

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.564 of 2014

Gapal Ray @ Gopal Ray

....
Petitioner
Mr. D.K. Sahoo-1, Advocate

-Versus-

Bati Ray and another

....
Opposite Parties
Mr. Debaraj Mohanty, Advocate

CORAM:
JUSTICE R.K. PATTANAİK

ORDER
22.07.2022

Order No.

04.

1. Instant petition under Section 482 Cr.P.C. is filed by the petitioner challenging the impugned order dated 23rd December, 2013 (Annexure-4) passed in Criminal Revision No.6 of 2012 by the learned Additional Sessions Judge, Rairangpur confirming the order of maintenance directed by the court of learned J.M.F.C., Rairangpur in CMC No.96 of 2009 moved under Section 125 Cr.P.C. seeking interim maintenance by the opposite parties on the grounds *inter alia* that the marriage between the parties was merely a surmise and conjecture without any evidence and therefore, the maintenance so ordered is unsustainable and thus, liable to be set aside.

2. Heard Mr. D.K. Sahoo-1, learned counsel for the petitioner and Mr. Debaraj Mohanty, learned counsel for the opposite parties.

3. In fact, the opposite parties filed CMC No.96 of 2009 before the court of first instance seeking maintenance from the petitioner under Section 125 Cr.P.C. which was disposed of by order dated 23rd August, 2012. The learned J.M.F.C., Rairangpur allowed the petition of OP No.1 and directed monthly maintenance of Rs.1,200/- payable to her and Rs.600/- in favour of OP No.2. The aforesaid order was challenged by the petitioner before the learned court below by filing a

revision. OP No.1 also preferred Criminal Revision No.7 of 2012 for a direction that the interim maintenance should be payable from the date of application of Section 125 Cr.P.C. filed by her. However, the learned court below dismissed both the revisions. As it appears, the order in Criminal Revision No.7 of 2012 has not been challenged at the instance of OP No.1. However, the petitioner being dissatisfied with the revisional order approached this Court by challenging the status of OP No.1 as his legally wedded wife and OP No.2 being born out of such wedlock.

4. Learned counsel for the petitioner submits that the revisional court without properly appreciating the evidence on record and absence of any marital status between the parties erroneously affirmed the decision of the learned Magistrate. It is further contended that the petitioner is from a labour class and has no regular employment and does not have any permanent source of income, the fact which was completely lost sight of by both the courts below.

5. On the contrary, the learned counsel for opposite parties justified the decision of the court below by contending that the petitioner accepted OP No.1 as his spouse and OP No.2 was born to them and considering the income of the petitioner rightly directed him to pay the monthly maintenance. It is also contended that the petitioner has an obligation to maintain the opposite parties which cannot be avoided on the ground of poor financial condition.

6. The learned Magistrate arrived at a conclusion that the validity of marriage is a matter which may be considered for a limited purpose while deciding an application for interim maintenance and took cognizance of the fact that the parties lived as husband and wife after their marriage was solemnized. On an analysis of entire evidence, the learned Magistrate held that the petitioner is liable to pay maintenance to the opposite parties. It appears that OP No.1 had filed a complaint before the local Protection Officer, whereafter, the petitioner was

summoned in DVC No.1 of 2009 to show cause and in that proceeding, he admitted the complainant to be his wife. Considering the above evidence and other materials and the fact of separation of the petitioner from his first wife and subsequent marriage to OP No.1 and both living together as spouses, the courts below considered it expedient to direct the order of monthly maintenance which in the view of the Court does not suffer from any infirmity. In a proceeding under Section 125 Cr.P.C., the legality or validity of a marriage between the parties is not examined threadbare and while directing monthly maintenance, relationship between the parties is only considered. In the present case, both the courts below have had a right approach while dealing with the plea of OP No.1 for interim maintenance. The relationship between the parties and their staying as spouses and particularly after separation of the petitioner from his first wife persuaded the courts to consider the maintenance of OP No.1 as he was neglected and was found to be without any source of income. A destitute women who is found to be in a relationship and living with a man as his wife would certainly require protection and in the present case, considering the evidence led by OP No.1, the courts below allowed the interim maintenance in her favour which by no means can be said as unjustified. It is reiterated that the petitioner having not denied his relationship with OP No.1 rather found to have admitted about it in a proceeding under the Domestic Violence Act, 2005 in respect of which evidence was produced before the learned Magistrate and being conscious of the position of law that in a proceeding under Section 125 Cr.P.C. there is a limited scope for appreciating a plea as to validity of marriage, the Court is of the considered opinion that he is definitely liable to maintain the opposite parties and therefore, rightly both the courts have allowed it.

7. With regard to means of income, the learned Magistrate received evidence from OP No.1 who claimed him of having a monthly earning of Rs.8000/- as against the claim that the daily income is only

Rs.90/- and he remains unemployed for 10 to 15 days a month. The courts found that the petitioner may have an income of Rs.6,000/- per month and above all, he is not infirm, rather, hale and hearty and therefore, liable to maintain the opposite parties and ultimately, allowed maintenance of Rs.1,200/- in favour of OP No.1 and Rs.600/- vis-à-vis OP No.2, which in no way appears to be disproportionate considering the fact that his monthly income was fixed at a reasonable figure.

8. In course of hearing, it was brought to the notice of the Court that despite such an order of maintenance, the petitioner is presently not paying any amount for the daily sustenance of the opposite parties. Anyways, since OP No.1 having not challenged the order passed in Criminal Revision No.7 of 2012, the petitioner shall have to pay and honour the order of maintenance under Annexure-4 which makes him liable with effect from 23rd August, 2012. The petitioner is not only required to pay the monthly maintenance but also to clear all the arrear dues which is pending since 2012, the date on which the maintenance was directed by the learned Magistrate vide Annexure-3. Net result is, the Court does not find any ground or compelling reasons to interfere with the findings of the courts below.

9. Accordingly, it is ordered.

10. In the result, petition under Section 482 Cr.P.C. stands dismissed.

(R.K. Pattanaik)
Judge

KC Bisoi/Secretary