

Court No. - 80

Case :- CRIMINAL REVISION No. - 5452 of 2023

Revisionist :- Smt. Seema Pandey

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Narsingh Pandey

Counsel for Opposite Party :- G.A., Shiv Ram Dubey

Hon'ble Ram Manohar Narayan Mishra,J.

1. Rejoinder affidavit filed by the revisionist is taken on record.
2. Instant Criminal Revision has been filed against judgment and order dated 02.08.2023 passed by Principal Judge, Family Court, Basti in Maintenance Case No.491/11/2019 under Section 125 Cr.P.C., Police Station Parasrampur. By the impugned judgment, learned court below has dismissed the application for maintenance under Section 125 Cr.P.C. filed by the applicant who is respondent No.2 in present criminal revision.
3. Heard learned counsel for the revisionist, learned counsel for the respondent No.2 and learned A.G.A. for the State-respondent and perused the material available on record.
4. Learned counsel for the revisionist submits that marriage of the revisionist was solemnized with respondent No.2 on 10.12.2017, prior to this revisionist was married with one Durgesh in the year 2015. However their marriage was never consummated, as revisionist was never sent off to her matrimonial home pursuant to marriage with Durgesh Shukla. His next submission is that although there was no dissolution of marriage solemnized between the revisionist and Durgesh Shukla, yet the relationship of husband and wife never established between the revisionist and her earlier husband Durgesh Shukla, and at the stage of marriage of revisionist with respondent No.2 this fact was not concealed from the side of the

revisionist. Inasmuch as despite first marriage of the revisionist, respondent No.2 is obligated to maintain his wife, the revisionist. However, he has neglected to maintain her, even having sufficient means to maintain the revisionist; he drives auto rikshaw in Mumbai and earns sufficiently to maintain his wife. He instead of maintaining the revisionist who is his legally wedded wife, he has entered into marital bond with some other lady and has solemnized bigamous marriage, which is an offence in penal code. He further submitted that revisionist is ready to live with respondent No.2. Revisionist and her earlier husband Durgesh Shukla parted their ways with mutual consent by way of outside of court settlement. The revisionist is not in a position to maintain herself, revisionist is also entitled to receive maintenance from respondent No.2 on the ground that she was deserted by respondent No.2 without any rhyme and reason.

5. Learned family court has not considered this point and dismissed the application for maintenance, without considering the factual aspects of the case in proper perspective. As respondent No.2 was not earlier married at the time of marriage with revisionist, the marriage between them cannot be held as bigamous marriage.

6. Learned court below has wrongly gave a finding that marriage of revisionist with respondent No.2 was bigamous, therefore she is not entitled to receive any maintenance from respondent No.2.

7. Per contra, learned counsel for the respondent No.2 submitted that marriage of revisionist and respondent No.2 was void under Section 5 of Hindu Marriage Act. At the time of marriage of revisionist with respondent No.2, her earlier husband Durgesh Shukla was alive and no decree of divorce

under provisions of Section 13 of Hindu Marriage Act has been granted by competent court to dissolve the marriage of revisionist with Durgesh Shukla.

8. He next submitted that it is a wrong to state that revisionist was never sent off to the home of her earlier husband Durgesh Shukla after marriage, as she has admitted in her cross-examination that she resided at the home of Durgesh Shukla for 10 to 15 days and some dispute occurred between them, as Durgesh Shukla was not ready to take her with him. Therefore, she had to contract second marriage with Anil Pandey. She has also submitted that her marriage with Durgesh Shukla was not dissolved, but due to some out of court settlement took place between them and he disassociated with Durgesh Shukla after taking Rs.1 lakh from him in compromise.

9. He lastly submitted that marriage between revisionist and respondent No.2 itself void being bigamous.

10. Learned court below has rightly dismissed the application under Section 125 Cr.P.C. with finding that revisionist was not entitled to seek maintenance from respondent No.2.

