

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.764 of 2019

Sri Damodar Tuika

....

Petitioner

Mr. Srinibash Satapathy, Advocate

-Versus-

Bijaylaxmi Tuika and Another

....

Opposite Parties

Mr. Rakesh Kumar Das, Advocate for OP No.2

CORAM:

JUSTICE R.K. PATTANAIK

DATE OF JUDGMENT:19.12.2022

1. The petitioner by invoking inherent jurisdiction of this Court has challenged the correctness, legality and judicial propriety of the impugned order dated 12th September, 2012 passed in Criminal Revision No.2 of 2016 by the learned Additional Sessions Judge, Gunupur for having confirmed the order of the learned J.M.F.C., Gunupur dated 26th February, 2015 in M.C. No.119 of 2009 in a proceeding under Section 125 Cr.P.C. directing maintenance in favour of opposite party No.1.

2. The opposite parties approached the learned J.M.F.C., Gunupur seeking monthly maintenance from the petitioner in terms of Section 125 Cr.P.C. which was entertained in M.C. No.119 of 2009 and allowed in part only in respect of opposite party No.2, namely, minor daughter of opposite party No.1. The said order under Annexure-1 of the court of learned J.M.F.C., Gunupur was challenged before the Sessions court in Criminal Revision No.2 of 2016 and was confirmed vide Annexure-4.

3. Heard Mr. Satapathy, learned counsel for the petitioner and Mr. Dash, learned counsel for opposite party No.1.

4. Mr. Satpathy, learned counsel for the petitioner submits that opposite party No.1 is not the legally wedded wife of the petitioner and by claiming so, he refers to the judgment (Annexure-1) of the civil court in C.S. No.21 of 2007 which was instituted by opposite party No.1 for a declaration about her marital status but was dismissed. When opposite party No.1's status was disbelieved, it is further submitted that the learned courts below could not have allowed maintenance vis-a-vis opposite party No.2 and hence, it is liable to be set aside. It is contended that the courts failed to take judicial notice of the judgment in C.S. No.21 of 2007 which was subsequently confirmed in appeal by a judgment in RFA No.6 of 2009 by the learned Ad hoc Additional District Judge (FTC), Gunupur and therefore, the monthly allowance for opposite party No.2 should not have been allowed.

5. Both the courts below have held that opposite party No.2 to be the illegitimate child of opposite party No.1 born through the petitioner and considering the birth certificate and other evidence on record as the parties lived together for about 7 months leading to a presumption that each of them had the access resulting in the birth of opposite party No.2 out of such relationship. It was held that child even though illegitimate, in view of Section 125 Cr.P.C. as it contemplates maintenance for such children, allowance of Rs.1,500/- per month was allowed. The learned J.M.F.C., Gunupur while denying maintenance to opposite party No.1 allowed it in favour of opposite party No.2 which was confirmed in revision. In fact, the learned Sessions court accepted the birth certificate of opposite party No.2 as admissible in terms of Section 35 of the Indian Evidence Act which was so held by the learned J.M.F.C., Gunupur referring to a decision in the case of **Mayadhar Nayak Vrs. Sub-Divisional Officer, Jajpur and others** reported in **2007 (Supp.-1) OLR 96**. The legal status of opposite party No.1

has not been challenged after the judgment in Annexure-1 nor the petitioner ever disputed the birth certificate of opposite party No.2 and challenged the same at any point of time. Considering the totality of the evidence on record such as the access of the petitioner to opposite party No.1 and the fact that the former was recorded as the father of opposite party No.2 in the birth certificate which was accepted by the learned courts below, this Court does not find any legal infirmity in the impugned order under Annexure-4 by allowing monthly maintenance only to opposite party No.2 in terms of Section 125 Cr.P.C. which includes a provision for illegitimate children. The petitioner never challenged the paternity of opposite party No.2 and otherwise also cannot deny the right of maintenance to her. No rebuttal evidence could either be produced to defeat the claim of opposite party No.1 on giving birth to opposite party No.2 through the petitioner. In other words, irrespective of opposite party No.1 having failed to establish her marital status as the legally wedded wife of the petitioner, since material was on record to show that opposite party No.2 was born out of their wedlock and though illegitimate is entitled to maintenance and therefore, rightly both the courts below reached at the same conclusion which, therefore, does not call for any interference.

6. Accordingly, it is ordered.

7. In the result, the CRLMC stands dismissed.

(R.K. Pattanaik)
Judge

U.K. Sahoo