

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM NO. 22 OF 2016

Bishni Toppo

....

Petitioner

Mr. Bikram Keshari Raj, Advocate

-versus-

Anil Kumar Minz

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

09.09.2022

Order No.

5. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this RPFAM seeks to assail the order dated 19th November, 2015 (Annexure-3) passed by learned Judge, Family Court, Rourkela in Criminal Proceeding No. 136 of 2014, whereby he rejected an application filed by the Petitioner under Section 125 Cr.P.C. on the ground that she failed to prove that she is the legally married wife of Opposite Party.
3. Mr. Raj, learned counsel submits that the Petitioner filed Criminal Proceeding No. 136 of 2014 with a specific allegation that she was working in KITEX Company in the State of Kerala and was staying in a Hostel. The Opposite Party, who happens to be her brother-in-law, went there and on 21st December, 2013, brought her to his Qrs. No.D/235, Sector-D, Bondamunda and thereafter, they lived as husband and wife from 24th December, 2013 to 13th July, 2014. Subsequently, the Opposite Party ill-treated the Petitioner and forced to her to abort pregnancy.

Ultimately, the Opposite Party drove her out of the said quarters. Although the matter was intimated to the family members of the Petitioner and meetings were convened on four occasions to resolve the issue, but in vain. The Petitioner thereafter lodged an F.I.R. in Mahila P.S., Sector-4, Rourkela. As she has no source of income, she filed an application under Section 125 Cr.P.C. claiming maintenance @ Rs.8,000/- per month. Learned Judge, Family Court, Rourkela disbelieving the marriage between the Petitioner and Opposite Party and observing that the Petitioner failed to establish that she is the legally married wife of Opposite party, refused to entertain the said application and rejected the same vide order dated 19th November, 2015. Hence, this RPFAM has been filed.

4. Although the Opposite Party is represented through his counsel, but none appears on his behalf at the time of call.

5. Upon hearing learned counsel for the Petitioner and on perusal of the case record, more particularly the impugned order, it appears that the Petitioner was examined as P.W.1. In her deposition, she had reiterated the averments made in the petition under Section 125 Cr.P.C. One Bandhu Kujur was also examined as P.W.2, who supported the evidence of P.W.1 and stated that both the Petitioner and Opposite Party were staying as husband and wife in Qrs. No.D/235, Sector-D, Bondamunda from 24th December, 2013 to 13th July, 2014. No evidence was adduced by the Opposite Party.

6. Law is well settled that strict proof of marriage is not necessary to claim maintenance under Section 125 Cr.P.C. If it is proved that parties are staying as husband and wife under one

roof for a considerable period and recognized by the society as husband and wife, the same would be sufficient to entertain the claim of maintenance under Section 125 Cr.P.C.. This material aspect was lost sight of by learned Judge, Family Court, Rourkela while adjudicating the petition under Section 125 Cr.P.C. It appears that learned Judge, Family Court, Rourkela proceeded on a footing that onus is on the Petitioner to strictly prove the marriage between the Petitioner and Opposite Party. He took exception to the fact that the Petitioner has not pleaded in her petition under Section 125 Cr.P.C. that there was marriage between the parties and she is the legally married wife of Opposite Party. The said observation of learned Judge, Family Court, Rourkela is not sustainable in the eyes of law. Accordingly, the impugned order under Annexure-3 is set aside and the matter is remitted back to the learned Judge, Family Court, Rourkela to adjudicate the Petition under Section 125 Cr.P.C. afresh giving opportunity of hearing to the parties concerned.

7. The RPFAM is allowed to the aforesaid extent.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks