

GAHC010012632013



2024:GAU-AS:11264

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

Case No. : Crl.Pet./834/2013

SUSIL DHAR
S/O GAUR CH. DHAR P.O. BARJALANGA P.S. BOMARBAND BHELO,
CACHAR.

VERSUS

SMTI RATNA RANI DHAR
D/O HARAI RAM DAS HAILAKANDI TOWN, KALIBARI ROA,D
HAILAKANDI

Advocate for the Petitioner : MRM P GOSWAMI, MR.A SARMA,MR.T BARUAH,MR.D CHOUDHURY

Advocate for the Respondent : , ,PP, ASSAM

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
O R D E R

20.11.2024

1. Heard Mr. D Choudhury, learned counsel for the petitioner. Also heard Mr. P Borthakur, learned Additional Public Prosecutor, Assam. None appears for the respondent No. 2.
2. The present application is filed under Section 482 Cr.P.C. assailing judgment

and order dated 14.11.2007 passed in Criminal Motion No. 17/2002 by the learned Session Judge, Hailakandi. The further challenge is an order dated 27.06.2013 passed in M.R. (Ex) No. 53/2009 by the learned Chief Judicial Magistrate, Hailakandi for execution of award passed by the learned Session Judge in Criminal Motion No. 17/2002.

3. The brief facts leading to filing of the present case is that the respondent No. 2 filed a complaint under Section 125 Cr.P.C. registered as MR case No. 6/1999 before the learned Chief Judicial Magistrate, Hailakandi claiming maintenance for herself and for her female child. The present petitioner contested the aforesaid case by taking a plea that complainant was not a legally married wife of the petitioner inasmuch as, on her complaint, a departmental proceeding was initiated against the petitioner and he was dismissed from service on 24.05.1983. However, subsequently, vide order dated 06.04.1985, he was reinstated in the service for the reason that the complainant could not establish a valid marriage between the petitioner and the complainant. Thus, it is the case of the petitioner that as the marriage between the petitioner and the complainant was not valid and therefore, he is not entitled for payment of maintenance under Section 125 Cr.P.C.

4. After considering the evidence on record, the learned Chief Judicial Magistrate, Hailakandi by its judgment and order dated 04.02.2002 declined to grant maintenance in favour of the complainant holding that the petitioner and the complainant is not legally married husband and wife. However, the petitioner was directed to pay a maintenance allowance of Rs. 400/- p.m. to the daughter.

5. The present petitioner being aggrieved by the aforesaid order, preferred a criminal revision petition before this court, which was registered as CrI. Revn 250/2002. Said criminal revision was disposed of by this court under its order dated 23.05.2006 holding that the child has in the meantime attained majority on 30.04.2000 and therefore, the petitioner shall not be liable to pay awarded amount beyond the said date i.e. 30.04.2000. It was further held that however, he is liable to

pay maintenance to the daughter with effect from 28.01.1999 till 30.04.2000.

6. The complainant wife being aggrieved by the judgment dated 04.02.2002 passed by the Chief Judicial Magistrate, Hailakandi approached the learned Session Judge, which was registered as Criminal Motion 17/2002 and the learned Sessions Judge, Hailakandi by its impugned judgement dated 14.11.2007 passed in the aforesaid Criminal Motion 17/2002 reversed the decision of the learned Chief Judicial Magistrate, Hailakandi and awarded an maintenance of Rs. 500/- p.m. to the complainant wife from the date of the filing of the petition under Section 125 Cr.P.C.

7. Subsequent to passing of that order, when maintenance was not paid, the complainant wife approached for recovery of the said amount, which was registered as MR (Ex) 53/2019 and by impugned order dated 27.06.2013, the learned Chief Judicial Magistrate, Hailakandi issued warrant to realise the arrear dues to the complainant.

8. Mr. Chodhury, learned counsel for the petitioner while assailing the order dated 14.11.2007 passed by the learned Session Judge argues that the learned Session Judge in exercise of its revisional power ought not to have interfered with well reasoned judgment of the learned Chief Judicial Magistrate, Hailakandi who had arrived at his conclusion after proper appreciation of material evidence on record. Therefore, such order is liable to be interfered with by this court.

9. None appears for the complainant / respondent wife to defend her case.

10. Be that as it may, it is seen that the fundamental case of the petitioner is that the complainant was not a legally married wife and therefore she is not entitled for any maintenance under Section 125 Cr.P.C. It is the further case that the learned Chief Judicial Magistrate, Hailakandi after proper appreciation of the evidence has arrived at conclusion that the marriage was not a valid marriage and therefore such conclusion ought not to have been interfered by the learned Sessions Judge.

11. The 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 in 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. In a matrimonial dispute, more particularly, in a proceeding under Section 125 Cr.P.C, a Magistrate is not required to declare the parenthood or the legality and validity of any marriage and a prima facie view for the purpose of maintenance is necessary. 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 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 the appropriate remedy to establish the same.

12. It is equally well settled that the object of revisional power under Section 397 Cr.P.C. is to set right a patent defect or an error of jurisdiction or law. Such power can also be exercised where the decisions 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.

13. Now coming to the determination made by the learned Session Judge it is seen that the learned Session Judge while reversing the decision of the learned Chief Judicial Magistrate, Hailakandi had re-appreciated the evidence led by the complainant as well as the petitioner and came to a conclusion that the decision of the learned Chief Judicial Magistrate, Hailakandi is tainted with material irregularities inasmuch as the said finding has not been based on evidence recorded and accordingly the learned Session Judge re-appreciated the evidence and came to the following conclusion:

(i) From the evidence of the witnesses of the complainant, it is established that the marriage between the complainant and the petitioner was performed in the year 1980 by an informal way but subsequently their marriage was performed according to Hindu rights and custom and

the said marriage was performed by PW5 and the said PW5 in his evidence had stated that he performed the marriage between the parties but without observing the religious formalities.

(ii) Such fact coupled with the facts stated by other PWs, particularly PW1 constitute sufficient material to show that there was some kind of marriage between the complainant and the alleged husband.

(iii) There is no hard and fast law that a woman in order to become wife of the petitioner must perform her marriage by strictly following religious status.

(iv) There are ample materials on record to show that from 1980 to 1982 the complainant and the petitioner lived together as husband and wife and resulted of delivery of the minor daughter and whose favour already maintenance allowance has been granted.

(v) Though the husband through his evidence tried to prove that the complainant had in the meantime married to one Niranjan Das, there was nothing to prove such facts and accordingly it was concluded that the determination made by the learned Chief Judicial Magistrate, Hailakandi was perverse.

14. This court has also perused the material available on record. In view of the conflicting determination made by both the courts below and after perusal of the said material backed by the settled proposition of law that strict proof of marriage is not required in a proceeding under Section 125 Cr.P.C., this court is in total agreement with the findings recorded by the learned Sessions court below inasmuch as such determination is based on sound reasoning. In the considered opinion of this court and as discussed hereinabove, the learned Chief Judicial Magistrate, Hailakandi has failed to duly appreciate the evidence on record and gave undue emphasise on the strict proof of marriage and therefore, such determination can be termed as a patent

defect and therefore, this court finds no infirmity in the determination made by the learned Session Judge.

15. Accordingly, the present criminal petition stands dismissed. Interim order, if any, stands vacated.

JUDGE

Comparing Assistant