



RECEIVED
IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION NO. 544 /2013

Single Bench

PETITIONERS/
Applicant

1. Smt. Shikha Majumdar,
W/o. Anutosh Majumdar,
Aged about 28 years,
2. Anushka Majumdar,
D/o. Anutosh Majumdar,
Aged about 8 years,
Both R/o. at present C/o. Dileshwar
Rao, Gitanjaly Rao, Nutan Chowk,
Ekta Nagar, Bhilai -3, Distt. Durg
(C.G.)

SR. No. 544/13
Presented by Shri S. Jha
dated 23.8.13

RESPONDENT
Non Applicant

VERSUS

Anutosh Majumdar,
S/o. Paritosh, Aged about 28 years,
R/o. C/o. Radhakrishna Mandir,
Loharpara, Bhilai-3, Distt. Durg
(C.G.)

Civil & Revenue District - Durg (C.G.)
Crime No. NA
P.S. - Bhilai -3, Distt. Durg (C.G.)
Criminal M.J.C. No. 62/12

CRIMINAL REVISION UNDER SECTION 19 (4) OF THE FAMILY
COURTS ACT, 1984



APR 24/2014

AFR.

Page:

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Revision No. 544 of 2013

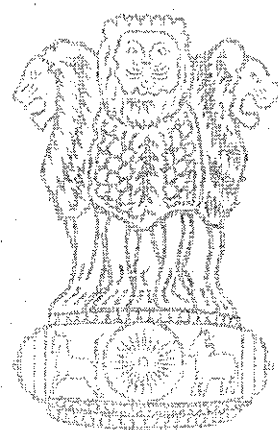
Petitioners : Smt. Shikha Majumdar &
Applicants Another

VERSUS

Respondent : Anutosh Majumdar
Non applicant

Post for pronouncement of judgment on 24th day of
December, 2014.

Sd/-
Goutam Bhaduri
Judge



सत्यमेव जयते

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Revision No. 544 of 2013

Petitioners : Smt. Shikha Majumdar &
Applicants Another

VERSUS

Respondent : Anutosh Majumdar
Non applicant

[Criminal Revision Under Section 19(4) Of The Family Court Act, 1984]

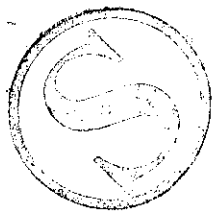
SB: Hon'ble Shri Goutam Bhaduri, J.

Present: Ms. Fouzia Mirza, Advocate for the petitioners/applicants.
Mr. Ganesh Ahuja with Mr. Raja Sharma, Advocates for
the respondent/non-applicant.

JUDGMENT

(Delivered on 24th December, 2014)

1. Challenge in this revision petition is to the order dated 01.07.2013 passed by the First Additional Principal Judge, Family Court, Durg, in a Criminal M.J.C. No.62/2012 wherein the maintenance claimed by the applicant Smt. Shikha Majumdar was refused by the Family Court. By the said order, the maintenance to the daughter Anushka Majumdar was granted of Rs.2,000/- per month. The refusal to grant maintenance to the applicant Smt. Shikha Majumdar was on the ground that she was not the legally wedded wife of non-applicant Anutosh Majumdar and the finding of such order is under challenge before this Court.
2. Ms. Fouzia Mirza, learned counsel vehemently attacked the findings on the ground that the learned Court below while exercising the power under Section 125 of Cr.P.C. exceeded its jurisdiction and further was denuded to go into the legality of the marriage in the teeth of the evidence, which was existing. She would submit that in the instant case the marriage was solemnized in the year 2003 and out of wedlock a daughter was born in the year 2004. It is further contended that the relation between the



73

Page No.2

parties became strained from the year 2011 onwards which led to report and counter report and subsequently when the applicant being the wife was deserted, an application was filed under Section 125 of Cr.P.C. for maintenance before the Family Court. The Family Court framed an issue that whether the applicant No.1 Smt. Shikha was a legally wedded wife of applicant and on that issue after marshaling the evidence, the Court has given a finding that since the applicant Shikha Majumdar belonged to Muslim religion, therefore, the marriage performed with Anutosh Majumdar cannot be said to be a legal marriage. On that premises the learned Court had denied the status of the applicant to be wife of the respondent.

