

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.165 of 2015

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1. Sangita Devi Wife of Hira Roy @ Heera Rai and daughter of Singhari Singh @ Sinharu
Singh Resident of Village - Prihalpur, P.O- Kharsota, P.S.- Azamnagar, District - Katihar

.... Petitioner/s

Versus

1. Hira Roy @ Heera Rai Son of Anil Roy @ Uniha Resident of Village - Uttarampur,
P.O.- Kushida, P.S.- Harischandrapur, District - Malda (West Bengal)

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Md. Qumrul Hoda, Adv

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 07-03-2017

The Additional Principal Judge, Family Court,
Katihar in Maintenance Case No. 122 of 2013 has rejected the claim
of the petitioner for maintenance under Section 125 Cr.P.C., against
the opposite party on the ground that she could not establish the fact
of her marriage with the opposite party. Learned counsel for the
petitioner has drawn my attention to the affidavit sworn jointly by the
petitioner and the opposite party before Notary Public at Sub
Divisional Court, Barsoi, Katihar to submit that the petitioner and
opposite party are apparently husband and wife. He has also submitted



that the witnesses were examined in support of the claim of the petitioner in the proceeding under Section 125 of the Cr.P.C before the court below to support the petitioner's case that she was legally married wife of the opposite party.

I have perused the impugned order. There was no documentary evidence produced before the court below to establish the case of the petitioner that she is a legally married wife of the opposite party. From the impugned order, I do not find that such plea of declaration being available was not taken before the court below. Secondly, the court below has found contradiction in the evidence of witnesses produced by the petitioner. Thirdly, some of the witnesses are said to have deposed that the marriage was performed in court whereas some deposed that the marriage was solemnized in temple. No Pujari of any temple was produced before the court below to substantiate the claim of the petitioner of her marriage with the Opposite Party.

In that background, refusal of the court below to allow claim under Section 125 of the Cr.P.C does not appear to be suffering from any legal infirmity.

The petitioner shall be at liberty to seek declaration of her marriage with the Opposite Party in appropriate proceeding in accordance with law: If her claim is established and proved, she will



have liberty to apply for maintenance under Section 125 of the Cr.P.C.

This application stands disposed of with the observation as above.

(Chakradhari Sharan Singh, J)

Ranjan/-

AFR/NAFR	NAFR
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