IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Revision No. 12 of 2022

Ashok Kumar Singh @ Ashok Singh @ A. K. Singh.... .. ... Petitioner(s)

Versus

1.The State of Jharkhand.

2.Nirupama Pramanik .. ..Opp. Party(s)

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CORAM :HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

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For the Petitioner(s) : Mr. L. C. N. Shahdeo, Advocate
For the State : Mr. V. Roy, SPP
For the O.P. No.2 : Mr. Vishal Kr. Tiwary, Advocate

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15/ 12.01.2024. Heard, learned counsel for the parties.

1. The instant criminal revision has been preferred against the order dated 16th January, 2020 passed by the learned Additional Principal Judge, Additional Family Court, Jamshedpur in Original Maintenance Case No.17 of 2019 under Section 125 Cr. P.C., whereby the petitioner has been directed to pay Rs.4,000/- per month as maintenance to the O.P. No.2 and further directed to pay Rs.2000/- as lumpsum as a litigation cost.
2. The sole ground for challenge is that the Opp. Party No.2 /applicant is not legally married wife of the petitioner and they never lived together in that relationship. In support of the contention, it is submitted that the applicant had lodged Complaint Case No.850 of 2008 against the petitioner under Sections 417 & 354 IPC on the allegation that petitioner had agreed for marriage on 06.04.2008, but when the complainant went for marriage with all the relevant documents, the accused did not turn up there. In this case, the learned Trial Court acquitted the accused of the charges on the finding of consensual relationship between both the sides.
3. Another case being Dhalbhum Mahila P.S. Case No.26 of 2016 was filed by the applicant/ Opp. Party no.2 against the petitioner under Sections 494/ 495/ 498A IPC on 22.12.2016. In this case, after investigation cognizance has not been taken under Section 498A, IPC as there was no prima facie material to show that the marital relationship between the applicant and the petitioner.
4. Learned SPP for the State assisted by learned counsel for the Opp. Party No.2 have opposed the prayer. It is submitted that there is presumption of marriage when couple live together and strict proof of marriage is not required to be proved by the applicant in the maintenance case. In this

regard, reliance is placed on ***Badshah v. Urmila Badshah Godse*, (2014) 1 SCC 188** wherein it is held:

> ***13.*** *We are dealing with a situation where the marriage between the parties has been proved. However, the petitioner was already married. But he duped the respondent by suppressing the factum of alleged first marriage. On these facts, in our opinion, he cannot be permitted to deny the benefit of maintenance to the respondent, taking advantage of his own wrong. Our reasons for this course of action are stated hereinafter:*
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> ***13.1.****Firstly, in Chanmuniya case [Chanmuniya v. Virendra Kumar Singh Kushwaha, (2011) 1 SCC 141 : (2011) 1 SCC (Civ) 53 : (2011) 2 SCC (Cri) 666] , the parties had been living together for a long time and on that basis question arose as to whether there would be a presumption of marriage between the two because of the said reason, thus, giving rise to claim of maintenance under Section 125 CrPC by interpreting the term "wife" widely. The Court has impressed that if man and woman have been living together for a long time even without a valid marriage, as in that case, term of valid marriage entitling such a woman to maintenance should be drawn and a woman in such a case should be entitled to maintain application under Section 125 CrPC. On the other hand, in the present case, Respondent 1 has been able to prove, by cogent and strong evidence, that the petitioner and Respondent 1 had been married to each other.*
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> ***13.2.****Secondly, as already discussed above, when the marriage between Respondent 1 and the petitioner was solemnised, the petitioner had kept Respondent 1 in dark about his first marriage. A false representation was given to Respondent 1 that he was single and was competent to enter into marital tie with Respondent 1. In such circumstances, can the petitioner be allowed to take advantage of his own wrong and turn around to say that the respondents are not entitled to maintenance by filing the petition under Section 125 CrPC as Respondent 1 is not "legally wedded wife" of the petitioner? Our answer is in the negative. We are of the view that at least for the purpose of Section 125 CrPC, Respondent 1 would be treated as the wife. (emphasis supplied)*

5. At the outset it must be noted that facts of the present case are different from the authorities relied upon. In the authority referred it was indisputably a 2nd marriage of the husband which he had performed by concealing his 1st marriage. In the present case cloud is on the factum of marriage itself. There is a presumption of marriage where there is evidence that parties were living together. But the said presumption is rebuttable presumption.

6. In the present case it is definite case of the Applicant that she was married to the petitioner on 5.5.2005. There is incontrovertible materials on record to show that she had filed c/1 No.850/2008 under Section 354 r/w 417 of the IPC, taking the plea that she lived together continuously for 4 years with the petitioner on a proposal of marriage, and on the said false promise of marriage he physically exploited the complainant. This case was filed in 2008 and therefore demolishes the case of the Applicant that she had been married to the petitioner in 2005. Once the marital relationship is disproved, there cannot be any order of maintenance under section 125 of the CrPC.

Under the circumstance, impugned order is set aside and revision is allowed.

(**Gautam Kumar Choudhary, J.**)

Sandeep/

Uploaded.