

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1369 of 2018

Rajendra Nath Murmu.

....

Petitioner

-versus-

Jyoshnarani Pingua.

....

Opposite Party

CORAM: JUSTICE S.PUJAHARI

ORDER

08.07.2022

Order No.

10.

1. This matter is taken up through Hybrid mode.

2. The petitioner in this application under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") has challenged the judgment dated 12.04.2018 passed by the learned Addl. Sessions Judge, Karanjia in Criminal Revision No.6 of 2017 confirming the order dated 13.10.2017 passed by the learned J.M.F.C., Karanjia in Criminal Misc. Case No.60 of 2016, wherein the petitioner has been directed to pay maintenance of Rs.10,000/- per month to the opposite party in a proceeding under Section 125 of Cr.P.C.

3. Heard the learned counsel for the petitioner and the learned counsel for the opposite party.

4. As it appears, the petitioner has challenged the impugned order of maintenance in this petition on the ground that the opposite party being not his wife, the Court below as well as the revisional Court has committed gross illegality in holding that she is the wife of the present petitioner and, as such, she having been deserted, the petitioner is liable to pay her maintenance and saddled with the liability of maintenance amount on him as above.

5. Learned counsel for the petitioner would submit that the evidence adduced with regard to the marriage between the petitioner and the opposite party is not at all convincing. There being too slender evidence for the same, veracity of which is also doubtful in view of the other evidence militating against the same, the learned J.M.F.C., Karanjia while in seisin over the matter could not have come to a conclusion that there exists a relationship of husband and wife between the parties. Thereafter also, it should not have saddled the petitioner with the liability to pay maintenance without any grounds that exists for the same.

6. Per contra, the learned counsel for the opposite party-wife submits that a strict proof of marriage is not a requirement in a proceeding under Section 125 of Cr.P.C. The Court came to a conclusion that cannot necessity for a proof beyond reasonable doubt with regard to such marriage. If the same is proved by preponderance of probabilities, the Court ought to

accept that the parties were married and couples. In such premises, if the wife shows that she has justifiable reason to withdraw from the Society of the husband, then the Court should not be reluctant to award the maintenance to protect her from destitution and vagary. In this case, there appears to be evidence on record with regard to the marriage between the parties to prove that they are couples. In such premises, when the opposite party-wife (petitioner in the Court below) was deserted by the petitioner and she is living separately, the Court taking note of the facts and circumstances, especially the income of the petitioner saddled him with the liability to maintain his opposite party-wife. The same in no circumstances can be said to be palpably wrong or without evidence on record. The same was also tested before the higher forum that before the Sessions Judge which taking note of the evidence as well as the law, found no illegality in the impugned order, hence confirmed the same. This Court, therefore, at this stage in exercise of power under Section 482 of Cr.P.C. should not interfere with the same as that would amount to entertaining a second revision in the guise of a petition under Section 482 of Cr.P.C. which is prohibited under the Code.

7. I have heard the learned counsel for the parties and taken note of their submissions, so also I have gone through the impugned orders passed by both the Courts. It appears that in this case, the parties have not disputed that a strict proof of marriage is not a requirement to saddle someone with liability

in a proceeding under Section 125 of Cr.P.C. So also, unless the finding rendered is palpably illegal or based on no evidence, the Court should not interfere with the same in a revision much less is the chance of interference with the same in a petition under Section 482 of Cr.P.C., inasmuch as allowing such 482 Cr.P.C. petitions are nothing but in the guise of second revision which is prohibited under the Code to be entertained. It also appears that in this case, the learned J.M.F.C. has dealt with the evidence that was adduced by the parties to prove the marriage and to rebut the marriage between the petitioner and the opposite party to arrive at a conclusion that they were couples. The Court taking note of the facts and situation arrived at a conclusion that the opposite party proved that she is the wife of the present petitioner. The Court in this regard has also taken the law laid down in the case of *Bhatiya vrs. State* wherein it is stated to have been held by the Apex Court that strict proof of marriage is not essential in a proceeding under Section 125 of Cr.P.C. There is no quarrel on the said proposition which settled in law, but I cannot refrain myself again from saying that this is another case where the learned Magistrate has cited a decision without proper reference to ascertain such a ratio has been laid down in the decision referred. Hence, this Court expects the learned Magistrate while citing such decision may remain careful in future and provide the reference of citation for the advantage of the parties contesting the case as well as the higher forum.

8. Be that as it may, since such finding has been upheld by the revisional Court and it is also not disputed that the opposite party-wife is living separately. The petitioner is not maintaining her though he happens to be a cashier in a Nationalized Bank earning more than Rs.40,000/- per month previously is not in dispute. The revisional court on scrutiny of the same, when finds no illegality or infirmity in the impugned order, this Court, as such, did not interfere with the same, more so when it has not been brought to the notice of this Court that the aforesaid orders are palpably illegal and the finding has been rendered without any evidence or contrary to the evidence or law. Since this petition is in the guise of second revision which is prohibited in the Code, this Court does not want to exercise such power to quash the orders impugned, as this is not a fit case for exercise of such power.

9. Accordingly, this CRLMC being devoid of merit stands dismissed.

10. A copy of this order be communicated to the trial Court as well as the learned Magistrate, who rendered the impugned judgment, for her guidance forthwith.

(S. Pujahari)
Judge

MRS