

Shiv Shankar Murmu Vs State of Jharkhand and Another

Court: Jharkhand High Court

Date of Decision: Aug. 4, 2008

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 107, 125, 482

Citation: (2008) 4 JCR 351

Hon'ble Judges: Dilip kumar sinha, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D.K. Sinha, J.

The petitioner Shiv Shankar Murmu has invoked the inherent jurisdiction of this Court u/s 482 of the Code of Criminal

Procedure for the quashment of the order dated 22.6.2007 passed by the Sessions Judge, Singhbhum West at Chaibasa in Cr. Rev. No. 17 of

2006 whereby and whereunder the order passed in Misc. Case No. 17 of 2001 by the SDJM, Porahat at Chaibasa on 28.2.2006 in a proceeding

u/s 125 CrPC directing the petitioner to pay maintenance allowance @ Rs. 2500/- per month to the O.P. No. 2 Piyo Murmu was confirmed.

2. The short fact for consideration in the instant case was that the opposite party No. 2 Piyo Murmu had initiated a proceeding u/s 125 of CrPC

for grant of monthly maintenance of Rs. 500/- from her husband-petitioner herein on the ground that she was legally married to him on 28.1.1997

according to Santhal customary rites and thereafter both started living together. The marriage was consummated and after one month of their

marriage, the petitioner left his house in order to join his duties in the army on assurance that he would visit her at regular interval and that she

would be provided all bare necessities of life. It was alleged that after departure of the husband-petitioner, her in-laws started perpetrating torture,

stopped her food and compelled her to live in a cow-shed, thereby made her life miserable. When the petitioner returned back from his posting,

the complainant/opposite party No. 2 narrated her miseries but without any heed to her grievance. She contacted the Mukhia of the village and a

panchayati was convened on 8.3.1998, attended by several people of the village wherein the father of the petitioner assured that he would keep

her with due care and comfort yet, there was no change in the behaviour of her in-laws. After a long gap, second panchayati was held on

18.8.2000. In this panchayati also no positive decision could be taken for her settlement except the false promise of her in-laws. The complainant

alleged that when her husband came back and learnt about the panchayati became furious and drove her out from his house. Finding no way out

she took shelter in the house of one Salkhan Murmu, as her parents were already dead and there was none in her parental home. The petitioner

was suitably employed in the army, drawing monthly salary of Rs. 8,330/-, besides 10 bigas of culturable land, as such, she claimed Rs. 500/-

monthly maintenance.

3. Mr. A.K. Kashyap, the learned Sr. counsel exhorted by submitting that the opposite party No. 2 Piyo Murmu was not legally married wife of

the petitioner herein. Admittedly, Chheka (engagement) was proposed to be made in between the petitioner and opposite party No. 2 on the

instance of his family members but the petitioner refused to marry her and therefore, the marriage between the two did not solemnize at all. For

such reason, there appeared apprehension of breach of peace between the parties, giving rise to a proceeding u/s 107 of the Code of Criminal

Procedure before the Sub Divisional Magistrate, Chakradharpur, registered as Misc. Case No. 39 of 2001. Advancing his arguments Mr. A.K.

Kashyap submitted that the narration of the opposite party No. 2 was totally false in respect of any panchayati either held on 8.1.1998 or on

18.8.2000 and the opposite party No. 2 had never occasion to live in the house of the petitioner in any capacity including as his wife. The

petitioner was an employee of the Central Government, i.e. Nayak in the Indian Army and at the relevant time he was posted in the State of J &

K, as such it was mandatory on his part to disclose the name of his wife in his service record but the petitioner as was still bachelor the fact that

Piyo Murmu was his wife had got no bearing in his service book.

4. On the other hand, Mr. M.K. Dey, the learned Counsel appearing for and on behalf of the opposite party No. 2 submitted that there was

concurrent finding of the Sub Divisional Judicial Magistrate, Porahat in a proceeding u/s 125 of CrPC on the factum of marriage as also by the

revisional Court of Sessions Judge, Singhbhum West that the O.P. No. 2 was married wife of the petitioner which did not call for interference by

this Court. The witnesses were consistent before the learned SDJM on the factum of marriage and admittedly, the petitioner was working as

Nayak having his salary to the extent of Rs. 9,000/- per month. Though the complainant/opposite party No. 2 had demanded only Rs. 500/- but

the learned SDJM having considered the amended provision in the CrPC and applying his discretion and prudence, allowed the maintenance to the

opposite party No. 2 to the tune of Rs. 2,500/- per month directing the petitioner to pay from 5.9.2001 which was modified by the Sessions

Judge, Chaibasa in Cr Rev. No. 17 of 2006 by his order dated 22.6.2007 whereunder the maintenance amount was made payable from

1.10.2001 and not from 5.9.2001. The witnesses produced on behalf of the complainant/opposite party No. 2 were consistent and therefore,

finding of facts was based upon the evidence and the same was upheld by the revisional Court. Finally Mr. Dey submitted that under the

circumstances this Misc. petition was liable to be dismissed.

5. Having regard to the facts and circumstances of the case, I find substance in the argument that there was concurrent finding of fact by the Court

of original jurisdiction of SDJM, Porahat at Chaibasa as also by the revisional Court of Sessions Judge, Singhbhum West, Chaibasa on the factum

of marriage between the parties and the earning of the petitioner being Naik in the Army to the tune of Rs. 9000/- per month, I further find that the

witnesses produced on behalf of the complainant/opposite party No. 2 in a proceeding u/s 125 of CrPC were consistent that soon after the

marriage the petitioner left his wife (opposite party No. 2) and went to join his duty. The fact that panchayati were held in the village in this

connection was also admitted by the witnesses besides, consumation of their marriage and that they lived together for a month. I have no hesitation

to hold that even the complainant/opposite party No. 2 had demanded only Rs. 500/- being her monthly maintenance, at the same time, the

S.D.J.M. was within his competence to enhance the same reasonably to the extent of Rs. 2500/- per month proportionate to the earning of the

petitioner. In the circumstances, in view of the concurrent finding of the Courts below and contrary to that no illegality or irregularity could be

shown on behalf of the petitioner, the order impugned passed by the learned Sessions Judge, Chaibasa in Cr Rev. No. 17 of 2006 confirming the

order of the SDJM, Porahat in a proceeding u/s 125, CrPC arising out of Misc. Case No. 17 of 2001 with partial modification calling upon the

petitioner to pay monthly maintenance to the O.P. No. 2 does not call for interference of this Court in exercise of inherent jurisdiction u/s 482,

CrPC .

6. There being no merit, this Cr MP is dismissed.