

Dwarika Prasad Satpathy

Vs

Bidyut Prava Dixit and Another

Criminal Appeals Nos. 1082-83 of 1999

(K. T. Thomas, M. B. Shah JJ)

14.10.1999

JUDGMENT

SHAH, J.-

1. Leave granted.

2. Respondent 1 wife filed application Criminal Miscellaneous case No. 26 of 1989 on 15-3-1989 under Section 125 CrPC before the Judicial Magistrate, Nayagarh for her maintenance. The Judicial Magistrate allowed the said application by order dated 28-6-1993 and granted a monthly maintenance of Rs 400 to her and Rs 200 to her daughter w.e.f. 15-3-2989. That order was challenged by the husband (the appellant herein) before the Sessions Court in Criminal Revision No. 114 of 1993. The revision application was heard by the Ist Additional Sessions Judge, Puri, who by his judgment and order dated 19-4-1994 partly allowed that revision application of the appellant and set aside the maintenance granted to Respondent 1. However, the order granting maintenance of Rs 200 per month to the minor daughter, till she attains majority subject to future enhancement, was maintained.

3. Against that judgment and order, the appellant filed Criminal Miscellaneous Case No. 1338 of 1994 before the High court of Orissa at Cuttack. Respondent 1 wife had also filed Criminal Revision No. 389 of 1994. The High court heard both the revision applications together, dismissed the revision application filed by the appellant and allowed the revision application filed by Respondent 1 wife. The High Court held that it is not disputed that the parties are residents of Village Kantilo and at the relevant time, the appellant was a bachelor and working as a junior Employment Officer at Nayagarh. It was also accepted that he was a friend of the elder brother of Respondent 1 and was frequently visiting their house in connection with a social and cultural organization of the village He fell in love with respondent 1 and developed an intimacy with her. It has also come on record that the appellant was proposing a pre-marital sexual relationship to Respondent 1, which was persistently refused by her. Thereafter, the appellant took a vow in the name of Lord Nilamadhab Bijje to marry her and thereby won the faith of Respondent1. Thereafter, because of the cohabitation respondent 1 took various actions of writing to the various authorities including the chief Minister of the State and ultimately, she launched a hunger strike in front of the office of the appellant. Thereafter, on the intervention of the Sub-Divisional Officer and other persons, the marriage was arranged in the Temple of Lord Jagannath at Nayagarh, in the presence of witnesses. After marriage Respondent 1 was being taken to the house of the appellant. On the way, she was persuaded to stay at the paternal (sic parental) house on the ground that his father may not accept her as a bride. At that stage, she was in an advanced stage of pregnancy. She stayed at her parental house and within 3-4 days she gave birth to a female child, Respondent 2. The parties

continued to live separately as before.

4. In the proceedings under section 125 of the Criminal Procedure code, the appellant denied pre-marital sexual relations with Respondent 1. He asserted that he was forced to undergo some sort of a marriage with Respondent 1 at the point of a knife; that he had not given consent to the marriage and that he was forced to exchange garlands with Respondent 1. The learned Magistrate believed the case of Respondent 1 in toto and arrived at the conclusion that there had been a marriage between the appellant and Respondent 1 in the Temple of Lord Jagannath and the said marriage was a valid and legal one. It was further held that the child was born out of this wedlock. In the revision, the additional Sessions Judge did not accept the factotum of marriage between the parties by holding that the appellant was forced to exchange garlands at the point of a knife and, therefore, there was no valid marriage in the eye of the law. So, the claim of Respondent 1 for maintenance was negated. He however, accepted the plea of Respondent 1 that a child was born because of pre-marital relations and confirmed the order granting maintenance to the child. The High Court observed that considering the standard of proof in a proceeding under Section 125 CrPC it cannot be held that Respondent 1 had not succeeded in establishing marriage. The court relied upon the evidence led by Respondent 1 for holding that in fact a marriage was solemnized in the Temple of Lord Jagannath and she was corroborated by the photographer who was present at the time of marriage. The evidence of the brother of Respondent 1 was also referred to for arriving at the said conclusion. The High court negated the contention of the appellant that the said ceremony was forcibly held at the point of a knife and also held that there was no reason for disbelieving Respondent 1 that the appellant and Respondent 1 were having pre-marital sexual relations and that the child was born out of this relationship. That order is challenged by filing these appeals by special leave.

