

GAHC010237792017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./208/2017

BHOLA NATH RAI
S/O. LT. TULU CHANDRA RAY, PERMANENT OF RESIDENT OF VILLAGE
DUKHI XUKHI UNDER GOLAKGANJ POLICE STATION IN THE DIST. OF
DHUBRI, ASSAM AND PRESENTLY RESIDING AT DHUBRI POLICE
RESERVE, DHUBRI.

VERSUS

SMT. TUTUMONI SONOWAL and ANR
D/O. NOT KNOWN, R/O. JEC ROAD, GARMUKH UNDER JORHAT POLICE
STATION IN THE DIST. OF JORHAT, ASSAM.

2:THE STATE OF ASSAM

Advocate for the Petitioner : MR.S K DEKA

Advocate for the Respondent : MR. B BORGOHAIN (R-1)

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT

Date : 29-05-2023

Heard Mr. J. Deka, learned counsel for the petitioner and also heard Ms. S.G. Baruah, learned counsel appearing for the respondent No.1.

2. In this petition, under Section 401 read with Sections 397 & 482 of the Code of Criminal Procedure, 1973, petitioner - Shri Bhola Nath Rai, has put to challenge the correctness or otherwise of the judgment and order dated 06.01.2016, passed by the learned Judicial

Magistrate 1st Class at Jorhat in Misc. Case No.5/2015, whereby the learned Magistrate directed the petitioner to pay a sum of Rs.4,000/- (Rupees four thousands) per month, to the respondent No.1, as maintenance from the date of the order.

3. The factual background, leading to filing of the present revision petition, is adumbrated herein below:-

“Smti. Tutumoni Sonowal, the respondent No.1 here-in got married with the petitioner on 26.05.2008, as per social rites and lived together with him as husband and wife in a rented house in Titabor Town of Jorhat District. After the marriage, the petitioner started torturing her both mentally and physically; demanding dowry and he also tried to kill her. Thereafter, the petitioner was transferred to Dhubri and leaving behind the respondent No.1, in a rented house at Titabor, the petitioner left for Dhubri, with the warning to her that she could come to Dhubri only when she is able to meet his demand of dowry. Thereafter, on 03.11.2013, the petitioner called the respondent No.1 to Guwahati and met her at the ISBT, Guwahati and enquired from her, if she had brought the demanded dowry and when she replied in negative, the petitioner sent her back to Jorhat. Then the respondent No.1 filed a case under Section 498-A of the IPC against the petitioner. Then the petitioner called the respondent No.1 to Kokrajhar and when she went there, she came to know that the petitioner is a married person, having his wife and children. Then in order to sustenance and being left with no other option the respondent No.1 had filed a petition before the court of learned Chief Judicial Magistrate, Jorhat praying for granting her maintenance @ Rs.10,000/- per month. It is stated that the petitioner is a police personnel, and his monthly remuneration is Rs.35,000/- to Rs.40,000/- and she has no source of income of her own.

Upon the said petition, the learned court below had registered a Misc. Case No.5/2015, under Section 125 of the Cr.P.C. and issued notice to the petitioner. Then the petitioner entered appearance and contested the claim made by the respondent No.1 tooth and nail by filing written statement. The case of petitioner is that respondent No.1 is a widow and he knew her husband. He had disputed his monthly income, as claimed by the respondent No.1 and he has the burden to look after his old aged mother and his family.

Then after hearing learned counsel for both the parties, the learned court below, vide impugned order dated 06.01.2016, directed the petitioner to pay a sum of Rs.4,000/- (Rupees four thousands) per month, to the respondent No.1."

4. Being highly aggrieved by the impugned order dated 06.01.2016, the petitioner approached this Court, challenging the correctness or otherwise of the said order and contended to set aside the same *inter alia*, on the following grounds amongst others:-

- (i) That, the learned Court below has erred in law and on facts while passing the impugned order;
- (ii) That, the cardinal principle of Criminal Jurisprudence is 'proof beyond all reasonable doubt' and in the present case, the respondent had totally failed to prove her marriage with the petitioner and as such the impugned order is perverse and erroneous;
- (ii) That, the non-reading and miss-reading of the evidence on record have resulted in grave miscarriage of justice in the present case;
- (iii) That, apart from oral evidence, the respondent had totally failed to bring any documentary evidence or photographs to prove the marriage and moreover, the witnesses examined by the respondent No.1 are all interested witnesses and as such the same are not believable;
- (v) That, there is serious contradiction in the evidence of the PW.1 and PW.3, regarding the place of her marriage and the person present. While PW.1 stated that the marriage was solemnized in Gorajan Naam Ghar and further stated that PW.3 was present in her marriage. Whereas, PW.3 in his cross-examination stated that the marriage was performed in the house of the father of the respondent and the learned Court below had ignored the same;
- (vi) That, the learned trial Court failed to appreciate that the evidence so led by the respondent's witnesses are beyond pleading and as such those evidence cannot be taken into account. Moreover, the learned Court below had failed to consider that the respondent No.1 had failed to proof the marriage as well as failed to examine person who allegedly performed the purported marriage.

