

GAHC010227692014



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev. Pet./311/2014

BUBUL BORBORA
S/O LT. TILAK BORBORA R/O HATIGORH
SALAGURI GAON
P.S. JORHAT
DIST. JORHAT
ASSAM.

VERSUS

SMTI RUPANJALI BARUA BORBORA
D/O LT. GOLAP BARUA R/O KACHAGARAL
P.O. and DIST. JORHAT
ASSAM
PIN- 785007.

Advocate for : MS.P HANDIQUE
Advocate for : LEGAL AID COUNSEL appearing for SMTI RUPANJALI BARUA
BORBORA

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 07.11.2024

1. Heard Mr. D Barua, learned counsel for the petitioner. Also heard Mr. A.M Bora, learned senior counsel assisted by Mr. V.A Chowdhury, learned counsel who has appeared as Amicus Curiae on being appointed by this court.

2. The present petition under section 397 read with section 482 Cr.P.C, 1973 is filed assailing an order dated 28.05.2014, passed by the learned Addl. Sessions Judge, Jorhat in Criminal Revision No.40/2013 filed by the respondent wife, whereby, the judgment dated 11.11.2013 passed by the learned Addl. CJM, Jorhat in Misc Case No.11/2010 was reversed and the matter was remanded back for determination of quantum of maintenance under section 125 Cr.P.C.

3. The respondent wife filed Misc Case No.11/2010 before the learned Addl. CJM, Jorhat under section 125 Cr.P.C. By the aforesaid judgment, the application filed by the respondent wife was dismissed basically on the ground that the evidence of PW's did not inspire confidence of the learned Judge that the petitioner and the respondent is husband and wife.

4. Such decision was reversed by the learned Addl. Sessions Judge in Criminal Revision No.40/2013 preferred by the respondent wife. The learned Sessions Judge after elaborately dealing with the evidence of PW as well as the DW, came to the conclusion that the independent PW sufficiently proved the fact that the revision petitioner is the wife of the opposite party and she left her matrimonial home due to continuous physical torture on her by the husband. It was further concluded that the husband though denied the claim of the petitioner and asserted that the petitioner was a maid and not a legally married wife, failed to adduce cogent evidence.

5. According to the learned Sessions Judge, all the independent DWs deposed that they had seen the petitioner in the house of the opposite party husband and heard from the said person

that she was engaged as a maid in his house, however, none of the aforesaid witnesses deposed that they had seen the petitioner working as maid in the house of the opposite party. It was also concluded that the independent PWs had led direct evidence in proof of the claim of the petitioner whereas none of the independent DWs had led any proof of the claim of the opposite party. Accordingly, the decision of the learned CJM was reversed.

6. This issue should not detain this court any further, inasmuch as, the Hon'ble Apex Court in ***Dwarika Prasad Satpathy–VS- Bidyut Prava Dixit and Another*** reported in ***1999 7 SCC 675***, laid down the propositions that the standard of proof of marriage, a proceeding under section 125 Cr.P.C., is not as strict as is required in a trial of an offence in a criminal case. It is equally well settled that an order passed in an application under Section 125 Cr.P.C. does not really determine the rights and obligations of the parties inasmuch as the Section 125 Cr.P.C. is enacted with a view to provide a summary remedy to neglected wife/children and parents to obtain maintenance. It is also well settled that the absolute proof of marriage is not always necessary and when a party denies the marital status, he/she should opt for appropriate remedy to establish the same.

7. The object of revisional power of this Court under Section 397 Cr.P.C. is to set right a patent defect or an error of jurisdiction or law. Such power can be exercised where the decision under challenge are grossly erroneous, there is non compliance of provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.

8. It is equally well settled that a revisional jurisdiction of High Court should not be exercised in a routine manner. The Hon'ble Apex Court in ***Chandra Babu vs State*** reported in ***2015 (8) SCC 774***, held that normally revisional jurisdiction should be exercised in a question of law however, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. The Supreme Court went to say that the power is required to be exercised so that justice is done and there is no abuse of power by the Court.

9. This Court is in agreement with the findings recorded by the courts below which are based on sound reasoning. In the considered opinion of this Court and as discussed herein above, the learned Courts below has duly appreciated the evidence on record. The conclusion arrived at on the basis of such appreciation of evidence cannot be termed as a decision which could not have been arrived at on the basis of evidence available on record more particularly, in the backdrop of the settled law in this regard as recorded hereinabove. This Court has not found anything as regards any patent defect of jurisdiction or of law. The learned counsel has not also been able to show non compliance of any provisions of law or that the findings recorded is based on no evidence or that material evidence is ignored or that judicial discretion is exercised arbitrarily or perversely.

10. In the considered opinion of this court, the learned Addl. Sessions Judge has not committed any illegality or irregularly leading to exercise of revisional power of this court. Therefore, this court is not inclined to interfere with the decision of the learned Addl. Sessions Judge impugned the present proceeding. Accordingly, the present

petition stands dismissed. Interim order passed earlier, if any, stands vacated. The LCR be returned back.

11. At this stage, the learned counsel for the petitioner submits that the respondent wife already got married and therefore on this count the revision petition should be allowed. However, this court cannot go into such disputed question of fact, inasmuch as the respondent wife is not represented by her counsel but rather by Amicus Curiae appointed by this court. Accordingly, while parting with the record, it is clarified that the petitioner shall be at liberty to approach the learned court's below filing appropriate application under section 127 Cr.P.C, if newly arises.

12. While parting with the records, this court places on record the able assistance rendered by Mr. A.M Bora, learned senior counsel as Amicus Curiae.

JUDGE

Comparing Assistant