

IN THE COURT OF THE SESSIONS JUDGE ::::::::::: BONGAIGAON.

CRIMINAL REVISION NO. 23(2)/2014.

Sri Rabin Ch. BarmanPetitioner.
Vs.
Smt. Sonebala BarmanRespondent.

**PRESENT : Smt. M. Nandi,
Sessions Judge,
Bongaigaon.**

ADOCATES APPEARED : Sri S. K. Sarkar, Advocate
for the petitioner.

Mrs. R. Choudhury, Advocate
for the respondent.

Date of Argument : 27.11.2014.

Date of Judgment : 08.12.2014.

JUDGEMENT AND ORDER

1. This Revision is directed against the order dtd. 04.01.2014 passed in Misc. Case No. 57/12 by learned Additional Chief Judicial Magistrate, Bongaigaon U/S 125 CrPC and awarded maintenance amounting to Rs. 3,000/- per month in favour of the petitioner and her minor child.

2. The brief facts of the case, is that, Smt. Sonebala Barman filed a petition U/S 125 CrPC in the Court of learned Chief Judicial Magistrate, Bongaigaon against her husband Rabin Chandra Barman claiming maintenance for her and her child. The case was registered as Misc. Case 57/12 and subsequently made over to the Court of learned Additional Chief Judicial Magistrate, Bongaigaon for disposal. During trial both the parties appeared before the Court of learned Additional Chief Judicial Magistrate, Bongaigaon, adduced evidence in support of their cases and after hearing both sides, learned Additional Chief Judicial Magistrate, Bongaigaon passed the order and judgment as aforesaid.

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3. Being highly aggrieved and dissatisfied with the order dtd. 04.01.2014 passed by the learned Additional Chief Judicial Magistrate, Bongaigaon in Misc. Case 57/12, the petitioner has preferred this revision on the following grounds:

1. For that the learned trial court has failed to appreciate the fact that there was no marriage solemnized between the parties. The Opp. Party was the maid servant of the petitioner and she is not legally married wife of the petitioner.
2. For that the impugned judgment and order passed by the learned Magistrate is illegal as the respondent/petitioner is not legally married wife of the petitioner. As such, she is not entitled to get any maintenance.

4. I have heard arguments advanced by learned counsel of both sides. I have perused the evidence on record recorded by the learned trial Court. I have also perused the Judgment and Order delivered by learned Additional Chief Judicial Magistrate, Bongaigaon.

5. In this case petitioner/Opp. Party has denied any marriage with the 1st party/respondent. He was not examined himself in the Misc. Case 57/12 as DW in support of his allegation.

6. DW 1 is Smti. Budhe Barman. She deposed in her evidence that she knew that there was no marriage between the petitioner and the respondent. He was the adjacent neighbour of 1st party/respondent but for the last 3/4 months, she is staying alongwith her daughter.

In her cross-examination, DW 1 stated that she is the mother-in-law of 2nd party's brother and staying in the house of 2nd party's brother as because his wife is her daughter. But she admitted that due to conjugal relationship between the parties, one female child was born. Her name is Jonmoni. At present she is studying in school and she also stated that

both of them were staying together for 4/5 years and the 2nd party contracted second marriage with one Namita.

7. The another witness of the petitioner/2nd party is DW 2 also stated that there was no marriage between the petitioner and the respondent, but the petitioner got married to one Namita Barman about 12 years back. But in her cross-examination, she replied that she is the adjacent neighbour of the petitioner/Opp. Party and she had seen that the petitioner/Opp. Party used to visit the house of the 1st party.

8. Though the petitioner/2nd party was not examined in the Misc. Case 57/12, but it is interesting to note that the witnesses of the petitioner/Opp. Party has admitted the fact that the petitioner and the respondent were staying together for 4/5 years and out of their conjugal relationship, one female child was born.

