

Samod Paswan @ Subodh Vs The State of Jharkhand and Another

Court: Jharkhand High Court

Date of Decision: July 7, 2012

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 125

Hon'ble Judges: Harish Chandra Mishra, J

Bench: Single Bench

Advocate: Kumar Nilesh, for the Appellant; H.K.Sikarwar, Assistant Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

H.C.Mishra

1. Heard learned counsel for the petitioner and the learned counsel for the State as also learned counsel for the Opp. Party No.2, the complainant

wife, who has appeared through advocate. This application is directed against the order dated 20th September 2010 passed by learned Principal

Judge, Family Court, Dhanbad, in M.P. Case No. 196 of 2009, whereby, in an ex-parte proceeding u/s 125 of the Cr.P.C., the Court below has

directed the petitioner to make the payment of maintenance @ Rs.3,000/-per month to the Opp. Party No.2. The impugned order also shows that

the proceeding was taken ex-parte as because the petitioner did not appear in spite of notice.

2. Learned counsel for the petitioner has submitted that the impugned order passed by the Court below is absolutely illegal, inasmuch as, from the

impugned order itself, it is apparent that it was the case of the Opp. Party No.2 in the Court below that the marriage between the parties had been

solemnized on 20.4.2008 at Gaya and thereafter, she was subjected to cruelty and torture and ultimately, she was ousted from her matrimonial

home. The opposite party No.2 had examined herself as P.W.1 in the Court below, from which, it appears that she had deposed that her husband

has another wife also, from whom, they have got two children, one is eight years old and another is eight months old. Learned counsel for the

petitioner accordingly, submitted that the opposite party No.2, who was married to this petitioner on 20.4.2008 cannot have a child aged eight

years, and as such, said opposite party No.2 is the second wife of the petitioner and she is not entitled to get any maintenance from him, as the

marriage between the parties, if any, is void. Learned counsel for the petitioner accordingly, submitted that the impugned order cannot be sustained

in the eyes of law.

3. Learned counsel for the Opposite party No.2, on the other hand, has submitted that there is no illegality in the impugned order, inasmuch as,

though it is admitted that the husband had two wives, but it may be a case that the wife having child aged about eight years might be a widow,

having the child from before this marriage with the petitioner. Learned counsel accordingly, submitted that it cannot be inferred that the opposite

party No.2 is the second wife of the petitioner and as such, there can be no illegality in the impugned order passed by the Court below on this

score alone.

4. After having heard the learned counsel for the petitioner and learned counsel for the opposite party No.2, I find that according to the opposite

party No.2 herself, she was married to the petitioner on 20.4.2008 and her husband is having two wives and there is a child aged eight years. This

child aged eight years cannot be the child of the petitioner and as such, the child who is aged eight years must be the child of the first wife of the

husband and the opposite party No.2 is the second wife of her husband. The submission of the learned counsel for the opposite party No.2 that

the wife having the eight year old child might be the widow having child from before this marriage, cannot be entertained at this stage as this fact

ought to have been pleaded and proved by the opposite party No.2 in the Court below. This having not been done, no such inference can be

drawn in her favour.

5. In view of the aforementioned discussions, I find that from the evidence adduced by the opposite party No.2 herself, it is apparent that she is the

second wife of the petitioner and as such, she is not at all entitled to get any maintenance u/s 125 of the Cr.P.C., the marriage between the parties

being absolutely void. As such, the impugned order cannot be sustained in the eyes of law. Accordingly, the impugned order dated 20.9.2010

passed by the learned Principal Judge, Family Court, Dhanbad, in M.P. Case No. 196 of 2009, is hereby, set aside. This revision application thus,

stands allowed.