3. Referring to the document placed in this revision, she would submit that the relation started to become strained that of applicant with her husband i.e. respondent in the year 2011-12 which led to report vide Ex.AC/1 wherein after the initial report a compromise was arrived at between the parties by Ex.AC/4 wherein the non-applicant respondent admitted the fact that the applicant No.1 is legally wedded wife. She therefore submits that in view of such admission, there was no occasion for the Court to go into the validity of the marriage for the purpose of determining the compensation payable under Section 125 of Cr.P.C.
4. Further referring to the document and the photographs which are placed on record, the counsel referred to the birth certificate of the child which is marked as Ex.AC/7 and would submit that after the marriage out of the wedlock a daughter was born who was named Anuska Majumdar and in the birth certificate too, the name of the father was shown that Anutosh Manumdar. She further relied on the document marked as Ex.C-17 and C-18 which are voter I.D. Card and the Pass-port of the respondent and

would submit that in such Pass-port on self disclosure of the respondent, applicant was shown as wife of the respondent. Further the LIC policy which is marked as Ex.C-21 and C-22 while making reference the counsel would submit that in such LIC policies which were issued in the year 2008, the name of the applicant was shown as nominee being the wife. She further referred to certain photographs and would submit that perusal of such photographs would clearly demonstrate the fact that the applicant was married to the respondent.

5. Learned counsel would submit that since the Family Court was deciding the question of maintenance to be paid under Section 125 of Cr.P.C. and in the facts in this case since the paternity of the child was accepted, the presumption of valid marriage follows. Relying on the case law reported in **AIR 1999 SC 3348 (Dwarika Prasad Satpathy v. Bidyut Prava Dixit and another)**, the counsel would submit that under the same principle, the Hon'ble Supreme Court has awarded the maintenance. Similar reliance was placed in **2014 (1) SCC 188 (Badshah v. Urmila Badshah Godse and another)** and it is stated that Section 125 of Cr.P.C. is a benevolent provision considering the long relationship of the parties as has been established by the witness, which was clear before the Court to hold that the presumption of valid marriage exists and under the evidence available the applicant should have been held to legally wedded wife and maintenance should have been provided.
6. It was further contended in the likewise case reported in **2011 (1) SCC 141 (Chanmuniya v. Virendra Kumar Singh Kushwaha and another)**, **2009 (4) SCC 774 & 2011 (12) SCC 189 (Pyla Mutyalamma Alias Satyavathi v. Pyla Suri Demudu and another)**, it is stated that before the Court below since the Court was exercising the power under Section

125 of Cr.P.C., as such it was not within the jurisdiction of the Court to go into the validity of marriage even otherwise also the valid marriage was established that the applicant had converted from Muslim to Hindu religion. Therefore it is stated that such finding arrived at by the learned Court below is misconceived and misreading of the evidence.

7. Per contra, the learned counsel appearing on behalf of the respondent advanced his arguments on the case law reported in AIR 1988 SC 644 and submit that in order to get maintenance under Section 125 of Cr.P.C. one fact has to be established that the applicant is a legally wedded wife. He would submit that in this case though the statement has been made that before the marriage she had converted into Hindu religion but the evidence of the Pandit who was examined in this case has not supported the case of the applicant and they have stated that no such conversation had taken place. Meaning thereby on the date of marriage, applicant belong to other religion of Muslim therefore the marriage even if have been said to have solemnized it cannot be said to be valid marriage as per Hindu law.

