

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 233 OF 2016

Harihara Sahu

..... Petitioner

Mr. Debasis Sarangi, Advocate

-versus-

Smt. Urmila Sahu alias Kumudini

..... Opp. Party

Mr. Debasish Sahu, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

16.12.2022

Order No.

13. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this RPFAM seeks to assail the order dated 11th August, 2016 passed by learned Judge, Family Court, Berhampur in Criminal Proceeding No.156 of 2014, whereby he has been directed to pay maintenance @ Rs.8,000/- per month to the Opposite Party from the date of filing of the application.
3. Mr. Sarangi, learned counsel for the Petitioner submits that the relationship between the parties, as alleged by Opposite Party is seriously disputed by the Petitioner. There is material on record to show that the Opposite Party was working as a maid at the house of the Petitioner after death of his wife. However, there is no material on record to show that the Opposite Party is the legally married wife of the Petitioner. Learned Judge, Family Court relied upon certain photographs at Ext.2 series and the report of the Principal Counselor dated 9th November, 2015 at Ext. 1 along with the letter of the brother of Opposite Party and came to a conclusion that the Opposite Party is the legally married wife of the Petitioner.

4. Mr. Sarangi, learned counsel for the Petitioner submits that it is the specific allegation of the Opposite Party that the marriage was solemnized at Puri. But, no documentary proof in support of the same has been filed. Learned Judge, Family Court while considering the photographs as under Ext.2 series came to hold as under:

“OP as D.W.1 denies that he figures in Ext.2 series the marriage photographs. But to a naked eye when the photographs are compared with the physical appearance of OP it appears that photographs very much figure the OP in a bridal make up in bridal ceremony with the bride.”

5. He also submits that although the Principal Counselor's report at Ext.1 was taken into consideration to arrive at a conclusion that there was a marriage between the Petitioner and Opposite Party, but the Petitioner was not given any opportunity to rebut the same. Ext.1 was never confronted to the Petitioner. He further submits that the Principal Counselor submitted his report without issuing any notice to the Petitioner or giving him an opportunity of hearing. Thus, the report under Ext.1 could not have been utilized against the Petitioner. He further submits that only because the Opposite Party was serving as a maid at the house of the Petitioner, it cannot be said that there was a marital relationship between the parties. On a close reading of the impugned order, it would appear that the same is based on a presumptions and surmises, which has no role to establish that there was a marriage between the Petitioner and Opposite Party. He, therefore, submits that the Opposite Party is not entitled to receive any maintenance from the Petitioner, as directed and prays for setting aside the impugned order.

6. Mr. Sahu, learned counsel for the Opposite Party vehemently objecting to the same contends that after death of the wife of the Petitioner, the Opposite Party was taken to the home of the Petitioner as his caretaker and she resided at the house of the Petitioner. The maid servant of the Petitioner examined as D.W.3, who does not disclose anything about the Opposite Party although the latter, was residing at the house of the Petitioner. He further submits that strict proof of marriage is not required in a proceeding under Section 125 Cr.P.C. It is sufficient, if the parties to the proceeding are living as husband and wife under one roof to entertain an application under Section 125 Cr.P.C.. Learned Judge, Family Court taking into consideration both oral and documentary evidence on record has arrived at a conclusion that the Opposite Party is the wife of the Petitioner.

7. It is his submission that the Opposite Party has no independent source of income to maintain herself. Hence, learned Judge, Family Court has committed no error in directing the Petitioner to pay the maintenance as above. He, therefore, prays for dismissal of the RPFAM.

8. Taking into consideration the rival contentions of the parties, this Court finds that learned Judge, Family Court relied upon the report of the Principal Counselor under Ext.1, which suggests that there was a marriage between the Petitioner and Opposite Party. The said document was never confronted to the Petitioner before utilizing it against him. Further the Principal Counselor was not examined as witness in the proceeding. The photographs as under Ext.2 series are weak piece of evidence, unless it is supported by any other material to establish that there was a marriage between the parties. It is the case of the Opposite

Party that the marriage took place at Puri. But, no documentary proof whatsoever to that effect was produced. Although the priest, who allegedly performed the marriage has been named, but no explanation has been offered as to why he was not examined in the proceeding. Learned Judge, Family Court also relied upon the letter of the brother of the Opposite Party. But, that cannot be taken as evidence on merit for proof of marriage, as the same was a self declaration of the brother of the Opposite Party himself.

9. In view of the above, this Court is of the considered opinion that the materials relied upon by learned Judge, Family Court to come to a conclusion that there is a marriage between the parties is not sufficient to prove the same.

10. In that view of the matter, this Court is of the considered opinion that the impugned order is not sustainable in the eye of law. Accordingly, the impugned order is set aside and the matter is remitted back to learned Judge, Family Court, Berhampur for fresh adjudication of the matter giving opportunity of hearing to the parties keeping in mind the observation made herein above.

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

(K.R. Mohapatra)
Judge

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