- (vii) That, from the evidence on record, it has not been conclusively proved that the petitioner is the husband of the respondent No.1 and to prove that convincing evidence is required.

5. Mr. J. Deka, the learned counsel for the petitioner submits that the petitioner is a married person and the respondent has admitted the same in her petition and also in her evidence and as such the judgment and order passed by the learned Court below is illegal and passed without jurisdiction. Mr. Deka further submits that the learned Court below, while granting maintenance, has placed reliance upon a decision of Hon'ble Supreme Court in **Dwarika Prasad Satpathy vs. Bidyut Prava Dixit and another**, reported in **(1997) 7 SCC 675** and relied upon paragraph 6 of the judgment. However, the learned Court below has not considered the paragraphs 7 & 8 of the said judgment, which is very much relevant to the case in hand. Mr. Deka further submits that the petitioner has denied the marriage and he is already married to another woman and having children from her side. It is the further submission of Mr. Deka that the respondent had made contradictory statement in respect of place of solemnization of the marriage and that the petitioner had also adduced evidence and rebutted the claim of the respondent No.1. Therefore, it is contended to allow this petition. Mr. Deka also referred following case laws to bolster his submission:

(i) **Yamunabai Anantrao Adhav vs. Anantrao Shivram Adhav & Anr. (1988) 1 SCC 530,**

(iii) **Bakulabai & Anr. vs. Gangaram & Anr. (1988) 1 SCC 537.**

6. Per contra, Ms. S.G. Baruah, learned counsel appearing for the respondent No.1 submits that the marriage between the petitioner and the respondent No.1 was solemnized on 26.05.2008, as per social rites at Titabor in Jorhat District and after some days, marital discord surfaced between them for which the respondent No.1 filed a case under Section 498-A of the IPC, against the petitioner. Ms. Baruah further submits that thereafter a compromise was effected between the petitioner with the respondent No.1 and the petitioner took her to his native place on 04.11.2014, and only then, she came to know about the marriage of the petitioner with another lady. Ms. Baruah further submits that, to challenge the validity of the marriage, the petitioner has to go to the Civil Court and in this proceeding, he cannot challenge the validity of the marriage and the Court has to presume the marriage of the

petitioner with the respondent No.1 as valid. It is the further submission of Ms. Baruah that the petitioner got married with the respondent No.1 by suppressing his earlier marriage and there is no evidence that the said marriage is legal and valid. Ms. Baruah also submits that the impugned judgment and order of granting maintenance to the respondent No.1 suffers from no infirmity or illegality and therefore, it is contended to uphold the same.

7. In reply to the submission of Ms. Baruah, learned counsel for the respondent No.1, Mr. Deka, learned counsel for the petitioner submits that explanation (b) and (d) of Section 125 of the Cr.P.C. provides that only the legally married wives are entitled to maintenance and the same has been duly explained in paragraph 7 of the case of **Dwarika Prasad Satpathy (Supra)** and after coming into force of the Hindu Marriage Act, 1955, the second marriage is void and therefore, it is contended to allow the revision petition.

8. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record, and perused the case laws, relied upon by the learned counsel for the petitioner. I have also gone through the impugned judgment and order passed by the learned Court below.

9. It is trite law that normally revisional jurisdiction has to be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in perverse finding. Basically the power of revision is required to be exercised so that justice is done and there is no abuse of power by the court. Reference in this context can be made to a decision of Hon'ble Supreme Court in **Amrti Kapoor vs. Ramesh Chander** reported in **(2012) 9 SCC 460**.

10. In the case of **Dulichand vs. Delhi Administration** reported in **AIR 1975 SC 1960**, Hon'ble Supreme Court has observed thus :-

"The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But, even so the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the

finding of fact was not unreasonable or perverse."

10.1. It is necessary to note that in the case of **Dulichand (supra)** the High Court had re-appreciated the whole evidence and confirmed the findings of the two courts below. This Court, therefore, did not interfere with them.

11. In **State of Maharashtra vs. Jagmohon Singh** reported in **AIR 2004 SC 4412**, while dealing with the revisional power of the High Court has held as under:-

"The revisional court is empowered to exercise all the powers conferred on the Appellate Court by virtue of the provisions contained in Section 410 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of Appellate Court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be, "for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceeding of such inferior court." It is for the above purpose, if necessary, the High Court or Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of Appellate Court on the Revisional Court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power."

12. It appears that the learned Court below, while disposing of the petition under Section 125 of the Cr.P.C., has framed as many as four issues, which are extracted as under:-

- (i) Whether the 1st party is the wife of 2nd party within the purview of Section 125, CrPC ? And if so,**
- (ii) Whether the second party has sufficient means to maintain his wife ? And if so,**
- (iii) Whether second party neglected or refused to maintain first party ?**
- (iv) Whether the first party is entitled to maintenance ? If yes, what would be the quantum of maintenance ?**

Thereafter, discussing the evidence of the respondent No.1 and her witness as well as

the petitioner, the learned Court below has decided all the four points in affirmative and directed the petitioner to provide maintenance to the respondent No.1, @ Rs.4,000/- per month.