सत्यमेव जयते

8. The learned counsel for the respondent/non-applicant further placed his reliance in the case law reported in **AIR 1995 SC 895, (2005) 3 SCC 636 (Savita Ben Somabhai Bhatiya Vs. State of Gujrat and others), and 1988 Criminal Law Journal 1206 (P.P. Puthiyana Attakoya Thangal and another Vs. Union Territory of Lakshadweep and another)** and would submit that in this case, the applicant never converted into Hindu before marriage, therefore, the marriage itself was not valid as the non-applicant was Hindu at the time of marriage and the applicant was Muslim. Therefore, she can not be treated to be Hindu without conversion. It is further submitted that unless and until conversion

according to Hindu law is done she will remained to be a Muslim so the marriage in between the applicant and the non-applicant can not be treated to be valid marriage so as to treat the applicant as legally wedded wife.

9. I have heard the learned counsel for the parties and perused the entire documents.
10. Since the matter pertains to denial of maintenance on the ground that no valid marriage was found, it will be necessary to refer the law laid down in **AIR 1999 SC 3348 (Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit)**. The Hon'ble Supreme Court while interpreting the scope of Section 125 of Cr.P.C. held that proceedings U/s.125 Cr.P.C. is to be determined on the basis of the evidence brought on record by the parties which are summary in nature. 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 with evidence 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 of Cr.P.C., The same view is also reiterated by the Hon'ble Supreme Court in the recent case law reported in **2014 (1) SCC 188, Badshah Vs. Urmila Badshah Godse and another**, the Court in this case has followed the principles laid down in Dwarita Prasad Satpathy's case. It is further held that it is to be remembered that the order passed in application U/s.125 of Cr.P.C. does not finally determine the rights and the obligations of the parties and the said section is enacted with a view to

provide summary remedy for providing maintenance to the wife, children and parents. Herein the paternity of the child has not disputed.

11. The Court also reiterated the view taken in case of **S. Sethurathinam Pillai Vs. Barbara, reported in (1971) (3) SCC 923**, wherein it was held that the maintenance to the wife can not be denied where there was some evidence on which conclusion for grant of maintenance could be reached. Therefore, the series of judgment has evolved that the prima-facie evidence to be considered as to whether the maintenance can be granted on the prima-facie evidence available. Therefore, the defence is further examined in the light of the principles which has been laid down by the Hon'ble Supreme Court.

12. In the instant case, the documents which were placed by the applicant in a proceedings U/s.125 of Cr.P.C. includes a report made by her on 17.11.2012, wherein a complaint was made to the police station Purani Bhilai alleging that the applicant was married to the respondent 10 years back and thereafter first three years the relations were cordial and very good and further it was stated that relations started deteriorating thereafter. The said document was marked as Ex.AC-1. It further makes a reference that in the year 2008 an agreement was entered in between the applicant and the respondent, wherein the respondent admitted the fact that the applicant is the wife and further under took that he will not further enter into any dispute and will perform second marriage during her life time i.e. the applicant. The said documents was marked as Ex.AC-4 and contains signatures of both applicant and non-applicant. The said documents is preceded by document Ex.AC-3 a declaration given by applicant that she do not want any further action on her report provided she is kept with honour and prestige. The document AC-5 pertains to the birth certificate of the applicant No.2, wherein the mother's name is shown

as Shikha Majumdar and father is shown as Anutosh Majumdar. The photographs Ex.A-11 is also placed on record, wherein the applicant and non-applicant have been shown together with their daughter. All these documents have not been specifically questioned by the non-applicant and prima-facie the documents are not in dispute which leads to form opinion that applicant and non-applicant lived as husband and wife.

13. The document AC-15 is the report of the police department, which was in response to some report made by the applicant and the matter was returned with an observation that the applicant and non-applicant have performed love marriage and due to their wedlock the daughter was also born. The report purports that it was dispute between husband and wife and no further action was taken being non-cognizable offence. So by reading of all the document, one fact emerges out that on the primary enquiry it was found that the applicant and non-applicant got married. The facts are further fortified by the voters I.D. Card Ex. C-17 of applicant, wherein the name of the husband is shown as Anutosh Majumdar. The other document importantly is the pass-port of the non-applicant marked as Ex.C-18. In the document, the applicant has been shown as the wife of Anutosh Majumdar, and copy of the passport also contains the name of the father and mother of the non-applicant. The document Ex.C-19 is the copy of ration card, wherein the name of the applicant, non-applicant and the daughter are recorded as unit of the family.

