

CRIMINAL REVISION

C.R. R. No. 2992 of 2009

Present :-The Hon'ble Mr. Justice **Prasenjit Mandal**

Judgement On: June 10, 2010.

Smt. Laxmi Mondal.

Versus

Sri Sanatan Mondal.

POINTS

Maintenance – Marriage admitted – Maintenance if can be denied on the basis of an affidavit that, the wife had been previously married – The Code Of Criminal Procedure 1973, S 125.

FACTS

The wife/petitioner filed the application under Section 125 of the Code of Criminal Procedure claiming maintenance for herself and her child against the opposite party. Upon consideration of evidence of both the sides, the learned Judicial Magistrate allowed the application granting maintenance at the rate of Rs.700/- per month for the wife and Rs.500/- per month for the child with effect from the date of order. The husband/opposite party preferred a revisional application which was allowed by the learned Additional District & Sessions Judge, Fast Track Second Court, Diamond Harbour, by the order impugned. Now the grievance of the petitioner is that though the marriage between the two is an admitted fact learned Additional District & Sessions Judge allowed the revisional application on the ground that previously the wife/petitioner was married to one Monoranjan Jatua and that marriage was dissolved by an affidavit which was filed before the learned Trial Judge.

HELD

The so-called affidavit had not been sworn in connection with the proceedings under Section 125 of the Code of Criminal Procedure from which the present application under Section 482 of the said Court has arisen. There is no evidence that the petitioner, namely, Laxmi Mondal and Laxmi

Jatua is the one and same person. Moreover that affidavit has not been sworn in course of the proceeding under Section 125 of the Cr. P. C. The decision reported in AIR 1977 SC 407 clearly lays down that affidavits sworn or affirmed before the Magistrate not in seisin of the case are totally inadmissible in evidence. Moreover, The said affidavit has not come to the Court in the proceedings from proper custody. Sri Monoranjan Jatua with whom it is alleged that the petitioner was married, has not been examined. He was not even summoned to produce the so-called affidavit in support of the termination of marriage between Laxmi Jatua and Monoranjan Jatua. Therefore, the learned Additional District & Sessions Judge has acted on the basis of inadmissible evidence and as such he has committed gross mistake in arriving at a conclusion. The findings of the learned Additional District & Sessions Judge is, therefore, treated totally perverse and so the impugned order cannot be sustained at all.

Para 4

CASES CITED

AIR 1977 SC 407

For the petitioner: Mr. Biplab Mitra,

Miss Trina Mitra.

For the opposite party: None appears.

THE COURT 1) This application under Section 482 of the Code of Criminal Procedure has arisen out of the order dated June 1, 2009 passed by the learned Additional District & Sessions Judge, Fast Track Second Court, Diamond Harbour in connection with Criminal Motion No.75 of 2008 arising out of the order dated March 5, 2008 passed the learned Judicial Magistrate, Third Court, Diamond Harbour in Misc. Case No.330 of 2006 allowing the maintenance in favour of the opposite party.

2)The wife/petitioner filed the application under Section 125 of the Code of Criminal Procedure claiming maintenance for herself and her child against the opposite party. Upon consideration of evidence of both the sides, the

learned Judicial Magistrate allowed the application granting maintenance at the rate of Rs.700/- per month for the wife and Rs.500/- per month for the child with effect from the date of order. The husband/opposite party preferred a revisional application which was allowed by the learned Additional District & Sessions Judge, Fast Track Second Court, Diamond Harbour, by the order impugned. Now the grievance of the petitioner is that though the marriage between the two is an admitted fact learned Additional District & Sessions Judge allowed the revisional application on the ground that previously the wife/petitioner was married to one Monoranjan Jatua and that marriage was dissolved by an affidavit which was filed before the learned Trial Judge.

3)The learned Advocate for the petitioner has contended that the learned Additional District & Sessions Judge has totally misdirected himself in considering the affidavit which has no connection with the Misc. Case under reference and the so-called affidavit is totally inadmissible in respect of the matter in dispute to the parties. So the learned Additional District & Sessions Judge has committed gross irregularity in taking into account of the said exhibit.

4)Having considered the materials on record, I find that the so-called affidavit had not been sworn in connection with the proceedings under Section 125 of the Code of Criminal Procedure from which the present application under Section 482 of the said Court has arisen. There is no evidence that the petitioner, namely, Laxmi Mondal and Laxmi Jatua is the one and same person.

Moreover that affidavit has not been sworn in course of the proceeding under Section 125 of the Cr. P. C. The decision reported in AIR 1977 SC 407 clearly lays down that affidavits sworn or affirmed before the Magistrate not in seisin of the case are totally inadmissible in evidence. Moreover, I find that the said affidavit has not come to the Court in the proceedings from proper custody. Sri Monoranjan Jatua with whom it is alleged that the petitioner was married, has not been examined. He was not even summoned to produce the so-called affidavit in support of the termination of marriage between Laxmi Jatua and Monoranjan Jatua. Therefore, the learned Additional District & Sessions Judge has acted on the basis of inadmissible evidence and as such he has committed gross mistake in arriving at a conclusion. The findings of the learned Additional District & Sessions Judge

is, therefore, treated totally perverse and so the impugned order cannot be sustained at all.

5)Therefore, the application succeeds. The order dated June 1, 2009 passed by the learned Additional District & Sessions Judge, Fast Track Second Court, Diamond Harbour in Criminal Motion No.75 of 2008 is hereby set aside. The application under Section 482 of the Code of Criminal Procedure is thus allowed with the above observations.

6)Considering the circumstances, there will be no order as to costs.

7)Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

(Prasenjit Mandal, J.)