

GAHC010008572013



2024:GAU-AS:10877

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./511/2013

SAKARJYOTI PATOR,
S/O SRI NANDARAM PATOR R/O VILL- NIZ MIKIRGAONBARAPUZIA,
MOUZA- CHARAIBAHU P.S. MIKIRBHETA DIST. MORIGAON, ASSAM.

VERSUS

THE STATE OF ASSAM and ANR,

2:MISS. MEGHALI DEVI
D/O SRI LOKNATH NATH VILL- NATUAGAON MOUZA- MORIGAON
P.S. MORIGAON DIST. MORIGAON
ASSAM

Advocate for the Petitioner : MR.A HAQUE, MR.B CHOUDHURY,MR.D BANIA,MR.E AHMED

Advocate for the Respondent : R SARMAH, PP, ASSAM,B K BHATTACHARJEE,

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

06.11.2024

1. Heard Mr. B. Choudhury, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State representing the

respondent No. 1. None appears for the respondent No. 2.

2. The present application under Section 482 of Cr.P.C. is filed for quashing the judgment and order dated 19.02.2013 passed by the learned Chief Judicial Magistrate, Morigaon in M. R. Case No. 180/2010 which was filed by the respondent wife under Section 125 of Cr.P.C. By the aforesaid order, an amount of Rs. 1500/- was awarded in favour of the respondent wife as maintenance in exercise of power under Section 125 of Cr.P.C.
3. The further challenge is an order dated 24.05.2013 passed by the learned Sessions Judge, Morigaon in Criminal Revision Case No. 30/2013, whereby the decision of the learned CJM, Morigaon dated 19.02.2012 was upheld by dismissing the criminal revision preferred by the petitioner.
4. The fundamental ground urged by the learned counsel for the petitioner is that there is no proof of marriage and he disputed of having legally married the wife and therefore, both the learned Court's below ought to have determined the aforesaid issue at first and then, ought to have granted maintenance.
5. I have given anxious consideration to the submissions advanced by the learned counsel for the parties and also perused the materials available on record.
6. It is well settled that standard of proof of relationship in a proceeding under Section 125 is not strict as is required in a trial of an offence in a criminal case. It is also to be taken note that an order passed in an application under Section 125 Cr.P.C. does not really determine the right and obligations of the parties inasmuch as the Section 125 Cr.P.C. is enacted with a view to provide a summary remedy to neglected wife/children and parents to obtain maintenance.
7. In exercise of its inherent power, this Court can set right a patent defect or an error of jurisdiction or of law, pass order to prevent abuse of process and for

securing ends of justice. Such power can also be exercised where the decision under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. It is equally well settled that a revisional jurisdiction of High Court should not be exercised in a routine manner. The Hon'ble Apex Court in ***Chandra Babu vs State*** reported in **2015 (8) SCC 774** held that normally revisional jurisdiction should be exercised in a question of law however, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. The Supreme Court went to say that the power is required to be exercised so that justice is done and there is no abuse of power by the Court.

8. It is also well settled proposition of law that until and unless there are illegality, irregularity and failure of justice, this Court generally should not exercise its power under Section 482 Cr.P.C. in cases of maintenance under Section 125 Cr.P.C.
9. The learned Chief Judicial Magistrate had duly appreciated the evidence laid by the complainant/wife and also the defence evidence laid by the husband. After appreciation of such evidence, more particularly, the evidence of PW-1 (wife), PW-2 (grand-mother of PW-1) and PW-3 (father of PW-1), the learned Court below concluded that the complainant/PW-1 eloped with the petitioner herein and they got married as per Sankari Custom and thereafter lived as husband and wife. The learned trial Court had also considered the evidence of DW-1 and DW-2 and concluded that denial of marriage by the DW-1 (the husband) is not enough and it requires positive evidence. The learned trial Court further concluded that under Section 125 of Cr.P.C., the complainant has only to prove that she has lived with the opposite party as husband and wife for a considerable period and the type of marriage is not material. Accordingly, the maintenance award was passed.

When such order of granting maintenance to the opposite party herein was challenged in the Court of learned Sessions Judge, the learned Court even did not admit the revision petition and concluded that there is no reasonable ground to admit the revision.

10. This Court is in total agreement with the findings recorded by the court below which are based on sound reasoning. In the considered opinion of this Court and as discussed herein above, the learned trial Court below has duly appreciated the evidence on record and the conclusion arrived at on the basis of such appreciation of evidence cannot be termed as a decision which could not have been arrived at on the basis of evidence available on record. This Court has also not found anything as regards any patent defect of jurisdiction or of law. The learned counsel for the petitioner has also not been able to show any non compliance of any provisions of law or that the findings recorded by the learned trial Court is based on no evidence or that any material evidence has been ignored or that judicial discretion is exercised arbitrarily or perversely.
11. Therefore, in view of the aforesaid, this Court also do not find any error not to say any patent error or defect in the impugned judgment and order dated 19.02.2013 passed by the learned Chief Judicial Magistrate, Morigaon in M. R. Case No. 180/2010 and order dated 24.05.2013 passed by the learned Sessions Judge, Morigaon in Criminal Revision Case No. 30/2013.
12. In view of the aforesaid discussions and reasons, this criminal petition stands dismissed. Interim order, if any, stands vacated. LCR be sent back.

JUDGE

Comparing Assistant