

Chandra Deo Vs. Juganti Devi and ors.

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SooperKanoon Citation : sooperkanoon.com/481542

Court : Allahabad

Decided On : Oct-28-1996

Reported in : II(1997)DMC6

Judge : G.S.N. Tripathi, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125

Appeal No. : Criminal Revision No. 1082 of 1996

Appellant : Chandra Deo

Respondent : Juganti Devi and ors.

Advocate for Def. : G.A.

Advocate for Pet/Ap. : Shashi Nandan, Adv.

Disposition : Petition dismissed

Judgement :

G.S.N. Tripathi, J.

1. This Criminal Revision has been filed Under Section 397 Cr. P.C. against the judgment and order dated 20.7.1996 passed by Mr. N.P. Singh, Judge, Family Court, Azamgarh in Criminal Case No. 437 of 1990.

2. Smt. Juganti Devi filed an application Under Section 125, Cr. P.C. claiming maintenance for herself as well as her son Ashok.
3. She has alleged that she is the legally wedded wife of Chandra Deo, revisionist, according to the customary law available and acceptable in this community of Yadavas. Out of the union of Smt. Juganti Devi with Chandra Dao, a son, Ashok, was born. He is about 10 years old and the revisionist has entered into another marriage, allegedly, with another lady and he has turned the applicant out of his house. The applicant has no source of income.
4. The revisionist Chandra Deo, in his written statement, has alleged that neither Smt. Juganti Devi was his wife nor Ashok is his son. Therefore, question of granting any maintenance allowance either to Smt. Juganti Devi or to Ashok does not arise. He also took the plea that, in fact, Smt. Juganti Devi was married to Lal Behari, s/o Paras. However, he admits that when he started living at the house of Lal Behari, he developed sweet relations with Smt. Juganti Devi.
5. Before the learned lower Court, parties have laid oral as well as documentary evidence. After scanning the same, learned lower Court came to the conclusion that marriage between Smt. Juganti Devi and Chandra Deo was performed according to the customary rites and was acceptable to this community of Yadavas and a son Ashok was born out of this wedlock. After basing his finding on the evidence on the record, the learned lower Court's finding was recorded as below.
6. I have perused the order of the learned lower Court and I find that this revision has no force and it is liable to be dismissed accordingly. From the statement of Smt. Sukhraj, examined by the revisionist himself, the birth year of Ashok was 1974. After the death of Lal Behari, the name of Ashok was not recorded as son and son of Lal Behari. This finding is based upon oral as well as documentary evidence. In absence of any perversity as alleged, I do not find any justification to interfere with the findings recorded by the learned lower Court. Therefore, I hold that Smt. Juganti Devi is the legally wedded wife of Chandra Deo and, admittedly, she has not remarried (both Chutta-Chutti customary diroce) as from evidence it was not established against Smt. Juganti Devi. However, she has not been

maintained for more than 8 years by the petitioner. This fact is not disputed that the revisionist has now married with another lady. This, by itself, amounts to cruelty, entitling Smt. Juganti Devi to live away from the husband and claim maintenance Under Section 125, Cr. P.C. Therefore, the learned lower Court came to the correct conclusion that Smt. Juganti Devi was the legally wedded wife of Chandra Deo and she was not remarried as yet. Hence it granted a maintenance allowance of Rs. 300/- right from the date of application. But he refused to grant any maintenance to her son Ashok, as he had become major. Ashok also did not challenge this order nor claimed any maintenance.

7. Learned Counsel could not show that conclusions drawn by the learned lower Court are not based on the material available on the record as evidence available before the Court. Therefore, this Court, while sitting in revisional jurisdiction, shall not interfere in the conclusions on facts drawn by the learned lower Court, which are based on the materials available on the record. Learned Counsel in the end, asked that some leniency should be shown in the payment of arrears. I think the learned lower Court has already shown abundant leniency and allowed the revisionist to pay the maintenance allowance in 10 equal instalments. No further leniency is permissible in law. The revision is accordingly dismissed.