

GAHC010219052012



2024:GAU-AS:12145

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

Case No. : Crl.Rev.P./119/2012

MRIGEN DAS BARUAH
S/O SRI SIDANANDA DAS R/O VILL- MAKUM ASHOK NAGAR COLONY,
NEAR APBN, P.S. MAKUM, DIST. TINSUKIA, ASSAM,

VERSUS

JAYANTI RAMCHIERY
D/O SRI JOGEN RAMCHIERY R/O GONDING PARA V/A DAKSHIN BAKSA,
P.S. MUSALPUR, DIST. NALBARI, ASSMA,

Advocate for the Petitioner : MS.E AHMED, MR.N BORAH,MR.D R GOGOI

Advocate for the Respondent : , MR. J H SAIKIA,

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

02.12.2024

1. None appears for the parties on call.
2. This criminal revision petition under Section 397 of the Cr.P.C., 1973, is filed assailing a Judgment and Order dated 30.01.2012 passed by the learned Principal Judge, Family Court, Kamrup, Guwahati in F.C. (Crl.) No. 355/2008, whereby the

petitioner husband was ordered to pay a monthly maintenance allowance at the rate of Rs. 2000/- to the respondent wife.

3. The basic ground of challenge is that the respondent wife earlier preferred an application under Section 125 of Cr.P.C. being registered as F.C. (Crl.) No. 301/2004 on 14.04.2004 which was dismissed for default by the learned Principal Judge, Family Court, Kamrup, Guwahati under its order dated 18.08.2006 and subsequently, the second maintenance application being F.C.(Crl.) No. 355/2008 was filed.
4. The respondent wife preferred F.C.(Crl.) No. 355/2008 seeking maintenance and alleging that she has not been able to maintain herself and her husband is not maintaining even after having sufficient means. The petitioner husband filed written statement and took a stand that the application was not maintainable in view of dismissal of earlier petition filed under Section 125 of Cr.P.C. It was objected on the ground that there was no marriage and in fact there was an agreement for marriage and therefore, on the basis of such agreement of marriage, the respondent wife was not entitled for any maintenance.
5. The learned Principal Judge, Family Court, after considering the material available on record and the evidence laid by the parties, concluded that the complainant and the respondent was the wife and husband. It was further decided that the petitioner failed to maintain the respondent wife. As regards filing of the earlier application, the learned trial Court concluded that though a statement was made that earlier an application under Section 125 of Cr.P.C. was filed and also dismissed, however, no evidence was brought in the aforesaid proceeding. Accordingly, the impugned judgment was passed.
6. The fundamental case of the petitioner is before the learned Magistrate is denial of the allegation in total that the wife could not maintain herself and that

she is not having any source of income and also the statement of the wife that the petitioner is having sufficient income.

7. After perusal of the material available on record including the evidence adduced by the respondent wife as well as the husband, the learned trial Court came to a conclusion that the husband is an able bodied person and he has not provided any kind of maintenance to the wife.
8. This Court has also perused the material available on record including the evidence of PW-1, PW-2 and PW-3 as well as the written statement.
9. It is by now well settled that there clear proof of marriage is not necessary in a proceeding under Section 125 of Cr.PC. The Hon'ble Apex Court in **Dwarika Prasad Satpathy–VS- Bidyut Prava Dixit and Another** reported in 1999 7 SCC 675, laid down the propositions that the standard of proof of marriage in a Section 125 proceeding is not as strict as is required in a trial of an offence in a criminal case. It is equally well settled that an order passed in an application under Section 125 Cr.P.C. does not really determine the rights of 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.
10. The object of revisional power of this Court under Section 397 Cr.P.C. is to set right a patent defect or an error of jurisdiction or law. Such power can 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.

11. This Court is in 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 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 not found anything as regards as patent defect of jurisdiction or law. The learned counsel has not also been able to show any non compliance of any provisions of law or that the findings recorded is based on no evidence or that material evidence is ignored or that judicial discretion is exercised arbitrarily or perversely. In the case in hand, after perusal of the material available on record, this Court finds no ground to interfere with the findings of fact and the determination made by the learned Court below.
12. In view of the aforesaid discussions and reasons, this criminal revision petition stands dismissed.
13. Interim order, if any, stands vacated. LCR be sent back.

JUDGE

Comparing Assistant