5. Before issuing notice, this court by order dated 12-10-1998 directed the appellant to deposit rest of the total arrears of maintenance payable to Respondent 1 within six weeks. Thereafter, notice was issued to Respondent 1 and subsequently the matter was directed to be listed for final disposal. On 16-7-1999, when the matter came up for hearing, the appellant contended that he is not the father of the child. On behalf of Respondent 1, it was pointed out fatherhood of the child. At that stage, the learned counsel for the appellant sought time of four weeks to get instructions from the appellant. Thereafter, when the matter was placed for hearing on 20-8-2999, the learned counsel for the appellant stated that he was not willing to undergo a DNA test and, therefore, this court ordered that "this means appellant is disentitled to dispute the paternity of the child. This is recorded". On the next date of hearing, learned counsel for the parties were heard at length and it was contended by the learned counsel for the appellant that there was no valid marriage between the appellant and Respondent 1 and, therefore, the order passed by the High court awarding maintenance to Respondent 1 is illegal and requires to be set aside.

6. Learned counsel for the appellant at the time of hearing had not disputed the paternity of the child. Hence, the question is whether the marriage between the appellant and Respondent 1 was valid or invalid? In our view, validity of the marriage for the purpose of summary proceedings under Section 125 CrPC is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceedings is not as strict as is required in a trial of offence under Section 494 IPC. 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. Undisputedly, marriage procedure was followed in the temple, the too, in the presence of the idol of Lord Jagannath, which is worshipped by both the parties. The appellant contended before the learned Magistrate that the said marriage was performed

under duress and at the point of a knife, he was required to exchange garlands. That contention is not proved by leading necessary evidence. Once it is admitted that the marriage procedure was followed then it is not necessary to further provided into whether the said procedure was complete as per Hindu rites in the proceedings under Section 125 Cr PC.

7. Learned counsel for the appellant relied upon the decision of this court in *Yomunabai Anantrao Adhav v. Anantrao Shivram Adhav*¹ and submitted that even in a summary proceeding under section 125 CrPC, the court is required to find out whether the applicant wife was a lawfully wedded wife or not. In the said case, the court considered the point whether a Hindu woman who has married after the coming into force of the Hindu Marriage Act, 1955, with a man having a lawfully wedded wife, can maintain an application of maintenance under Section 125 CrPC even on an illegitimate child by expressed words but none are found to apply to a de facto wife where the marriage is void ab initio. The marriage was null and void because Section 5, inter alia, provides that a marriage may be solemnised between any two Hindus if the conditions mentioned therein are fulfilled. One of the conditions is -neither party has a spouse living at the time of marriage. Under Section 11, such marriage is null and void. The Court held that marriage of a woman in accordance with Hindu rites with the man having a living spouse is a complete nullity in the eye of the law and she is not entitled to the benefit of section 125 of the code. In our view the said judgment has no bearing on the facts of the present case as it is not a case of a de facto marriage nor can it be held that the marriage between the appellant and Respondent 1 was void ab initio. It is a case where it is contended that at the time of marriage essential ceremonies were not performed. Hence in the present case, we are not required to discuss the issue that unless a declaratory decree of nullity of marriage on the ground of contravention of any one of the conditions specified in clauses (i), (iv) of Section 5 is obtained, it cannot be held in collateral proceedings that the marriage was null and void. Nor is it required to be discussed that the legislature has not provided that if some marriage ceremonies are not performed, the marriage is a "nullity" under section 11 or is "voidable" Under Section 12 of the Hindu marriage Act.

