

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 105 OF 2021

Manjulata Mallik

..... Petitioner

Mr. P.R. Mishra, Advocate

-versus-

Bhagirathi Mallik

.... Opp. Party

Mr. Pravat Kumar Mohanty, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

22.07.2022

Order No.

8. 1. This matter is taken up through hybrid mode.
2. This RPFAM has been filed assailing the order dated 5th May, 2021 (Annexure-4) passed by learned Judge, Family Court, Bhadrak in Criminal Proceeding No.1085 of 2016, whereby an application under Section 125 Cr.P.C. was dismissed on the ground of failure on the part of the Petitioner to establish that she is the legally married wife of the Opposite Party.
3. Mr. Mishra, learned counsel for the Petitioner makes lengthy argument explaining the Indian culture and sanctity in the statement of an Indian lady describing the Opposite Party as her husband. It is his submission that learned Judge, Family Court could not appreciate the evidence in its proper perspective. P.W. 3, who is an octogenarian and former MLA also deposed about the marriage between the Petitioner and Opposite Party. Learned Judge, Family Court disbelieved the same without assigning any cogent reason thereto. It is his submission that the deposition along with documents marked as Exhibits clearly establish that the Petitioner is the legally married wife of Opposite Party. The birth

certificate, original Matriculation Certificate of Basanta Mallik, his Job Card, Voter Identity Cards as well as Adhar Cards of both the Petitioner as well as said Basanta Mallik clearly establish the marriage between the parties and Basanta Mallik is the son born out of their wedlock. When the Opposite Party denies the marriage, burden lies on him to prove his case. This material aspect was not taken into consideration by learned Judge, Family Court while passing the impugned order. He also relies upon the decisions in the cases of in ***Basanta Kumar Sahu –v- Bhikari Charan Sahu and others***, reported in 1995 (I) OLR 516, ***Sri Dharma Bahaji Bairi –v- Smt. B. Rajeswari and another***, reported in 2008 (Supp.-II) OLR 371, ***Narayan Meher –v- Mukta Meher and another***, reported in 2010 (Supp.-II) OLR 376, ***Digambar Samal –v- Narmada Mohanty and another***, reported in 2015 (II) OLR 1037, ***Nirmala –v- Rukminibai***, reported in AIR 1994 Kar 247 and ***Mohinder Singh –v- Jaswant Kaur (D) through Lrs.***, reported in 2020 (4) CCC 448 (SC) and submits that strict proof of marriage is not necessary for establishing that the Petitioner is the legally married wife of Opposite Party. Living together as husband and wife under one roof, which is recognized by the society, is sufficient to prove that the Petitioner is the legally married wife for grant of maintenance in a proceeding under Section 125 Cr.P.C.. In that view of the matter, he prays for setting aside the impugned order and to remit the matter back to the learned Judge, Family Court, Bhadrak for fresh consideration on the basis of the materials available on record.

4. Mr. Mohanty, learned counsel for the Opposite Party objecting to the submission made by learned counsel for the Petitioner contended that the RPFAM under Section 19(4) of the Family Courts Act, 1984 is in the nature of a revision under Section 401 Cr.P.C. Thus, re-appreciation of evidence is not permissible in this revision. It is his submission that the Petitioner alleges that she had married to the Opposite Party in the year 1976. There is no material on record to show that when they were separated and as to why she waited for thirty-five years to file an application under Section 125 Cr.P.C., when she had knowledge that the Opposite Party had married to one Champabati and has seven children out of their wedlock, Learned Judge, Family Court discussed the materials on record in detail and came to a conclusion that the Petitioner failed to establish that she is the legally married wife of the Opposite Party. The Petitioner had filed an application on 1st May, 2017 to establish that Basanta Mallik is the biological son born out of wedlock of the Petitioner with the Opposite Party. The said application was rejected vide order dated 16th April, 2018 and remained unchallenged. Thus, the exhibits showing that Basanta Mallik is the son of Opposite Party have no significance. The said documents were not prepared on the instruction of the Opposite Party or at his instance. The Petitioner has not yet moved competent court of law to establish that she is the legally married wife of the Opposite Party. Hence, the impugned order warrants no interference. In that view of the matter, he prays for dismissal of the RPFAM.

5. After hearing learned counsel for the parties at length, this Court at the outset observes that the ratio cited by learned counsel for the Petitioner is not in dispute. The ratio decided therein are established law of the land. It is true that strict proof of marriage is not necessary in a proceeding under 125 Cr.P.C. The relationship between the parties as husband and wife can be established, if it is proved that they are/were living under one roof as husband and wife, which is recognized by the society.

6. In the instant case, the witnesses examined on behalf of the Petitioner have stated that the marriage between the Petitioner and Opposite Party was solemnized in the year 1976. It is also stated that Basanta Mallik was born out of their wedlock. But, as stated by Mr. Mohanty, learned counsel for the Opposite Party, it appears from the record that in the proceeding under Section 125 Cr.P.C., an application was filed to determine the status of said Basanta Mallik as the biological son of the Petitioner. The said petition was rejected vide order dated 16th April, 2018, which was never challenged in any higher forum and attained its finality. Thus, the status of Basanta Mallik as the son born out of the wedlock of the Petitioner and Opposite Party is yet to be decided by any competent Court of law.

7. It appears from the record that the Petitioner had knowledge about the marriage between the Opposite Party and Champabati and both the Petitioner and her father (P.W.2) had also knowledge that seven children born out of the wedlock of the Opposite Party and Champabati. But the Petitioner had never challenged the said marriage. P.W. 2 in his evidence has categorically stated that he

had no relationship with the Opposite Party for all those years. There is no evidence on record to show that the documents like, birth certificate, matriculation certificate, voter identity card and adhar card etc. were prepared either at the instance or on the instruction of the Opposite Party. It also appears that the birth certificate of Basanta Mallik was prepared during pendency of the proceeding under Section 125 Cr.P.C.

8. It also appears that learned Judge, Family Court has discussed the materials on record in detail and arrived at a conclusion that the Petitioner has failed to establish that she is the legally married wife of the Opposite Party. This Court is conscious that it is exercising power of revisional Court, where re-appreciation of evidence is not permissible. Only because a second view may be permissible on re-appreciation of evidence, that cannot be a ground of interference in a revision. On perusal of the impugned order, it appears that learned Judge, Family Court, Bhadrak has discussed the materials in detail qua the evidence as well as documents exhibited by both the parties and arrived at a just conclusion. As such, this Court is not inclined to interfere with the impugned order.

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

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

(K.R. Mohapatra)
Judge