

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Criminal Revision No.520 of 2012

Laxman Oraon **Petitioner**
Versus
State of Jharkhand and Anr. **Opposite Parties**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. J. P. Jha, Senior Advocate
Mr. Aishwarya Prakash, Advocate
For the State : Mr. Arup Dey, A.P.P.
For the O.P. No. 2 : Mr. Sudhanshu Shekhar Choudhary,
Adv.

Through Video Conferencing

09/06.09.2021 Heard Mr. J.P. Jha, learned Senior counsel appearing on behalf of the petitioner along with Mr. Aishwarya Prakash, Advocate.

2. Heard Mr. Sudhanshu Shekhar Choudhary, learned counsel appearing on behalf of the opposite party no.2.

3. Heard Mr. Arup Dey, learned A.P.P. appearing on behalf of the opposite party - State.

4. Learned Senior counsel appearing on behalf of the petitioner submits that the proceeding in connection with grant of maintenance under Section 125 Cr.P.C is a summary proceeding and strict rule of evidence will not apply to such proceedings. Learned counsel also submits that the impugned order passed by the learned court below is perverse. He submits that the evidence of P.W.1-the mother of the applicant, has not been taken into consideration by the learned court below and accordingly, the impugned order suffers from non-consideration of material evidences on record. Learned Senior counsel has also referred to the evidence of O.P.W.5-the petitioner, as well as the evidence of O.P.W.6, the Advocate, who has claimed to have prepared affidavit of P.W.1, whose photocopy was filed before the learned court below as enclosure to evidence on affidavit of P.W.6. The learned counsel

has submitted that the said affidavit dated 15.07.2002 relating to the *panchayati* held on 15.07.2002 when there was customary divorce call 'chora-chori' between the present petitioner and opposite party no.2 and these aspects of the matter have not been properly considered by the learned court below and accordingly, the impugned order is perverse and is fit to be set aside.

5. Learned counsel on instructions from his client has also submitted that he has complied with the order dated 25.02.2013 passed by this Court relating to payment of opposite party no.2. This fact is strongly denied by the learned counsel appearing on behalf of the opposite party no.2. Learned counsel has referred to Section 63 (2) of the Evidence Act to submit that in view of Section 63 (2), a photo-copy of the affidavit was admissible in evidence as the original of the same was retained by the mother of the applicant.

6. Learned counsel appearing on behalf of the opposite party no.2, on the other hand, has vehemently opposed the prayer and has submitted that the learned court below has considered all the materials on record including the evidence of P.W.1 and has also discussed the photocopy of the so-called affidavit dated 15.07.2002 and has rejected the same by a well-reasoned order. He submits that the affidavit was never produced in original before the learned court below and a photocopy of an affidavit cannot be said to be a document prepared by the same process. He submits that the primary evidence has not been produced. The learned counsel has also submitted that the marriage between the petitioner and the opposite party no.2 is admitted, but the plea was taken by the present petitioner that there was 'chora-chori' (divorce) between the petitioner and the opposite party no.2 in *Panchayati* held on 15.07.2002. He submits that the materials on record having been considered by the learned court below, the

impugned order of maintenance does not call for any interference by this Court. He also submits that there is no perversity or illegality in the impugned order and accordingly, the same does not call for any interference.

7. During the course of argument, it is not in dispute from the learned counsel appearing on behalf of the petitioner that the so-called affidavit dated 15.07.2002 which is being heavily relied upon by the petitioner stating that the same indicates that there was divorce between the petitioner and opposite party no.2, is certainly not the affidavit of the opposite party no.2, but is an affidavit alleged to have been executed by the mother of present opposite party no.2.

8. Learned counsel appearing on behalf of the State has also opposed the prayer of the petitioner and has submitted that the impugned order does not call for any interference.

9. Arguments concluded.

10. Judgment is reserved.

(Anubha Rawat Choudhary, J.)