

HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P. No. 07 of 2019

1. Smti. Pritilata Majumder,
wife of Shri Krishnapada Majumder, daughter of Shri Tikendra Majumder.
2. Smti. Tuli Majumder (Minor), daughter of Shri Krishnapada Majumder,
Both residents of Village-West Kanchanbari, P.O-Kanchanbari, P.S-Kumarghat,
District-Unakoti, Tripura
(The petitioner No.2 being minor is represented by her mother, the petitioner
No.1)

-----Petitioner(s)

Versus

1. Shri Krishnapada Majumder,
Son of Shri Rajbihari Majumder, resident of Village-West Kanchanbari, P.O-
Kanchanbari, P.S-Kumarghat, District-Unakoti, Tripura
2. The State of Tripura

-----Respondent(s)

For Petitioner(s) : Mr. S. Lodh, Advocate.
Mr. K. Saha, Advocate.

For Respondent(s) : Mr. S. Ghosh, Additional Public Prosecutor.

Date of Hearing : 24th March, 2021.

Date of Pronouncement : 23rd April, 2021.

Whether fit for reporting :

Yes	No
	✓

B E F O R E

HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

JUDGMENT & ORDER

Petitioner has challenged impugned order dated 09.10.2018 passed by Judge, Family Court, Kailashahar in Crl. Misc. (125)-50 of 2018 declining to grant maintenance allowance to the petitioner in a proceeding under section 125,

Cr.P.C initiated by the petitioner for herself and her minor daughter named Tuli Majumder.

[2] The factual context of the case is as under:

Petitioner Smt. Pritilata Majumder who is deaf and dumb filed a petition in the Family court at Kailashahar under section 125 Cr.P.C seeking maintenance allowance for herself and her minor daughter Tuli Majumder alleging that he entered into matrimonial alliance with the respondent on 19.09.2017 at Kumarghat and thereafter when she was carrying pregnancy her husband ousted her from her matrimonial home on 15.10.2017 committing physical and mental torture on her. She was then sheltered by her parents at their home where she gave birth to a daughter. After her daughter was born, she informed her husband. But neither the husband nor any other member of his family came to see the new born baby. It was stated by the petitioner that she does not have any means of livelihood to maintain her and her child whereas her husband is a businessman having a monthly income of not less than Rs.40,000/-. She, therefore, claimed Rs.5,000/- for herself and Rs.3,000/- for the daughter for their maintenance. After the case was registered in the Family Court, notice was issued to respondent No. 1. It appears from the order dated 07.07.2018 of the Family Court that father of respondent No.1 received notice on his behalf. Thereafter, several chances were given to the respondent to appear and submit his reply in court. Ultimately, the Family Court by order dated 16.08.2018 decided to hear the case ex parte since respondent husband of the petitioner did not appear.

[3] In the course of trial petitioner examined herself as PW-1. Court engaged Shri. Krishnapada Bhattacharjee, assistant teacher of deaf and dumb school of Boulapassa to interpret the evidence of the petitioner to the court since the petitioner was deaf and dumb. It has been recorded by the court that as she was unable to understand the sign language, court could not record her evidence even with the aid of the trained interpreter. Showing her mother in the court, she told that her mother was aware of everything of her life.

[4] Her mother Smt. Namita Majumder was examined on behalf of the petitioners as PW-2 whose evidence is as under:

“The petitioner, Pritilata Majumder is my daughter. I have four daughters and one son. Pritilata is my second daughter. Prior to her marriage she had love affairs with Krishnapada Majumder S/o. Sri Rajbihari Majumder of West Kanchanbari. Subsequently we accepted their relationship. When she was carrying 8 months pregnancy her relationship with Krishnapada Majumder was established. She showed Krishnapada Majumder then we understand that Krishnapada Majumder was responsible for her pregnancy. Matter was reported to Kumarghat PS. Police arrested Krishnapada then matter was settled. Krishnapada agreed to marry her. Accordingly marriage was solemnized in a temple at Kumarghat. I did not go to the place of marriage. She spent only 10-12 days peacefully at her matrimonial house. Thereafter, we brought my daughter at home for delivery. At the crucial time of delivery her husband did not turn up. Thereafter all along my daughter stayed with us. After 10 to 12 days of her marriage her husband left for unknown destination. I could not say where he has been living now. Now his PCO is being run by his brother. I had no idea of the income of her husband. My daughter filed the present case claiming monthly maintenance of Rs.5,000/- for her daughter and Rs.3,000/- for her daughter. I could not produce any documents regarding ownership of the PCO of her husband.”

