

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 221 of 2022

Rabindra Dalai

....

Petitioner

Mr. Asit Kumar Jena, Advocate
on behalf of Mr. Sunil Kumar Panda, Advocate

-versus-

Usha Dalai @ Barik and another

....

Opp. Parties

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
27.10.2022**

Order No.

1. This matter is taken up through hybrid mode.
2. A memo along with copies of depositions filed in Court is taken on record.
3. Petitioner-husband in this RPFAM seeks to assail the judgment and order dated 3rd September, 2022 (Annexure-1) passed by learned Judge, Family Court, Jeypore in Criminal Proceeding No.19 of 2019, whereby the Petitioner has been directed to pay maintenance of Rs.5,000/- per month to Opposite Party No.1 (wife) and Rs.2,000/- per month to Opposite Party No.2 (daughter) from the date of filing of petition under Section 125 Cr.P.C., i.e., 12th September, 2019.
4. Mr. Jena, learned counsel appearing on behalf of Mr. Panda, learned for the Petitioner submits that the Petitioner does not challenge the quantum of maintenance directed to be paid by him to Opposite Parties. Petitioner in this RPFAM seeks to assail the marriage between the Petitioner and Opposite Party No.1, which forms the basis of filing of petition under Section 125 Cr.P.C. In support of his case, learned counsel relied upon

the statement of PW-1 (Opposite Party No.1) and OPW-3, Priest of the temple. It is submitted that the Opposite Party No.1 in her evidence has categorically stated that initially the marriage was taken place at Shiv temple of village Kiang by exchanging garlands in presence of the Priest. The OPW-3, who is the Priest of the said Shiv temple, in his evidence, has stated that he is the lone Priest in the said Shiv temple performing his duty since last thirty years. It is categorically stated by OPW-3 that the Petitioner had never married to any lady in the Shiv temple in the village Kiang during the year 2012 or on any date by exchanging garland. It is a blatant lie and is made out only to get maintenance from the Petitioner. It is also submitted by learned counsel that there was no occasion on the part of the Petitioner to marry Opposite Party No.1. The Family Court relying upon documentary evidence like Adhar Card and certain photographs being swayed away has passed the impugned order. Hence, the same is not sustainable. Moreover, OPW-4, the Drummer supported the case of the Petitioner. When the basis of filing the petition for maintenance is not proved, grant of maintenance in favour of Opposite Parties by Family Court is not sustainable. Hence, he prays for setting aside the impugned order.

5. Heard learned counsel for the Petitioner and perused the impugned order under Annexure-1. On perusal of record, it appears that Opposite Party No.1 has categorically stated that initially marriage was solemnized by exchanging garland in the Shiv temple at village Kiang. Subsequently, marriage was performed in presence of family members and a feast was arranged in the village. It is also borne out from record that they

were blessed with Opposite Party No.2. Adhar Card (P-2), Mamata Yojana Card (P-3), Adhar Card of Opposite Party No.2 (P-4) clearly disclose that the Petitioner is the husband of Opposite Party No.1 and father of Opposite Party No.2. Strict proof of marriage is not required in a proceeding under Section 125 Cr.P.C. An order of maintenance can be passed, if it is established that the parties were living under one roof as husband and wife for a considerable period. Opposite Party No.1, in her evidence, has stated that she was living with the Petitioner for a considerable period and out of their wedlock, Opposite Party No.2 was born. No effective rebuttal evidence is produced by the Petitioner to disbelieve the same. It further appears that learned Judge, Family Court, discussing the materials on record in details, has come to the conclusion that Opposite Party No.1 is the wife of the Petitioner and it is sufficient for the purpose of considering an application under Section 125 Cr.P.C. There is also no rebuttal evidence on record to disbelieve that Opposite Party No.2 is not born out of the wedlock of the Petitioner and Opposite Party No.1. In that view of the matter, this Court, while exercising power under Section 401 of CPC, is not inclined to re-appreciate the evidence on record.

6. Accordingly, the RPFAM being devoid of any merit stands dismissed.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy