

(2013) 07 JH CK 0080

Jharkhand High Court

Case No: Criminal Revision No. 352 of 2013

Deoram Soren

APPELLANT

Vs

The State of Jharkhand and
Parwati Soren

RESPONDENT

Date of Decision: July 12, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125
- Penal Code, 1860 (IPC) - Section 376, 417

Citation: (2013) 3 AJR 711 : (2014) 2 DMC 53 : (2013) 4 LJLR 319

Hon'ble Judges: Harish Chandra Mishra, J

Bench: Single Bench

Advocate: Prakash Jha, for the Appellant;

Final Decision: Dismissed

Judgement

Harish Chandra Mishra, J.

Heard learned counsel for the petitioner and learned counsel for the State. Petitioner is aggrieved by the order dated 27.2.2013 passed by the learned Principal Judge, Family Court, Dumka, in Cr. Misc. Petition No. 125 of 2007, whereby in a proceeding u/s 125 of the Cr. P.C., the Court below has directed the petitioner to make the payment of Rs. 1,000/- per month for maintenance of his minor illegitimate daughter.

2. The minor girl aged about eight months, had filed the application u/s 125 of the Cr. P.C., through her mother in the Court below, claiming that her mother (herein after referred to as "X"), became pregnant due to cohabitation with the petitioner on the false pretext of marrying her. The petitioner ultimately refused to marry "X" and the child was born due to said cohabitation between "X" and the petitioner. It was stated in the petition that "X" had also filed a criminal case against the petitioner for the offence u/s 376 and 417 of the IPC, which was registered as Jama

P.S. Case No. 23 of 2007, in which the petitioner was ultimately put to trial in S.C. Case No. 174 of 2007 and he was found guilty for the offence u/s 376 of the IPC and was convicted and sentenced for the same, for which the petitioner is presently undergoing sentence in jail. Claiming that "X" has no means to maintain the child and the father was having the earning of about Rs. 80 per day as labour, besides income from agriculture, the claim for maintenance was filed in the Court below.

3. The petitioner appeared in the Court below upon notice and filed his show cause, in which there is total denial of the allegations by the petitioner. Both the parties adduced evidence in the Court below. Five witnesses were examined on behalf of the applicant child in the Court below, including her grand father, grand mother and maternal uncle of the child, as also the mother of the child. All the five witnesses supported the case of the applicant and the claim that "X" was subjected to cohabitation by the petitioner on the false pretext of marrying her, due to which she became pregnant and the child was born to her. The police case was also filed and the petitioner was ultimately convicted and sentenced by the Sessions Court. They have also deposed about the income of the petitioner stating that the petitioner was having income from agriculture. The witnesses have also stated about some settlement in the police station and the document regarding the said settlement in the police station was proved as Exhibit - 2, which showed that there was compromise of dispute between the parties and the petitioner brought "X" to his house, but according to the case of the applicant, she was again driven away from the house. Exhibit - 3 is the certified copy of the Judgment passed in S.C. No. 174 of 2007 by the Sessions Court, in which, the petitioner was found guilty and convicted and sentenced for the offence u/s 376 of the IPC.

4. On the other hand, the petitioner had examined seven witnesses in the Court below including himself, in which there is total denial of the allegations by the witnesses, including the petitioner. However, from the evidence discussed in the impugned order, it appears that O.P.W.-3 Dilip Soren had admitted in his cross-examination that the petitioner had established relationship with "X" and when the pregnancy was of eight months, the family of "X" began to put pressure on the petitioner to marry her, but he had refused to marry her. The other witness O.P.W.-6 Basanti Marandi, who claimed to be the wife of the petitioner, as also O.P.W.-7, the petitioner himself, admitted that the petitioner was in jail in connection with the rape case filed by "X".

5. On the basis of the evidence on record, the Court below come to the conclusion that there was cohabitation between "X" and the petitioner on the false pretext of marrying her, due to which she became pregnant and ultimately applicant was born and she is the illegitimate child of the petitioner. On the point of income of the petitioner, the Court below has taken into consideration the evidence adduced by both the parties and it was found that the witnesses examined by the petitioner himself, had admitted that the petitioner was earning daily wages as a labour and

one witness has also stated that his earning was about 300/- per day. The witness also admitted that the petitioner had agriculture land, and the purchase of the land showed that there was about 62 bighas of agriculture land in the name of the forefather of the petitioner. Taking into consideration the income of the petitioner on daily wages to be about Rs. 150 to Rs. 200/- per day, as also the income from the agriculture land, the petitioner was directed to pay Rs. 1000/- per month for maintenance of his illegitimate child.

6. Learned counsel for the petitioner has submitted that the witnesses examined on behalf of the petitioner have fully denied the allegation of any cohabitation between the petitioner and "X", and it is submitted that the witnesses examined on behalf of the applicant also, could not prove the fact that she is the illegitimate child of the petitioner. Learned counsel accordingly, submitted that the impugned order cannot be sustained in the eyes of law, and is fit to be set aside.

7. Learned counsel for the State on the other hand has opposed the prayer.

8. Having heard learned counsels for both the parties and upon going through the record, I find that the Court below has discussed the evidence adduced by both the parties and has come to the finding that there was cohabitation between "X" and the petitioner on the false pretext of marrying her, due to which she became pregnant and ultimately she gave birth to the applicant. The petitioner was also convicted on the same allegation for the offence u/s 376 of the IPC, and he is undergoing the sentence in jail. It also appears from the discussions of the evidence in the impugned order, that one witness O.P.W. 3, Dilip Soren had admitted in his cross-examination about the cohabitation between "X" and the petitioner. Even O.P.W.-6 Basanti Marandi, who has claimed to be the wife of the petitioner, as also O.P.W.-7, the petitioner himself, admitted that the petitioner was convicted and sentenced in connection with the rape case filed by "X".

9. In the facts of this case, I am of the considered view that the Court below has come to the correct conclusion on the basis of the evidence on record that the applicant is the illegitimate child of the petitioner. The Court has also taken into consideration the admitted income of the petitioner and has accordingly, directed to make the payment of Rs. 1,000/- per month to the illegitimate child for her maintenance, which in my considered view, cannot be termed as excessive by any parameter. I do not find any illegality and/or irregularity in the impugned order worth interference in the revisional jurisdiction. There is no merit in this application and the same is accordingly, dismissed.