[5] The Family Court by the impugned order declined to grant maintenance allowance to the petitioner and her daughter on the ground that marriage between her and the respondent was not proved and the paternity of the daughter was not also proved. The relevant extract of the impugned order is as under:

“9. In the case main point is to be decided whether there is any formal marriage between the petitioner No.1 and the opposite party or not. To prove that fact no cogent evidence is given. Neither the priest was examined nor any witness of the marriage was examined. The PW-2 also did not claim to remain present at the time of marriage. It is clear that before her alleged marriage she became pregnant and when she was carrying 08 months pregnancy they came to know that the opposite party was responsible for her pregnancy. In this regards this court cannot get the evidence of the petitioner as she does not know the sign language of the Deaf and Dumb as she is uneducated. This being the position, it is not proved that actually there was a formal marriage ceremony at alleged Laxminarayan Temple, Kumarghat. It is also matter of question whether in the said temple there is any scope of solemnization of marriage according to Hindu rites and ceremonies. This being the position, this court cannot come to the conclusion that the petitioner No.1 is the legally married wife of the opposite party and that the petitioner No.2 is the daughter of the opposite party. Hence, I am of the opinion that the petitioner No.1 in this case has failed to establish her marriage relationship with the opposite party and the petitioner No.2 is born out of a valid wedlock. Hence, this court cannot provide any relief on the basis of the existing petition of maintenance u/s 125 Cr.P.C. Hence, the petition of the petitioner stands dismissed.”

[6] Aggrieved petitioner has challenged the said order mainly on the following grounds:

i. The trial court did not consider the joint affidavit sworn by the petitioner and the respondent declaring that their marriage was solemnized on 19.09.2017 at Laxminarayan Temple at Kumarghat.

ii. The Family Court did not also consider the fact that strict proof of marriage is not a sine qua non in a proceeding under section 125 Cr.P.C.

iii. The Family Court erroneously rejected the petition without considering the cogent, consistent and coherent evidence of the petitioner.

[7] It is submitted by Mr. S. Lodh, learned counsel appearing along with Mr. K. Saha, advocate for the petitioner that the petitioner is a poor and physically challenged person. She does not have any means of livelihood. Denial of maintenance to her will lead her and her minor daughter to complete vagrancy. Learned counsel, therefore, urges the court for allowing her petition by granting reasonable maintenance allowance to her.

सत्यमेव जयते

[8] Despite efforts, notice could not be served on the respondent in normal course. Same thing happened in I.A No.1 of 2019 which was filed by the petitioner seeking condonation of 15 days delay in filing the present criminal revision petition. In the I.A, substituted service was caused by publication of notice in newspaper. But the respondent did not turn up. The case was then heard ex parte and delay was condoned. In this petition also, despite several efforts, notice could not be served on the respondent in usual course. Thereafter notice was published in newspaper following the procedure of substituted service. Since

the respondent husband has not turn up inspite of publication of such notice, the case has been heard ex parte against him.

[9] It may be recalled that in the Family Court mother of the petitioner deposed as PW-2 who stated that her petitioner daughter Pritilata had love affairs with the respondent which matured into their marriage. It was stated by the PW that her daughter became pregnant prior to marriage. When she was carrying 8 months' pregnancy, she had shown the respondent as the man who was responsible for her pregnancy. The matter was then reported to police station. Police arrested the respondent who agreed to marry the petitioner. Accordingly their marriage was solemnized in a temple at Kumarghat. After marriage, she lived with her husband at her matrimonial home for about 2(two) weeks. Thereafter, the PW brought her petitioner daughter to her for a safe delivery. Husband of the petitioner then left Kumarghat for an unknown destination. She told that she had no idea about the income of her son in law. She, however, told that brother of her son in law was running a PCO at Kumarghat.

[10] Sri Sukhamoy Sarkar [PW-3] also stated at the trial that petitioner Pritilata was a deaf and dumb girl. When her parents came to know that she was carrying pregnancy, her father met the PW and told that respondent Krishnapada was responsible for her pregnancy. Police then arrested the respondent who agreed to marry the petitioner. Accordingly their marriage was solemnized in a temple at Kumarghat. The petitioner started living with her husband at her matrimonial home. During those days, the PW also visited the petitioner in her

matrimonial home and came to know that she was tortured by her in laws and she was also denied food. Her parents then brought her to them for her safe delivery where she delivered a child. Before the delivery of her child, her husband left the area. According to the PW, husband of the petitioner used to run a shop at Kumarghat where he installed a photocopier. Besides, he also used to sell mobile top up and after he left the area, his brother Nidhu used to look after the business. The PW further stated that besides the shop, the respondent had landed property in his name.

