

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 137 of 2012

Gopal Mahato, S/o Sri Mohan Mahato, residing at Village
Godharbasti, P.O. Kusunda, P.S. Kenduadih, Dist. Dhanbad.

(Deleted vide order dated 09.08.2021)

1. Sushila Devi, W/o Late Gopal Mahato
2. Chandan Mahto, S/o Late Gopal Mahto
3. Nandan Mahto, S/o Late Gopal Mahto
4. Kundan Mahto, S/o Late Gopal Mahto

All r/o H. No. 105, Near Godhar Kali Mandir, Village
Godhar Kurmidih Basti, P.O. Kusunda, P.S. Kenduadih,
Dist. Dhanbad. **Petitioners**

-Versus-

1. State of Jharkhand
2. Tara Devi, W/o Sri Gopal Mahato (alleged), resident of
Village Moonidih Basti, P.O. Lalpur, P.S. Putki, Dist.
Dhanbad. **Opp. Parties**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

Through: Video Conferencing

25/06.09.2021

1. Heard Mr. Ashish Kumar Thakur, learned counsel appearing on behalf of the petitioners.
2. Heard Mr. Rakesh Ranjan, learned counsel appearing on behalf of the opposite party-State.
3. Heard Mr. Niranjana Singh, learned counsel appearing on behalf of the opposite party No.-2.
4. This criminal revision application has been filed for the following reliefs: -

"That the petitioner in the instant application prays for setting aside the judgment dated 23.01.12 passed by Shri Mrityunjay Mahato, the Learned Principal Judge, Family Court, Dhanbad in M. P. Case No. 212/2005 whereby and whereunder the Learned Judge has been pleased to allow the application filed by the Opposite party no. 2 u/s 125 Cr.P.C. and thereby has held that the opposite party no. 2 directed the petitioner to pay a sum of Rs. 1000/- per month as maintenance from date of application and Rs. 2000/- per month from date of order."

5. From perusal of records of this case, it appears that the present petitioners which includes Sushila Devi and her

children were substituted vide order dated 09.08.2021 in place of original petitioner Gopal Mahato (since deceased) against whom, opposite party No.-2, namely, Tara Devi had filed a petition under Section 125 of Cr.P.C. for claiming maintenance. However , it appears that there is dispute as to whether opposite party No.-2 is the legally wedded wife of Gopal Mahato or not.

Arguments of the petitioners

6. Learned counsel appearing on behalf of the petitioners while assailing the impugned order, has submitted that the learned court below, while recording the finding that opposite party No.-2 was the legally wedded wife of Gopal Mahato, has not considered the material evidences on record and has also recorded perverse finding. Learned counsel submits that the original petitioner Gopal Mahato had placed on record Ext.-C, which is his Class-X certificate, in which, his date of birth has been shown as 25.10.1967. He submits that the age of Gopal Mahato on the date of marriage with opposite party No.-2 was alleged to be on 07.05.1975 by the present opposite party and thus, the age of Gopal Mahato on the date of alleged marriage would be only 8 years.

7. Learned counsel submits that the learned court below while considering the evidences on record was of the view that most of the witnesses of the applicant (present opposite party No.-2) were relatives of Gopal Mahato which included P.W.-1, who claimed herself to be niece of Gopal Mahato; P.W.-2 who claimed himself to be brother-in-law i.e., *sadhu* of Gopal Mahato and P.W.-4 who claimed himself to be brother-in-law i.e., *sala* of Gopal Mahato. The learned counsel submits that while recording the aforesaid finding, the learned court below has not considered the cross-examination of P.W.-1 and so far as P.Ws.-2 and 4 are concerned, they are relatives of opposite party No.-2 and not Gopal Mahato which is apparent from their description itself. The learned counsel submits that there are other materials

on record as well, which have not been properly considered by the learned court below. He submits that identity of Gopal Mahato, with whom opposite party No.-2 claimed to have married, is also in dispute in the instant case.

8. Learned counsel on behalf of the petitioner has submitted that in spite of death of Gopal Mahato, the present case is still relevant on account of the fact that one Title Matrimonial Suit No. 76 of 2012 was also decided by the Family Court, Dhanbad, which was filed by Gopal Mahato for the declaration of his marital status with the present opposite party No. 2 and in that suit, Gopal Mahato had stated that he got married with Sushila Devi, the present petitioner. In the said case, the judgment passed in M.P. Case No. 212/2005 under Section 125 Cr. P.C, which is the impugned order in the present case, was also considered and it was held that the status of the parties has already been decided in M.P. Case No. 212/2005 and the said suit was decided vide judgment and decree dated 03.10.2018 and is underchallenge before this court in another case. Learned counsel has also submitted that the judgment passed by the learned court below which is the impugned order in the present case, has a serious bearing so far as the present petitioners are concerned.

