



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

Criminal Revision Petition No. 318/2022

Shri Naren Das,
S/O Baliram Das,
R/O Barmurikona, PS-Nalbari,
District-Nalbari, Assam-781335.

.....Petitioner.

-Versus-

Sandhyawati Das,
D/o Late Dhaniram Das,
W/o Naren Das,
R/o Village-Nij Depheli (Gopalpur),
PO-Nij Depheli, PS-Tamulpur,
District-Baksa, BTAD, Assam,
Pin-781367.

.....Respondent.

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

For the Petitioner : Mr. P. Upadhyay. Advocate.

For the Respondent : Mr. S.N. Krishnatraya. Advocate.

Date of Hearing : 24.05.2023

Date of Judgment : **30th May, 2023**

JUDGMENT AND ORDER

Heard Mr. P. Upadhyay, learned counsel for the petitioner. Also heard Mr. S.N. Krishnatraya, learned counsel for the sole respondent.

2. In this Criminal Revision Petition under Section 397/401 of the Code of Criminal Procedure, the petitioner, namely, Naren Das has put to challenge the correctness or otherwise of the judgment and order dated 21.03.2022, passed by the learned Principal Judge, Family Court, Nalbari, in F.C.(Criminal) Case No.825/2019. It is to be noted here that vide impugned order dated 21.03.2022, the learned Principal Judge, Family Court, Nalbari, had directed the petitioner to pay a sum of Rs.2,000/- per month to the respondent towards maintenance allowance.

3. The background facts, leading to filing of the present Criminal Revision Petition, are adumbrated as under:-

"Smti. Sandhyawati Das, the respondent herein, filed a case against the petitioner under Section 125 of Cr.P.C. before the learned Principal Judge, Family Court, Nalbari, stating inter alia that in the year 1997 the respondent and the petitioner solemnized their marriage socially on account of their love affairs and lived together as husband and wife at the house of the petitioner. Thereafter, the respondent became pregnant and on 11.10.1998, the petitioner got the respondent admitted at the Mahendra Mohan Chaudhury Hospital, Panbazar, Guwahati, for delivery of baby. But, after admitting the respondent in the Hospital, the petitioner disappeared from there. Thereafter, the respondent gave birth to a child, namely, Pompy Das on 06.11.1998, and the petitioner did not take any information about her. Then the respondent was taken by her father to her

matrimonial house and there the respondent was eagerly waiting for the petitioner. Since the date the petitioner left from the Hospital, he kept himself hidden from the respondent for about 22 years. And during the time of hearing of NRC, the respondent met the family members of the petitioner after 22 years and got the information about the petitioner and till date, the petitioner has not given any maintenance or cost in respect of the study of her daughter. Therefore, the respondent had preferred an application before the Family Court, Nalbari for grant of maintenance to herself and for her daughter to the tune of Rs.13,000/- per month, as because according to the respondent, the petitioner is a businessman and his monthly income is Rs.25,000/-.

Upon the said petition F.C.(Criminal) Case No.825/2019 has been registered. The petitioner, on receipt of the notice, entered appearance and contested the case tooth and nail by filing his written statement, denying solemnization of the marriage with the respondent and having physical relation with the respondent. The pleaded case of the petitioner is that he is living in the house of his father-in-law as house son in law (Gharjuwai) after marrying Alka Das in the year 2003 and out of their wedlock a male child was born who is at present 16 years old. Further contention of the petitioner is that Pompy Das is a married woman and the wife of Mahindra Singh of Kokrajhar. He also denied his business and income as stated by the respondent and further he averred that the respondent, in order to grab his property has come up with the instant case with false allegations.

Then hearing the parties the learned Principal Judge, Family Court, Nalbari vide impugned order dated 21.03.2022, has granted maintenance allowance of Rs.2,000/- per month to the respondent.”

4. Being highly aggrieved, the petitioner approached this Court, challenging the correctness or otherwise of the said order and contended to set aside the same, *inter alia*, on the following grounds amongst others:-

- (i) That, the learned Court below committed error in both law and facts in passing the impugned judgment and order. As such the Court below has acted in exercise of its jurisdiction illegally or with material irregularity;
- (ii) That, the respondent had failed to prove the factum of solemnization of marriage and the learned Trial Court granted maintenance allowance without coming to a finding that their marriage was a valid marriage;
- (iii) That, in view of the admitted fact that the petitioner and the respondent had no relation for last 22 years and there was no question of negligence and refusal to maintain the respondent by the petitioner.
- (iv) That, the petitioner has got no independent income and he is living in the house of his father-in-law as Gharjuwai and under such circumstances, the learned Trial Court ought not to have granted maintenance allowance without coming to a finding that the petitioner has got sufficient means to maintain the respondent.

(v) That, the finding of the learned Trial Court that now-a-days wage earner can earn at least Rs.350/- per day and it is therefore surfaced that the petitioner has sufficient means to maintain the respondent, is based on assumption and surmises.

5. Mr. Upadhyay, learned counsel for the petitioner submits that the petitioner has not admitted the marriage and there is no evidence as to when and how and where the marriage was solemnized. Mr. Upadhyay further submits that there was no negligence on the part of the petitioner as he remained untraceable for 22 years and the learned Court below has passed by the impugned order without considering the aforesaid aspects and therefore, the impugned order suffers from manifest illegality and as such it is contended to allow this petition by setting aside the impugned judgment and order.