14. The document Ex.C-21 and C- 22 are the copies of LIC policies. Such policies project that the non-applicant Anutosh Majumdar was the proposer, wherein the name of the applicant is recorded as wife Shikha Majumdar to be the nominee and is vice-a-versa. The record also contains the copy of an affidavit of Shikha Majumdar, wherein she had stated that after marriage she had changed her religion and has adopted Hindu

religion. The list of documents which was proved by the non-applicant also contains certain documents, which is Ex.NA-6C, which was a report to the police by the father of the non-applicant namely Paritosh Majumdar and in such report certain allegations of theft was made and the charges were also attributed to the non-applicant Shabina Begum @ Shikha Majumdar clamping allegations of theft. The document Ex. NA-8C was also placed which was with respect to some dispute in between the applicant and non-applicant respondent. Therefore, the examination of these documents referred above speaks about relations between the parties wherein prima-facie it would reveal that non-applicant had admitted the applicant to be his wife. The witness of non-applicant i.e. D.W.-10 had also stated the presence of applicant in house of non-applicant and it was stated that the identity was disclosed to be daughter-in-law by the mother of non-applicant. So prima-facie the documents and admissions on record shows that applicant was recognized as a wife of the non-applicant.

15. Section 50 of the Evidence Act speaks for opinion on the relationship which reads as under :- सत्यमेव जयते

"50.- Opinion on relationship, when relevant. – When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecution under Section 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860)."

16. Further reading of Section 50 of the Evidence Act would reveal that Section 125 (488) earlier is not covered within the proviso. Therefore, the opinion expressed by the conduct of the person herein the non-applicant

who had special means of knowledge of the subject may be held sufficient to prove the fact of marriage in a proceeding U/s.125 of Cr.P.C.

17. The admission made by the non-applicant at various stage in the different documents shows the fact of existence of state of mind and the intention and knowledge of the persons, who has executed such documents. There is no plausible explanation existing on the face of the record except the fact that the non-applicant had stated that the marriage itself is void. The Court ignored the fact that the Court was deciding the proceeding under Section 125 of Cr.P.C.. Therefore, according to the opinion of this Court the Family Court exceeded in it's jurisdiction to go into the validity of marriage. Qua 125 of Cr.P.C. Further if the documents are examined in another angle, the Section 58 of the Evidence Act leads that facts admitted need not be proved. Therefore, in view of the admission by the non-applicant husband, it could be safely presumed that applicant was the wife for the purpose while exercising the jurisdiction U/s.125 of Cr.P.C..
18. Further in case law decided in between ***Pyla Mutyalamma @ Satyavathi Vs. Pyla Suri Demudu and another***, reported in (2011) 12 SCC 189, the Supreme Court had interpreted the word wife and has laid down that law presumes favour of marriage and against concubinage when a man and women have cohabited continuously for a long number of years and when the man and women are proved to have lived together as a man and wife, the law will presume, unless the contrary is clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage.
19. Here the paternity of the child has not been questioned and the series of admission goes to show that the applicant and the non-applicant were living together, wherein the applicant was given the status of wife. In the

case law decided Supra, the Supreme Court further held that in a revisional jurisdiction if the finding is negative like the nature in case in hand, the revisional Court can re-evaluate the evidence since negative finding has evil consequence on life of both the child and woman.

20. Here in this case under consideration sufficient evidence in the form of admission is present by the non-applicant husband that the applicant was given the status of wife. Apart from the document, photographs which were filed clearly demonstrate the fact about such cordial relation between the parties when they were in the good time. The finding arrived at by the learned Court below going into the question of validity of marriage U/s.125 of Cr.P.C., appears to be prima-facie incorrect. The defence raised by the non-applicant was not that the applicant was not a wife but it was stated that the marriage was not actually performed according to the rituals of Hindu law.