11. From perusal of record it appears that applicant Smt. Seema Pandey filed an application for maintenance under Section 125 Cr.P.C. on 20.11.2019, before the Principal Judge, Family Court, Basti in which she has made averments that her marriage with opposite party Anil Pandey alias Rohit was solemnized on 10.12.2017 according to hindu rites and rituals. Her parents had spent sufficient money in the marriage and had given gifts, dowry to opposite party according to their ability. However, after some time the applicant came to know that her in-laws were greedy, they started teasing her for bringing less dowry. They began demanding a sum of Rs.1 lakh and a gold chain as dowry and when their demand was not fulfilled, they used to

harass and torture the applicant physically and mentally. They would give beating to her every now and then and deprived her even of meal and clothes. She suffered her predicament at her matrimonial home for some time, but ultimately she was thrown out from her matrimonial home by her husband and in-laws on 28.09.2019 after giving her beatings. Her father is a very old person and is suffering from financial constraints. He is not able to cater to the financial needs of the applicant. The applicant is legally wedded wife of the opposite party, he is having a pucca house, agricultural holding and also plies many Auto Rikshaws and thus he earns around Rs.70,000/- from all sources.

12. The applicant has also lodged an FIR against the opposite party vide Case Crime No.287 of 2019 on 02.10.2019 under Section 34 of Dowry Prohibition Act and Sections 323, 504, 5056, 498A IPC. She has also filed a copy of her injury report dated 02.10.2019 in support of her FIR version. Opposite party has filed an objection on application for maintenance on 18.07.2023 before the court below, wherein he has stated that applicant had concealed the material fact on an application for maintenance. In fact she was earlier married with one Durgesh Shukla as she used to give trouble to the family of Durgesh Shukla. She shifted to her parental place and solemnized marriage with opposite party by concealing her earlier marriage. The opposite party also stated in the objection that applicant in her cross-examination has stated that her first marriage was solemnized with Durgesh Shukla, son of Hari Narayan Shyukla, R/o-village Pachanu Shukla, P.S. Daltanganj, District Basti according to Hindu rites and rituals. She lived at his place for ten to fifteen days. There was no dispute between them, because he was not willing to take her with him. Therefore, she contracted second marriage, her marriage with Durgesh Shukla has not been dissolved. Man Bahal Pandey, the

father of the applicant has also stated in cross-examination as AW-2 that marriage of his daughter Seema was performed with Durgesh Shukla in 2015, at village Pachanu Shukla. There is no documentary evidence of dissolution of marriage between the applicant and her first husband Durgesh Shukla, which shows that applicant has contracted second marriage with the opposite party without dissolution of her first marriage with Durgesh Shukla. Therefore, her marriage with the applicant was void and illegal, and she is not entitled to seek any maintenance.

13. Learned court below has dismissed the application for maintenance on premise that this fact is proved that applicant was earlier married with Durgesh Shukla and subsequently she performed marriage with opposite party Anil Pandey. The marriage between Durgesh Shukla and the applicant has neither been dissolved by court nor through any customary divorce. She has not filed any document in support of fact that any out of court divorce was effected between the parties. Therefore, in absence of dissolution of marriage between applicant and Durgesh Shukla, her second marriage with opposite cannot be treated as valid in the eyes of law.

14. The learned court below has not gone into merits of the averments made in maintenance petition. This fact has not been denied by respondent No.2 that revisionist and respondent No.2 were defacto living as a married couple, and even performed matrimonial ceremonies. Therefore, he will not be permitted to take a stand that as the applicant was earlier married with some other person and their marriage was not dissolved by a formal decree of dissolution of marriage by the court, the benefit of maintenance will not be extended to her.

15. Hon'ble Supreme Court in **Rameshchandra Rampratapji Daga Vs. Rameshwari Rameshchandra Daga (2005) 2 SCC**

33 held that upheld the grant of maintenance to a wife under Section 25 of the Hindu Marriage Act from her second husband while her first marriage was still subsisting. The Court considered that although there was no legal decree of divorce from the first husband, (i) the wife had given customary divorce i.e., *chhor chitthhi* and (ii) the factum of the first marriage was not concealed from the second husband.

16. In another judgment **Chanmuniya vs. Virendra Kumar Singh Kushwaha and another (2011) 1 SCC 141**, Hon'ble Supreme Court considered the social object of Section 125 CrPC, the term "wife" should be expansively interpreted to include livein partners. While the question of law was referred to a larger bench, the Court took the view that men should not be permitted to benefit from legal loopholes by enjoying the advantages of a de facto marriage without undertaking its duties and obligations.