9. The 1st party/respondent adduced three witnesses during trial and all the three witnesses including the respondent have stated that the petitioner got married to the respondent/1st party and after their marriage, they led conjugal life and out of their conjugal relationship, one female child was born. She is now 13 years of age and studying in Class VI. During their conjugal life, the petitioner used to torture the respondent without any such reason. The respondent/1st party came to know that her husband had developed illicit relationship with another lady and ultimately her husband left the respondent/petitioner and her child in the house of her parents wherein they were staying after their marriage.

10. In the case of maintenance U/S 125 CrPC, the existence and continuation of conjugal relationship is the foundation of an order of maintenance along with a further key fact that she is unable to maintain herself. Standard of proof of marriage is not as high as under the Divorce Act or under Sections 494, 495, 497 and 498 of Indian Penal Code. The settled position of law is that where marriage is disputed, the Court can and should

decide the question without leaving the woman to establish her status in a Civil Court. When marriage is established, maintenance should be awarded and if legal validity of the marriage is questioned, it should be raised before a civil court. It is not open to the criminal court to require the wife to first prove the existence of the marriage in a civil court and then seek relief under the provision of Section 125 CrPC. This distinct right independent of the right which the wife and child may or may not have under the personal law. The husband cannot desert the wife and child by merely denying the relationship.

11. Though the petitioner/Opp. Party denied any relationship with the respondent/1st party in his written statement but the fact was not supported by the Opp. Party by adducing any evidence. Written statement is one thing and proof is another. Proof is establishment of fact by evidence or matters before the Court. Where the parties are in dispute as regards a material fact and averment in the written statement does not constitute evidence, as what is stated in the written statement is recital of past events which is required to be proved. Under the Evidence Act, if a material fact pleaded is not proved, it follows that the Court considers or believes that the fact does not exist. Therefore, the averment in the written statement cannot be used in favour of the maker. This being the position, statement made by the husband in his written statement that he has no any relationship with the 1st party/respondent is recital of past events and if the fact is not proved by adducing any evidence, such statement shall be of no consequence.

12. In the case in hand, may be there was no legal marriage between the parties, but it is an admitted fact that both parties lived together as husband and wife for a long time and out of their conjugal relationship, one child was born. As such, respondent/1st party and her child are entitled to get maintenance allowance from the petitioner/Opp. Party.

13. Regarding earning capacity of the petitioner/Opp. Party, according to the PW 1 i.e. the respondent/1st party, her husband is a railway employee and getting salary of Rs. 30,000/- per month which is not denied by

the Opp. Party either in his written statement or by adducing any evidence. One salary certificate of the petitioner is available in the record from which it reveals that he received Rs. 22,704/- as net pay in the month of June, 2013. Definitely after one and half years, his salary is increased. Under such circumstances, by getting approximate salary of Rs. 25,000/- in a month, he is capable of giving maintenance of Rs. 3,000/- per month to his wife and child.

O R D E R

14. In the result, the revision is dismissed. The order passed by learned Additional Chief Judicial Magistrate, Bongaigaon dtd. 04.01.2014 is upheld. The petitioner is directed to pay the maintenance allowance of Rs. 3,000/- per month to the respondent and her child in the trial Court. There is no order as to cost.

15. LCR be transmitted back with a copy of this Judgment and Order to the learned trial court.

Given under my hand and the seal of the Court on this 8th day of ***December, 2014.***

(M. Nandi)
Sessions Judge,
Bongaigaon.

Dictated and corrected by me,

(M. Nandi)
Sessions Judge,
Bongaigaon.

Criminal Revision No. 23(2)/2014

08.12.2014

Judgment is delivered.

In the result, the revision is dismissed. The order passed by learned Additional Chief Judicial Magistrate, Bongaigaon dtd. 04.01.2014 is upheld. The petitioner is directed to pay the maintenance allowance of Rs. 3,000/- per month to the respondent and her child in the trial Court. There is no order as to cost.

LCR be transmitted back with a copy of this Judgment and Order to the learned trial court.

Judgment prepared in separate sheets is kept with the case record.

As dictated,