21. The matter can be looked in to from the other angle. According to the defence raised by the non-applicant that the applicant was not converted into Hindu before the marriage and therefore, the marriage was invalid. If in this context, the provisions of Section 4 of Special Marriage Act, 1954 are examined. Section 4 in Chapter-II of Special Marriage Act, 1954 prescribes with a non-obstinate clause that a marriage between two 'persons' may be solemnized under the Special Marriage Act, if neither party has spouse living for incapable of giving consent to it in the consequence of unsoundness of mind or though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children and subject to recurrent attacks of insanity and if the male has completed the age of twenty-one years and the female the age of eighteen years, or

when the parties are not within the degrees of prohibited relationship, then the marriage can be solemnized.

22. Herein this case, admittedly there was no shadow of such restrictions between the parties to solemnize marriage. Only factor pleaded by the non-applicant that the religion were different i.e. Hindu and Muslim. Though the applicant has stated to have solemnized the marriage after conversion even if such statements are sidelined, the provisions of the Special Marriage Act, 1954 will govern the parties. Meaning thereby the defence raised by the non-applicant may not be available to him qua proceeding U/s.125 of Cr.P.C. It is not inconsistent to add that Special Marriage Act, 1954 do not contemplate the effect of non-registration of marriage under the Act. So consequence having not been provided for non-registration and if the registration of marriage is held to be mandatory, the object of the Special Marriage Act, 1954 would be defeated. So under the given set of facts, even if the pleadings of non-applicant is admitted, that parties belonged to different religion i.e. one Hindu and one Muslim, the status of applicant can not be denied that of wife.

सत्यमेव जयते

23. According to opinion of this Court, sufficient material has been placed on record to prima-facie form an opinion that the applicant was the legally married wife of the non-applicant. There is no plausible explanation why such admissions were made. Therefore, in the opinion of this Court, the applicant was able to prove by cogent and strong evidence that the applicant and the respondent had married to each other.

24. Further as has been reiterated the principles by the Hon'ble Supreme Court in case between **Badshah Vs. Urmila Badshah Godse, reported in (2014) 1 SCC 188** that purposive interpretation needs to be given to the provisions of Section 125 Cr.P.C. While dealing with the application of a

destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve 'social justice' which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It is specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society.

25. Having held that the maintenance can be claimed U/s.125 Cr.P.C., now coming to the question of quantum of maintenance, at para 26 of statement, the non-applicant/husband has denied the suggestion that he was still working as an accountant and was getting Rs.30,000/- per month. He further admitted the suggestion that in between first July, 2011 to October, 2011 there had been a lacks of transactions were entered into the account and volunteered with an statement that those amounts belonged to his friends. Such statement of the non-applicant, that bank account of non-applicant was being used by the friends wherein the lacks of transaction were held is difficult to admit and untrustworthy as no friends were examined. Therefore, considering the various documents which were placed before the Court below and taking into statement and the considerations of the price index which is prevailing at market I deem it proper to grant an amount of Rs.5000/- per month to the applicant wife from the date of application filed U/s.125 of Cr.P.C., before the Court below. Therefore, it is directed that the non-applicant shall pay an amount of Rs. 5000/- to the applicant apart from the maintenance which has

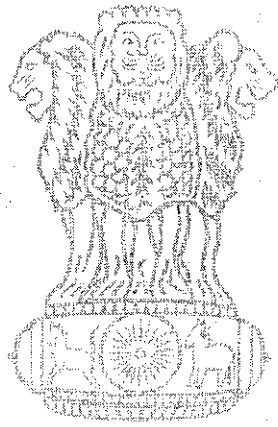
already granted to the children. Further a litigation cost of Rs.5,000/- is awarded.

26. With such above direction, the revision stands allowed. The non-applicant shall pay the accumulated arrears within a period of 6 months in six equal installments. The current amount of maintenance shall be paid by 10th of every months.

Sd/-
Goutam Bhaduri
Judge

Ask/balram

CHHATTISGARH HIGH COURT



सत्यमेव जयते