

IN THE COURT OF THE ADDL SESSIONS JUDGE(FTC),::::

BONGAIGAON.

CRIMINAL APPEAL NO.39(3) 2013

Jugal Chandra Ray

..... **Appellants.**

- Vs -

Ranjana Ray

..... Respondents.

PRESENT :- Smti. R. Kar.

Addl. Sessions Judge (FTC).

Bongaigaon.

APPEARANCE :- Sri. N. K. Ghosh

..... Learned counsel for the Appellants.

Sri. Pankaj Baidya

..... Learned counsel for the respondents.

Date Of Hearing- 18.11.14

Date of Judgment- 11.12.14

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J U D G M E N T

1. This appeal has been directed u/s 29 of the Protection of Women from Domestic Violence Act, 2005 against the judgment and order dated on 21.5.2013 passed by learned Additional Chief Judicial Magistrate Bongaigaon in CR Case No. 169/2012.

2. Brief fact of the case leading to this appeal is that the respondent being the complainant has filed one complain case vide CR Case No. 169/2012 u/s 12 of the Protection of Women from Domestic Violence Act, 2005 against the appellant/respondent before the court of learned CJM Bongaigaon seeking relief u/s 18,19,20 and 22 of the said Act. Learned Additional CJM after receiving the case on transfer conducted trial and vide impugned judgment and order allowed the petition.

3. Being highly aggrieved and dissatisfied with the impugned judgment and order the appellant has preferred this appeal on various grounds as mentioned in the memo of appeal. Some of the main contentions as raised in the memo of appeal are as follows:-

(1) It is contended that learned court below has not properly appreciated the evidence adduced by both the parties and as such the impugned judgment and order is liable to be set aside.

(2) It is also contended that learned court below has failed to ascertain whether the complainant is the legally married wife of the appellant/respondent or not and as such the impugned judgment and order is liable to be set aside.

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(3) On other grounds also its prayed to set aside the impugned judgment and order.

4. I have heard submission of both sides and gone through the LCR as well as the impugned judgment and order.

5. It is the contention of the appellant side that the complainant has failed to prove the marriage between both the parties. Learned counsel for the appellant has submitted that as per provision of the Protection of Women from Domestic Violence Act, 2005 strict proof of marriage is necessary.

6. Learned counsel for the respondent on the other hand has submitted that learned court below has rightly appreciated the evidence and materials on record and arrived at just finding and as such same does not require any interference.

7. Now as per evidence of the complainant, Ranjana Ray @ Sarkar (pw-1), on 25.7.2010, the respondent by way of love and affection took her at his job area at Siliguri and performed marriage with her and kept her at his quarter and they resided there as husband and wife leading happy conjugal life. During their conjugal life the respondent did not tell her that he is a married person and has another wife at village Chatipur. When the complainant ask the respondent about their proof of marriage then on 6.01.2011 the respondent took her before the Notary, Government of India at Siliguri court and made one affidavit showing joint declaration that both of them are husband and wife and their marriage was solemnized on 25.07.2011. The complainant also stated in her evidence that after giving birth of a male child the respondent brought her from Siliguri to his village Chatipur and kept her at his elder brother's house and there they lead conjugal life till one and half months and during that period she came to know that the respondent has another wife.

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While she asked the respondent about his another wife then he tortured her physically and mentally and did not provide her and her minor son proper food, clothes, and medicine etc and the respondent demanded Rs. 1,00,000(one lac) from her father's house and as she could not fulfill the demand the respondent thrown her out from his house and then finding no alternative she took shelter in her father's house. In her cross-examination also she has stated that on 25.7.2010 her marriage with Jugal Chandra Ray was performed in a shiv mandir at Siliguri. They lived as husband and wife for two and half years in a rented house of one Amulya Sarkar. Respondent side has given suggestion to pw-1 that no marriage was performed between the complainant and the respondent and she did not give birth to any child but said suggestion was denied by her. pw-2 Manindra Sarkar has corroborated the evidence of Pw-1.

8. Evidence of Jugal Chandra Ray Dw-1 and evidence of Dw-2 Champa Bala Ray are denial of all alligations as raised by the complainant. Dw-2, Champa Bala Ray is the sister-in-law of the appellant/respondent. Now the complainant has exhibited certain documents out of which Ext-2 is the affidavit sworn by Jugal Chandra Ray and Ranjana Sarkar before the Notary, Government of India at Siliguri. Ext-3 is the birth certificate of Rituraj Ray son of the complainant. Said certificate has been issued by the registrar of Births and Deaths, office of the Joint Director of Health services, Chirang, Kajalgaon. From Ext-3 it appears that father's name of Rituraj Ray has been entered as Jugal Chandra Ray. It is evident from the cross-examination that the respondent has not challenged Ext-2 and Ext-3.

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9. From the evidence of Pw-1 the complainant it is evident that she came to know that during her stay in the residence of the elder brother of the respondent at village Chatipur. She came to know that the respondent has another wife.

10. Now marriage between the complainant and the respondent may not be valid but from the evidence and materials on record it is established that both the complainant and the respondent resided as husband and wife at Siliguri, the work place of the respondent as well as in the house of his elder brother and it is also established that the complainant gave birth to a male child.

11. As per provision of Protection of Women from Domestic Violence Act strict proof of marriage is not necessary. It is sufficient if both the parties lived together through a relationship in the nature of marriage. In the instant case from the evidence it is established that the appellant not only lived with the respondent/complainant at his work place at Siliguri as well as in the house of his brother at this village but also out of their relation a male child was born. Appellant has failed to rebut Ext-2 . Ld court below has appreciated evidence in respect of each and every aspect and rightly held that the respondent has failed to establish his plea of defence.

12. Considering all aspect I have arrived at the finding that Ld court below has not committed any illegality or infirmity in passing the impugned Judgment and as such same does not require interference in appeal.

13. In the result appeal is dismissed.

14. Send back the LCR along with the copy of this Judgment.

The Judgment is given on this 11th day of December
2014 under my hand and seal of this court.

(R.Kar).
Addl. Sessions Judge (FTC)
Bongaigaon.

Dictated and corrected by me.....

(R.Kar).
Addl. Sessions Judge (FTC)
Bongaigaon.