6. Whereas Mr. S.N. Krishnatraya, learned counsel for the sole respondent submits that the petitioner in his evidence as DW-1 clearly admitted that he is the father of the child given birth by the petitioner and that if the evidence of the petitioner is considered along with the evidence adduced by the respondent, the same clearly established that at least for the purpose of Section 125 Cr.P.C. the marriage between the petitioner and the respondent stands proved and the learned Court below has committed no illegality while allowing the petition and as such the petition is liable to be dismissed.

7. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the impugned judgment and order passed by the learned Principal Judge, Family Court, Nalbari and the scanned copy of the record of the learned court below.

8. It is trite law that normally revisional jurisdiction has to be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of the power by the court. Reference in this context can be made to a decision of Hon'ble Supreme Court in ***Amrit Kapoor vs. Ramesh Chander*** reported in ***(2012) 9 SCC 460***.

9. On this aspect, it is sufficient to refer to and rely on the decision of this court in ***Dulichand vs. Delhi Administration*** reported in ***AIR 1975 SC 1960***, in which it is observed thus :-

"The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned additional Sessions Judge was correct. But even so the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse."

10. It is necessary to note that in the case of ***Dulichand*** (supra) the High Court had re-appreciated the whole evidence and confirmed the findings of the two courts below. Hon'ble Supreme Court, therefore, did not interfere with them.

11. In ***State of Maharashtra vs. Jagmohon Singh*** reported in ***AIR 2004 SC 4412***, while dealing with the revisional power of the High Court has held as under:-

"The revisional court is empowered to exercise all the powers conferred on the Appellate Court by virtue of the provisions contained in Section 410 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of Appellate Court, if necessary, in aid of power of

superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be, "for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceeding of such inferior court." It is for the above purpose, if necessary, the High Court or Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of Appellate Court on the Revisional Court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.”

12. It appears that herein this case, in the impugned judgment and order, the learned Court below has framed following three issues:-

- (i) Whether the First Party is the legally married wife of the Second Party?
- (ii) Whether the Second Party is the father of the daughter of the First Party, namely, Pompy Das? and
- (iii) Whether the First Party is entitled to get maintenance allowance and if so, what would be the quantum of maintenance?

Thereafter, the learned Court below has decided point No.(i) and (ii) together by holding that the evidence adduced by the respondent and the independent witness has clearly established solemnization of marriage between the petitioner and the respondent and it is further established that out of the said wedlock one baby girl namely, Smti Pompy Das, was born on 06.11.1998, and she deposed before the Court as PW-2.

13. When the finding so recorded, is examined in the light of the evidence on the record, with the aid of power of superintendence or

supervision as a part of power of revision conferred on the High Court under Section 397 CrPC, for the purpose of satisfying itself as to the correctness, legality or propriety of the impugned judgment and order, this court is unable to record concurrence with the submission of the learned counsel for the petitioner. The materials, so forthcoming, are sufficient to show that there was solemnization of marriage between the petitioner and the respondent and out of their wedlock one girl child was born to them. It is to be noted here that the petitioner himself also admitted in cross-examination that he is the father of the said girl child. Since solemnization of the marriage, as per social rites, between the petitioner and respondent stands established, the presumption about validity of the said marriage is available with all plenitude and amplitude. In holding so, this Court relies upon following decisions of Hon'ble Supreme Court in ***Sumitra Devi v. Bhikan Choudhary*** reported in ***(1985)1 SCC 637*** and ***A.L.V.R.S.T. Veerappa Chettiar v. S. Michael*** reported in ***1962(0) Supreme (SC) 379***.

14. It is to be mentioned here that in the case of ***Sumitra Devi*** (supra), where the Hon'ble Supreme Court held that there is no doubt that in order that there may be a valid marriage according to Hindu Law, certain religious rites have to be performed. Invoking the fire and performing Saptapadi around the sacred fire have been considered by this Court to be two of the basic requirements for a traditional marriage. It is equally true that there can be a marriage acceptable in law according to customs which do not insist on performance of such rites as referred to above and marriages of this type give rise to legal relationship which the law accepts.

15. Again in the case of ***S. Michael*** (supra), the Hon'ble Supreme Court has held that it is proved the marriage was performing in fact the

Court will also presume that the necessary ceremonies have been performed.

16. Application of the ratios, discussed herein above, to the facts and circumstances here in this case would indicate that the marriage between the petitioner and the respondent was performed and they lived together and given birth of a girl child. Though the petitioner has denied having married the respondent and living together as husband and wife and also denied absence of negligence on his part yet there is sufficient materials to show that he left the respondent at the hospital and disappeared thereafter and for last 22 years he remained disappeared which shows gross negligence on his part and for the purpose of Section 125 Cr.P.C. the marriage between the petitioner and the respondent stands proved and the negligence on the part of the petitioner also stands proved and as such the learned Court below has rightly arrived at the finding and awarded maintenance to the respondent and the impugned judgment and order on such count withstand the test of legality, propriety and correctness and the same requires no interference of this Court and accordingly, this Criminal Revision Petition stands dismissed.

17. The petitioner is directed to clear the arrear amount of maintenance within a period of 3(three) months from today.

18. In terms of above, this Criminal Revision Petition stands disposed of. The parties have to bear their own cost.

Sd/- Robin Phukan
JUDGE

Comparing Assistant