17. The three Judge Bench in **Vimala (K) vs. Veeraswamy (K) (1991) 2 SCC 375** pressed into service the purpose interpretation of Section 125 Cr.P.C. within the constitutional sweep of Article 15(3) reinforced by Article 39. Whereby maintenance was granted to the second wife as the respondent husband was unable to conclusively established his first marriage.

"3. 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 would 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, CrPC, 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. We are unable to find that the respondent herein has discharged the heavy burden by tendering strict proof of the fact in issue. The High Court failed to consider the standard of proof required and has proceeded on no evidence whatsoever in determining the question against the appellant. We are, therefore, unable to agree that the appellant is not entitled to maintenance.”

13. Similarly, this Court in **Dwarika Prasad Satpathy vs. Bidyut Prava Dixit and Another (1999) 7 SCC 675** granted maintenance where proof of marriage was inconclusive. The Court noted that the standard of proof of marriage while claiming maintenance is not as strict as is required in a trial for offence u/s. 494 IPC. It held:

“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 CrPC that there was no valid marriage as essential rites were not performed at the time of the said marriage. The provision 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...”

18. The Hon’ble Supreme Court in **Chanmuniya vs. Virendra Kumar Singh Kushwaha and another (supra)** observed as under:-

15. This divergence in judicial opinion has been noted by the Court in Chanmuniya (supra) and therefore the question of whether women in live-in relationships can claim maintenance u/s. 125 CrPC was referred to a larger bench. The discussion, to the extent relevant, is reproduced below:

“24. Thus, in those cases where a man, who lived with a woman

for a long time and even though they may not have undergone legal necessities of a valid marriage, should be made liable to pay the woman maintenance if he deserts her. The man should not be allowed to benefit from the legal loopholes by enjoying the advantages of a de facto marriage without undertaking the duties and obligations. Any other interpretation would lead the woman to vagrancy and destitution, which the provision of maintenance in Section 125 is meant to prevent.

25. The Committee on Reforms of Criminal Justice System, headed by Dr. Justice V.S. Malimath, in its Report of 2003 opined that evidence regarding a man and woman living together for a reasonably long period should be sufficient to draw the presumption that the marriage was performed according to the customary rites of the parties. Thus, it recommended that the word “wife” in Section 125 CrPC should be amended to include a woman who was living with the man like his wife for a reasonably long period...

42. We are of the opinion that a broad and expansive interpretation should be given to the term “wife” to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a precondition for maintenance under Section 125 CrPC, so as to fulfil the true spirit and essence of the beneficial provision of maintenance under Section 125. We also believe that such an interpretation would be a just application of the principles enshrined in the Preamble to our Constitution, namely, social justice and upholding the dignity of the individual.”

19. The right of maintenance claimed by the wife under Section 125 Cr.P.C. is not a benefit received by wife, but rather a legal and moral duty undertaken by the husband.

20. That on the basis of foregoing discussion and in the light of observations made by Supreme Court on this issue, this court is of the considered opinion that a deserted woman could claim maintenance from second husband, even if her first marriage with some other person was not legally dissolved, if other, pre requisites of Section 125 Cr.P.C. get fulfilled. This fact cannot be lost sight that even a divorcee is entitled to seek maintenance

from her erstwhile husband until she remarried. Thus, the approach of learned court below to dismiss the maintenance petition of the revisionist on technical ground that prior to marriage of the revisionist with respondent No.2, she was married with some other person and her earlier marriage was not dissolved by a decree of competent court is misdirected. The impugned order is vitiated by legal error and cannot be sustained under law.

21. The revision is liable to be **allowed**.

22. The revision is allowed. The impugned judgment and order dated 02.02.2023 passed by learned Principal Judge, Family Court is set-aside, and matter is remanded to learned court below to treat the maintenance application maintainable under Section 125 Cr.P.C. and hear and decide the same in accordance with law. It is needless to observed that as the matter is pending since the year 2019, the court below is expected to expedite the hearing and decision of the case afresh with utmost promptitude and without any further delay.

Order Date :- 15.1.2025

Ashish/-