8. The learned counsel for the appellant next relied upon the case of *Bhaurao Shankar Lokhande v. State of Maharashtra*² and contended that two ceremonies are essential to the validity of Hindu marriage, i.e., invocation before that sacred fire and spatapadi and are required to be established before holding the marriage performed in the temple was a valid one. In that case, the Court arrived at the conclusion that the prosecution for the alleged offence under Section 494 IPC, had failed to establish that the marriage was performed in accordance with the customary rites as required under Section 7 of the Hindu Marriage Act; it was certainly not performed in accordance with the essential requirements for a valid marriage under Hindu law and, therefore, the accused cannot be convicted under Section 494 IPC. In our view, in the said case the court was considering the offence punishable under Section 494 IPC. In a prosecution for bigamy, the second marriage has to be proved as a fact. The said decision would have no bearing in the proceeding under Section 125 CrPC, which is of a summary nature.

9. It is to be remembered that the order passed in an application under Section 125 CrPC does not finally determine the right and obligations and obligations of the parties and the said section is enacted with a view to provide a summary remedy for providing maintenance to a wife, children and parents, For the purpose of getting his rights determined, the appellant has also filed a civil suit, which is pending before the trial court. In such a situation, this Court in *S. Sethurathinam Pillai v. Barbara*³ observed that maintenance nudies where there was some evidence on which conclusion for grant of maintenance could be reached. It was held that order passed under Section 488 is a summary order which does not finally determine the rights and obligations of the parties; the

decision of the criminal court that there was a valid marriage between the parties.

10. After not disputing the paternity of the child and after accepting the fact that the marriage ceremony was performed, though not legally perfect as contended, it would hardly lie in the mouth of the appellant to contend in a proceeding under Section 125 is not to be utilised for defeating the rights conferred by the legislature on the destitute women, children or parents who are victims of the social environment. In *Ramesh Chander Kaushal v. Veena Kaushal*⁴ KrishnaIyer, J. dealing with the interpretation of section 125 CrPC observed (at para 9) thus: (SCC p. 74)

"9. This provision is a measure of social justice and specially enunciated to protect women and children and falls within the constitutional sweep of article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advance the cause - the cause the derelicts."

11. In *Vimala (K.) v. Veeraswamy (K.)*⁵ dealing with the contention of the husband that the second marriage with the applicant wife was void on the ground that his first marriage was subsisting, this court held that Section 125 CrPC is meant to achieve a social purpose and, therefore, the law which disentitles the second wife from receiving maintenance from her husband for the sole reason that the marriage ceremony though performed in the customary form lacks legal sanctity can be applied only when the husband satisfactorily proves the subsistence of a legal and valid marriage particularly when the provision in the Code is a measure of social justice intended to protect women and children, the object to prevent vagrancy and destitution; it provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife and observed thus; it provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife and observed thus: (SCC p. 378, para 3)

"When an attempt is made by the husband to negative the claim of the neglected wife depicting her as a kept mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage."

12. Similarly, in *Santosh v. Naresh Pal*⁶ dealing with the contention that the wife had not proved that she was a legally married wife because her first husband was living and there was no dissolution of her marriage, this Court held thus: (SCC p. 448, para 2)

" In a proceeding for maintenance under Section 125 CrPC the learned Magistrate was expected to pass appropriate orders after being prima facie satisfied about the marital status of parties. It is obvious that the said decision will be a tentative decision subject to final order in any civil proceedings, if the parties are so advised to adopt."

13. Hence, in our view from the evidence which is led if the magistrate is prima facie satisfied with regard to the performance of marriage in proceedings under Section 125 CrPC which are of a summary nature, strict proof of performance of essential rites is not required. Either of the parties aggrieved by the order of maintenance under section 125 CrPC can approach the civil court for declaration of status as the order passed under Section 125 does not finally determine the rights and

obligations of the parties.

14. In the result, the appeals are dismissed with costs quantified at Rs 5000.