Arguments of the opposite party No.-2

9. Learned counsel appearing on behalf of opposite party No.-2 while opposing the prayer has submitted that there is no illegality or perversity in the impugned order passed by the learned court below and the same does not call for any interference. However, during the course of argument, he does not dispute some of the aforesaid submissions advanced on behalf of the petitioners particularly non-consideration of Ext.-C which was filed by Gopal Mahato before the court below, which is a Class-X certificate of Gopal Mahato showing his date of birth as 25.10.1967.

10. The learned counsel submits that even if, this Court finds that some materials on record have not been properly considered by the learned court below, then at best it could be remanded back to the court concerned for fresh consideration instead of recording any finding after considering the materials on record. He submits that there are enough materials on record to establish the case in favour of present opposite party No.-2. He also submits that there are certain more materials which are available with him and were exhibited in the Title Matrimonial Suit indicating that Gopal Mahato was born in the year 1964. However, it is not in dispute that the said document(s) have not been exhibited in the maintenance case in which impugned order has been passed.

11. Both the learned counsels have submitted that certain further materials have come in Title Matrimonial Suit and liberty may be reserved with them to lead additional evidences before the learned court below.

Arguments of the opposite party-State

12. Learned counsel appearing on behalf of the opposite party-State has also submitted that a number of witnesses on behalf of opposite party No.-2 had supported her case and the learned court below has rightly recorded its finding, but he is not in a position to dispute the submission advanced on behalf of the petitioners regarding various documentary evidences and the evidences of the witnesses.

Findings of this Court

13. After hearing the learned counsel for the parties and considering the facts and circumstances of this case, this Court finds that certain material evidences have either not been properly considered by the learned court below or they have been totally ignored. This is with particular reference to Ext.-C which is the matriculation certificate of Gopal Mahato, wherein his date of birth was mentioned as 25.10.1967. The learned

counsel for the parties have indicated that certain evidences had come in the Title Matrimonial Suit, which were not available before the learned court below while passing the impugned order in the proceeding under Section 125 of Cr.P.C. which may have bearing in the maintenance case. From the side of the petitioners, it has been indicated that in Title Matrimonial Suit, the paternity of the daughter of opposite party No.-2 was also examined through D.N.A. Test, but she was found not to be daughter of Gopal Mahato. From the side of opposite party No.-2 herein, it has been submitted that service record of Gopal Mahato was exhibited before the court in the Title Matrimonial Suit, wherein his date of birth was mentioned of the year 1964. However, these two facts are admittedly not a part of the present records of the learned court below, wherein petition filed by the opposite party no.2 under Section 125 of Cr.P.C. was decided.

14. Considering the totality of facts and circumstances of this case, this Court finds that the impugned order passed by the learned court below cannot be sustained in the eyes of law on account of non-consideration of aforesaid material evidences on record which has made the impugned order perverse and is fit to be set-aside for securing the ends of justice. Accordingly, the impugned order dated 23.01.12 passed by the learned Principal Judge, Family Court, Dhanbad in M.P. Case No. 212/2005 is hereby set-aside and the matter is remitted back to the learned court below for fresh consideration and for passing fresh order after giving full opportunity to the petitioners as well as present opposite party No. 2. It is also observed that it will be open to the respective parties to adduce additional evidence(s) before the learned court below, if so advised.

15. This Court observes that merely because the present petitioners have been substituted in place of Gopal Mahato, that by itself cannot be taken as a finding that Sushila Devi was the legally wedded wife of Gopal Mahato.

16. It is made clear that this court has not gone into the merits or otherwise of the rival claims of the respective parties.

17. The parties are directed to appear before the learned court of Principal Judge, Family Court, Dhanbad on **01/10/2021**.

18. Accordingly, the present criminal revision application is disposed of.

19. Office is directed to immediately send back the lower court records to the court concerned.

20. Pending interlocutory applications, if any, are closed.

21. Let this order be communicated to the court concerned through FAX/e-mail.

(Anubha Rawat Choudhary, J.)

Mukul/Binit