

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Revision No. 1489 of 2022

Rengha Oraon @ Regha Oraon Petitioner

Versus

1. State of Jharkhand

2. Sumi Orain Opp. Parties

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Petitioner : Mr. Arun Kumar, Advocate

For the State : Ms. Shweta Singh, A.P.P.

Order No.07 Dated : 28.06.2024

1. This criminal revision petition is preferred against the order of maintenance passed in Original Maintenance Case No.25 of 2022 under Section 125 of the Code of Criminal Procedure by which the petitioner has been directed to pay maintenance of Rs.4000/- per month to the opposite party no.2.

2. The order has been impugned mainly on the ground that opposite party no.2 is not his legally married wife and he has already married to one Meela Orain and has two children from the said wedlock. In support of the contention, testimony of A.W. 1, applicant Sumi Orain is referred wherein she has not stated that she was legally married to the petitioner at any point of time. In maintenance application, date, time and place of the said marriage has not been disclosed.

3. It is argued that what has been stated in the application for maintenance is that she was handed over in a Village Panchayat on 08.01.2010 to this petitioner and thereafter, they commenced their life as husband and wife. The application is however, absolutely silent about the rituals of marriage by which they were married. Furthermore, it has come in the evidence of the applicant witness herself that the petitioner have wife and two children and they were living with the petitioner.

4. During the subsistence of first marriage, any second marriage was not legal and therefore, Opposite Party No.2 cannot be recognized legally wedded wife of the Petitioner.

5. Earlier notice was served on O.P. No.2, but she has not entered into appearance in person or through counsel. Learned A.P.P. has defended the

impugned order. However, she has not brought anything on record to suggest that the opposite party was legally married wife of the petitioner.

6. Subsistence of a valid marriage is prerequisite for passing any order under Section 125 of the Cr.P.C. Applicant (AW-3) has herself admitted that Petitioner was having wife and children. It has been deposed by her in para 3 that his first wife was living separately with husband and she is the second wife. Unless the petitioner is validly divorced from his first wife, marriage of the petitioner will have no legal sanctity. In this view of matter, unless there is any material to suggest that there was severance of marital status, any second marriage cannot be recognized in the eyes of law.

Impugned order is not sustainable on this score and is therefore set aside.

Revision Petition is allowed.

(Gautam Kumar Choudhary, J.)

Anit