

(2012) 11 CAL CK 0008

Calcutta High Court

Case No: CRR No. 2640 of 2011

In Re: Huding Kuri Hansda @
Hopon Kuri Tudu

APPELLANT

Vs

RESPONDENT

Date of Decision: Nov. 21, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125

Citation: (2013) 2 CHN 132

Hon'ble Judges: Toufique Uddin, J

Bench: Single Bench

Advocate: Prosenjit Mukherjee, for the Appellant;

Final Decision: Allowed

Judgement

Toufique Uddin, J.

This revision arose out of order dated 21.7.2011 passed by the learned Additional District & Sessions Judge, Birbhum at Rampurhat in CRR No. 5 of 2011 by dismissing the prayer of maintenance of the petitioner u/s 125 of the Code of Criminal Procedure, previously allowed by the learned Judicial Magistrate, First Court, Rampurhat in Misc. Case No. 391 of 2009. In the background of this revision the fact in a nutshell is that the petitioner got married with the Opposite Party No. 2 on 5.7.1997 and they lived as husband and wife. The Opposite Party No. 2 took steps to incorporate the name of the petitioner in the voter list of Rampurhat Constituency. The Election Commission of India issued a voter identity card in favour of the petitioner by mentioning that Sanatan Tudu @ Jagannath Tudu is the husband of the petitioner. Both the names of the petitioner and the husband were enlisted in voter list of Part No. 291 at village Sulanga under Rampurhat Constituency. After some days, the Opposite Party forcefully caused the petitioner to miscarriage the baby and subsequently repeated the same twice. After 4/5 years, on 2nd Baishakh 1416 B.S., the petitioner was driven out by the Opposite Party No. 2 after unbearable

torture unleashed by the husband. Since then, the petitioner has been residing with her widow mother. The Opposite Party never paid any maintenance to her. He has landed property and a stone quarry and also the house of tin shed. His monthly income is Rs. 25000/- p.m. approximately. The petitioner filed a case u/s 125 of the Code of Criminal Procedure in Misc. Case No. 391 of 2009 before the learned Judicial Magistrate, First Court, Rampurhat. The Opposite Party contested the application by filing a written objection. He disputed the validity of the marriage because according to him, he married another person at a village Parkandi and it is alleged that the Opposite Party No. 2 had no relation with the petitioner.

2. On hearing of both sides and considering materials on record, the learned Magistrate directed on 18.12.2010 the Opposite Party No. 2 to pay maintenance of Rs. 600/- p.m.

3. Challenging the order dated 18.12.2010, the Opposite Party No. 2 preferred criminal revision in CRR No. 5 of 2011. The said application was disposed of on 21.7.2011 by setting aside the order dated 18.12.2010 passed by the learned Judicial Magistrate, First Court, Rampurhat.

4. Being aggrieved by and dissatisfied with the impugned order, the petitioner preferred the instant revisional application mainly on the ground that the Election Commission issued voter identity card showing name of Opposite Party No. 2 as husband of the petitioner. The Opposite Party No. 2 gave a declaration and put signature in that paper admitting the fact that he married the petitioner.

5. Further, it was contended by the learned counsel for the petitioner that no evidence was adduced to show that Opposite Party No. 2 married a lady named Maku Tudu @ Maku Mardi. It was further contended that in any proceeding u/s 125 of the Code of Criminal Procedure, no strict proof of marriage is required. Further, it was contended that the lady with whom the Opposite Party No. 2 is allegedly married, was not produced by the Opposite Party at the time of giving evidence and without any evidence and materials the learned Judge came to the conclusion that the petitioner has 20 Bighas of land and has accordingly sufficient means of income.

6. On the other hand, the learned counsel for the Opposite Party submitted that marriage has not at all been proved and the petitioner has sufficient means to maintain herself.

7. Now the point for consideration is if the impugned order calls for any interference or not.

8. None appeared on behalf of the Opposite Party No. 1.

9. Section 125 of the Code of Criminal Procedure reads as follows:

S. 125. Order for maintenance of wives, children and parents -

(1) If any person having sufficient means neglects or refuses to maintain -

(a) his wife, unable to maintain herself, or...

10. To appreciate the case some relevant pieces of evidence are required to be examined. From the impugned judgment it transpires that PW 1 claimed in evidence that Jagan Tudu was married to her and a written document was executed to that effect. PW 2 also corroborated this. The signature of Jagan Tudu and PW 2 were marked as Ext. 1. The learned revisional court held that declaration of marriage i.e. Ext. 1 is not sufficient proof of marriage. Further, since in cross-examination, PW 2 stated that he never visited the house of Opposite Party, so, the learned revisional court thought him to be not trustworthy witness. It is ridiculous inasmuch as there appears to be no clear-cut suggestion given to PW 2 that Jagan Tudu was not present or did not put any signature. It was also not denied by the Jagan Tudu, the Opposite Party No. 2 that he put any signature on the declaration. Whether the declaration constitutes any valid document as regards marriage or not, is not very much relevant here if at least it transpires from materials on record that there was a show of marriage of the parties and they lived together in the manner as if they were husband and wife.

11. The learned counsel for the Opposite Party cited a decision as reported in 2011(1) AICLR 356 at para "B" (d) to (f). The facts and circumstances therein are distinguishable.

12. There are series of decisions wherein the Hon"ble Apex Court propounded that proof of marriage in a maintenance case should not be as strict as that required for the purpose of divorce suit or so. Reliance may be put on the decision as reported in [Chanmuniya Vs. Chanmuniya Virendra Kumar Singh Kushwaha and Another](#), wherein while interpreting the term "wife", the Hon"ble Apex Court was pleased to travel a long way by holding that long cohabitation entitles a woman to maintenance. It is settled that the validity of the strict marriage is required to be tested in civil suit. Further, [Vimala \(K.\) Vs. Veeraswamy \(K.\)](#), stipulates that burden of strict proof of earlier marriage of the husband is on the husband since the husband-Opposite Party No. 2 has taken a plea that he has married one Maku Mardi. The learned revisional court failed to make distinction between "burden of proof" and "onus of proof". To whom the burden rests, he failed to explain. Neither Maku Mardi was examined in the learned trial court for reasons best known to the Opposite Party No. 2, nor is there any evidence to the effect that the election card showing the name of the Opposite Party No. 2 as husband of the present petitioner was falsely procured or so. That document cannot be thrown away. In absence of Maku Mardi, it is doubtful if at all she was married to the Opposite Party No. 2 although the off-springs are reported to have been born out of alleged union between the Opposite Party No. 2 and Maku Mardi.

13. There is no requirement for performance of essential ceremonies of marriage. The decision as reported in [Bikash Kumar Mukherjee and Others Vs. Smt. Nanda Rani Mukherjee and Others](#), supports the case of the petitioner. The learned

Magistrate, Rampurhat appears to have taken a correct view as regards to the petitioner's claim of marital status. Regarding the capability to maintain herself by the petitioner, the findings of the learned revisional court is susceptible to interference. In totality, the findings of the learned trial court cannot be supported. Rather the findings of the learned Magistrate appears to be acceptable.

14. Hence, I find merit in the instant revision and the revision succeeds accordingly.

15. The order dated 21.7.2011 passed by the learned Judge, Rampurhat in CRR No. 5 of 2011 is set aside and the order dated 18.12.2010 stands affirmed and restored. Urgent Photostat certified copies, if applied for, be supplied according to rules.