[11] The Family Court rejected the entire evidence of PW-2 and PW-3 despite the fact that the respondent did not turn up to dispute their evidence. The ground on which the Family Court disbelieved the petitioners' case is that petitioners' mother was not present during her marriage with the respondent and moreover petitioner could not communicate her statement to the court since she failed to understand the sign language of the expert. The view taken by the Family Court is completely erroneous and uncalled for. The Family Court failed to appreciate the fact that though the expression 'wife' under section 125 Cr.P.C implies "legally married wife", the object of the provision is to provide speedy remedy for the supply of food, clothing, shelter and other essential necessities of life to the wife for her survival. Therefore, it has been held in several judicial pronouncements that strict proof of marriage is not a pre-condition to succeed in a claim for maintenance allowance under section 125 Cr.P.C.

[12] In the case of *Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit & Anr.* reported in (1999) 7 SCC 675: AIR 1999 SC 3348 Apex Court held that the standard of proof of marriage in a proceeding under section 125 Cr.P.C is not as strict as is required in a trial of offence under section 494 IPC. In the said judgment, the Apex Court has also held that if the claimant wife succeeds in showing that she and the respondent lived together as husband and wife, the court can presume that they are legally wedded spouses and in such a situation the party who denies the marital status can rebut the presumption. Observation of the Apex Court in this regard is as under:

“6.....In our view, validity of the marriage for the purpose of summary proceeding under Section 125 Cr.P.C. is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceeding is not as strict as is required in a trial of offence under section 494 of the I.P.C. If the claimant in proceedings under Section 125 of the Code succeeds in showing that she and the respondent have lived together as husband and wife, the Court can presume that they are legally wedded spouses, and in such a situation, the party who denies the marital status can rebut the presumption.....”

[13] In the given context, petitioners' witnesses have consistently stated that marriage of the petitioner and the respondent was solemnized in a temple at Kumarghat. The respondent did not turn up to say that marriage procedure was not followed in the temple. Moreover, it is no case that petitioner was mentally unsound. She is a deaf and dumb person who is a competent witness in terms of section 119 of the Evidence Act which reads as under:

119. Dumb witnesses.—A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

[14] Evidently the petitioner was produced in court and an expert trained in sign language was also engaged by the court to interpret her evidence. As observed by the court, since the petitioner did not understand sign language she could not communicate her evidence to the interpreter and as a result the interpreter could not interpret her evidence to court. However, the petitioner was able to communicate to the court by her signs and gestures that everything of her life was known to her mother.

[15] In this emerged situation, mother [PW-2] of the petitioner is the best witness on her side. She had intimate knowledge of the signs and gestures and meaning of all expressions of her daughter who was brought up by her since her birth. None on earth other than her could better understand her daughter. The mother categorically stated at the trial that marriage of her daughter with the respondent was solemnized in a temple at Kumarghat and after marriage a daughter was born to her and thereafter the respondent left the area. Her evidence was supported by PW-3, a 70 years old man, unrelated to the petitioner who had no reason to tell lie. Moreover, the husband managed to escape. He never appeared either at the trial court or before this Court to discharge his burden. It was not unknown to him that legal proceedings were initiated by his wife against him because he was arrested in one of the cases instituted by his petitioner wife.

[16] A bare perusal of section 119 of the Evidence Act would show that a deaf and dumb witness who is unable to speak may give his evidence in any other manner intelligible to the court. It may be by writing or by signs in open court. It is evident that the mother [PW-2] and her petitioner daughter [PW-1] came to the court on the same day for giving deposition in the case. It also appears from the record that the petitioner was a literate person. She was able to read and write. Therefore, in case of any doubt, the court could have asked her to communicate her words in writing. The court could have also cleared its doubts from the mother of the petitioner by putting the questions to her in exercise of its power under section 165 of the Evidence Act. Without taking recourse to such means, the Family Court rejected the petition declining to grant maintenance allowance to the petitioner and her daughter which is unacceptable.

[17] Under the discussions made above, this court is of the view that the petitioner was able to prove her case before the Family Court and her petition was erroneously rejected by the Family Court.

[18] Resultantly, the impugned order of the Family Court, Kailashahar is set aside and her petition is allowed.

[19] Maintenance allowance of a sum of Rs.5,000/- is allowed to her. Maintenance allowance of a sum of Rs.3,000/- as claimed by the petitioner is allowed to her daughter Tuli Majumder who is a minor. They will be entitled to such maintenance from the date of filing of the petition i.e. from 12.06.2018. The

Family Judge, Kailashahar will enforce the order and realize maintenance allowance along with the arrears thereof from the respondent husband of the petitioner. The Judge, Family Court, Kailashahar shall put the order to execution without awaiting formal petition from the petitioner for this purpose.

Communicate copy of the order to the petitioner free of cost. A copy of this order shall also be sent to the address of the respondent No.1.

Return the LC record.

Pending application(s), if any, also stands disposed of.

