



IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM NO.243 of 2024

(An application U/S. 19(4) of the Family Courts Act, 1984).

Lakshyapati Kumbhar ... **Petitioner**

-versus-

Sanyasini Kumbhar ... **Opposite Party**

For Petitioner : **Mr. P.K.Nayak,**
Advocate

For Opposite Party :

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING & JUDGMENT:21.11.2024(ORAL)

G. Satapathy, J.

1. This revision is directed against the impugned judgment dated 01.06.2024 passed in Criminal Misc. Case No. 12 of 2021 under Annexure-1 by which the learned Judge, Family Court, Sambalpur has directed the revision-petitioner to pay a sum of Rs.5,000/- per month to the OP towards monthly maintenance w.e.f. 02.03.2021.

2. In the course of hearing, Mr.Pabitra Kumar Nayak, learned counsel for the petitioner submits that although the petitioner disputes his marriage with OP,



but the learned trial Court ignoring such fact has arrived at a finding that the OP is the wife of the petitioner and thereby granted maintenance to OP-wife which is unsustainable in the eye of law and thereby, liable to be interfered with.

3. Since the sole question revolves around the dispute is whether the petitioner is the husband of OP, but the learned trial Court after referring to the different pronouncements of Apex Court and of this Court has held that strict proof of marriage in a proceeding U/S. 125 of CrPC is not required, but the foundational facts has to be established. In answering the issue, the learned trial Court has relied upon the decision in ***D.Velusamy Vrs. D.Patchaiammal; (2010) 10 SCC 469*** wherein the Apex Court in a proceeding under DV Act has interpreted Section 2(f) of DV Act to hold that the expression "Domestic Relationship" includes not only relationship of marriage, but also a relationship "in the nature of marriage" like live-in-relationship. It is further held therein that a relationship in the nature of marriage is



akin to a common law marriage which requires that although not being formally married, (a) the couple must holdout themselves to society as being akin to spouses, (b) they must be of legal age to marry, (c) they must be otherwise qualified to enter into a legal marriage, including being unmarried, (d) they must have voluntarily cohabitated and held themselves out to the world as being akin to spouses for a significant period of time. Further, in a case of live-in relationship too, a woman is also entitled to get maintenance U/S. 125 CrPC, so also the children born out of void and voidable marriages. The aforesaid view of this Court is well fortified by the decision in ***Kamala and others vrs. M.R. Mohan Kumar; (2019) 11 SCC 491*** wherein the Apex Court has held that when the parties live together as husband and wife, there is a presumption that they are legally married couple for the claim of maintenance of wife U/S. 125 of CrPC.

4. It is of course true that the findings arrived at by the Court in a proceeding U/S. 125 CrPC does not determine the rights and obligation of the parties



conclusively nor it declares the status of the party as either husband or wife. It is, however, observed that if by some evidence, it is established that the parties lived together as husband and wife, maintenance cannot be denied to the lady on the ground that she has not entered into marriage with the man, but, however, the aforesaid finding is based on presumption of marriage which is a rebuttable presumption. It is also equally important that the revisional Court has no power to re-appreciate the evidence on record and substitute its views on a finding of fact. The ground as advanced by the petitioner disputing his marriage with OP is a question of fact which cannot be decided in a revisional proceeding. It is also not in dispute that if the society accepts the party as a husband and wife and they are residing together live-in-relationship, the requirement of Section 125 of CrPC can be said to have been fulfilled.

5. On coming back to the evidence on record, it appears that the OP-wife has proved one document



under Ext.9 which was executed by one Krushna Kumbhar containing the signature of the revisional-petitioner which has of course being marked under Ext. 9/a with objection, but the learned trial Court after discussing the material facts together with the evidence has considered that the petitioner had accepted the OP as his second wife in presence of caste people. Further, the OP-wife has also examined one Mahendra Gardia as PW2 who stated that he had signed on Ext.9 and as requested by Krushnana Kumbhar and his wife Tapaswini Kumbhar, he arranged the marriage between Sanyasini Kumbnhar(OP) and Lakshyapati Kumbhar(Petitioner). On the other hand, the revisional-petitioner has examined himself to dispute the factum of marriage, but on the contrary, the OP has examined all together eight witnesses on her behalf in the proceeding U/S. 125 of CrPC and after appreciating the evidence on record, the learned trial Court has considered that the OP is the wife of the petitioner and accordingly awarded the maintenance to the present OP by taking



into account the income and other factors involved in this case.

6. At the cost of repetition, re-appreciation of evidence is impermissible in a revisional proceeding, unless the finding on a fact is arrived at without evidence or no evidence and the finding is so perverse to render it unacceptable to a prudent man. In this case, there is no such issue, but the learned counsel for the petitioner orally submits that the petitioner is not the husband of the OP, however, he could not validly dispute by taking this Court through any evidence. Hence, the plea as advanced by the petitioner is not acceptable and is accordingly rejected.

7. In the result, the revision petition stands dismissed being devoid of merit.

**(G. Satapathy)
Judge**

*Orissa High Court, Cuttack,
Dated the 21st day of November, 2024/Kishore*