13. While arriving at such a conclusion, the learned Court below has discussed a decision of Hon'ble Supreme Court in **Dwarika Prasad Satpathy (Supra)**, where it has been held that:-

“Validity of the marriage for the purpose of summary proceeding 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 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.”

14.1. It has also been held that:-

“Once it is admitted that the marriage procedure was followed then it is not necessary to further probe into whether the said procedure was complete as per the Hindu rites in the proceedings under [Section 125](#) CrPC”.

15. This court, having relied upon the case laws discussed herein above, perused the evidence on the record for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the learned courts below and that the finding of fact was not unreasonable or perverse. And it appears that the learned Court below, having considered the evidence on the record, arrived at a categorical finding that solemnization of the marriage on 26.05.2008, as per social rites, between the petitioner and the respondent No.1 was established. The learned court below also arrived at a finding that- it is also established that after the solemnization of the marriage, they resided together as husband and wife in a rented house at Titabor in Jorhat District and after one month of their marriage, the petitioner started subjecting the respondent No.1 to both mental and physical torture in

demand of dowry, because of which the respondent No.1 lodged one case under Section 498-A of the IPC and thereafter, the petitioner took her to Dhubri, after the death of his father and only then she came to know about the earlier marriage of the petitioner with another women and about having children from the said marriage. The finding, so arrived at, appears to be based on materials available on the record.

16. Now, advertent to the submissions of Mr. Deka, the learned counsel for the petitioner, this court finds that the same are devoid of substance. No doubt some inconsistencies are there in the version of the witnesses, but the same are not on core issues, and as such the same cannot diminish the probative value of the same. Since solemnization of the marriage, between the petitioner and respondent No.1, as per social rites, stands established, the presumption about validity of the said marriage will operate with all amplitude and plenitude that the said marriage is legal. Ms. Baruah, the learned counsel for the petitioner has rightly pointed this out during argument. Though it is being contended by the petitioner that he is married earlier and having children from that marriage, and on such count his marriage with the respondent is void and illegal, yet, he is under an obligation to prove solemnization of his first marriage in accordance with law, which burden seems to be not discharged here in this case. Having not done so, it cannot be said that the petitioner had successfully established such a plea. Therefore, no fault can be found with the finding, so recorded by the learned court below. In holding so, this court derived authority from a decision of Hon'ble Supreme Court in the case of ***Sumitra Devi v. Bhikan Choudhary*** reported in ***(1985) 1 SCC 637***, where the Hon'ble Supreme Court held that there is no doubt that in order that there may be a valid marriage according to Hindu Law, certain religious rites have to be performed. Invoking the fire and performing 'Saptapadi' around the sacred fire have been considered by this Court to be two of the basic requirements for a traditional marriage. It is equally true that there can be a marriage acceptable in law according to customs which do not insist on performance of such rites as referred to above and marriages of this type give rise to legal relationship which the law accepts.

17. Reference in this context can also be made to another decision of Hon'ble Supreme Court in ***K. Vimala v. K. Veeraswamy***, reported in ***1991 (1) Crimes(SC) 828***, where a three Judges Bench has held that Section 125 of the Code of Criminal Procedure is meant to

achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. 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 should insist on strict proof of the earlier marriage. The term 'wife' in Section 125 of the Code of Criminal Procedure, includes a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. The woman not having the legal status of a 'wife' is thus brought within the inclusive definition of the term 'wife' consistent with the objective. However, under the law a second wife, whose marriage is void on account of the survival of the first marriage is not a legally wedded wife and is, therefore, not entitled to maintenance under this provision. Therefore, the law which disentitles the second wife from receiving maintenance from her husband under Section 125 Cr.P.C., 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.

18. Again, in the case of ***A.L.V.R.S.T. Veerappa Chettiar vs. S. Michael*** reported in ***1962 (0) Supreme (SC) 379***, Hon'ble Supreme Court has held that it is proved that the marriage was performing in fact the Court will also presume that the necessary ceremonies have been performed.

19. Having applied the ratios of aforementioned case laws to the facts and circumstances on the record of the case in hand goes a long way to show that the learned court below has rightly awarded maintenance in favour of the respondent No.1. In view of above, this court afraid, the ratios laid down in ***Yamunabai Anantrao Adhav(supra)*** and in ***Bakulabai (supra)***, and in paragraph No.7 & 8 of ***Dwarika Prasad Satpathy (Supra)***, which were referred by learned counsel for the petitioner, would have any bearing upon the present case and would have come into his aid.

20. In ***Bhuwan Mohan Singh v. Meena, (2015) 6 SCC 353***, Hon'ble Supreme Court has held as under:-

“Section 125 of the Code of Criminal Procedure was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created where under she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.”

21. Keeping the above objective in enacting Section 125 Cr.P.C. in mind and analyzing the facts and circumstances on the record in the light of the principles presently occupying the field, it cannot be said that impugned judgment and order is suffering from any infirmity or illegality. In view of above, I find no merit in this petition and accordingly, the same stands dismissed.

22. The petitioner is directed to clear the arrear maintenance amount, if any, within a period of three months from today. The parties have to bear their own costs.

JUDGE

Comparing Assistant