

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
REVISION APPLICATION NO. 404 OF 2001

Mr. Girjappa Natha Galve .. Petitioner
vs.
Mrs. Malan G. Galve and anr. .. Respondents

Mr. S.T. Bhosale i/b Mr. Dilip Bodake for the Petitioner.
Mr. A.R. Metkari for Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 3 DECEMBER 2015.

P.C. :-

1] The challenge in this criminal revision application is to the judgment and order dated 14 August 2001 made by the IIInd Additional District Judge, Satara awarding maintenance of Rs.500/- per month to the Respondent. By the impugned judgment and order, the Additional District Judge has reversed and set aside the judgment and order dated 15 March 1997 made by the Judicial Magistrate First Class (JMFC), who had denied maintenance to the Respondent-wife.

2] Mr. Bhosale, learned counsel for the Petitioner, has submitted that there was absolutely no documentary evidence on record in relation to any marriage between the Petitioner and the Respondent-wife. The Petitioner had deposed that the Respondent was only his

mistress and that his real wife was one Sharada, from whom he had three children. Mr. Bhosale submitted that the JMFC had correctly appreciated that the material on record disbelieved the Respondent's case regards marriage. The Revisional Court, exceeded jurisdiction by attempting to reassess the material on record. Mr. Bhosale also submitted that the Petitioner is an elderly person having no proper source of income. On all these grounds, Mr. Bhosale urged that the impugned judgment and order dated 14 August 2001 is required to be set aside.

3] Having heard the learned counsel for the Petitioner and perused the material on record, in my judgment, no case is made out to exercise revisional jurisdiction and interfere with the impugned judgment and order dated 14 August 2001. Perusal of the impugned judgment and order would indicate that the Revisional Court has neither reassessed the evidence nor it has exceeded jurisdiction. The Revisional Court has rightly faulted the JMFC for insisting upon strict standard of proof for the purposes of establishment of marriage in summary proceedings under Section 125 of Cr.PC. This was a valid ground for interference.

4] In the present case, apart from the deposition of the Respondent-herself, the Respondent's father as also other witnesses were examined to establish the factum of marriage. Though the Petitioner has denied the factum of marriage, the Petitioner has admitted that the Petitioner and the Respondent had one daughter by name Vaishali. The case of the Petitioner is that the Respondent was not his legally wedded wife, but only his mistress. The JMFC by insisting upon a substantially higher and strict degree of proof has disbelieved the factum of marriage. The JMFC has obviously applied the incorrect tests and therefore, the judgment and order made by the JMFC was rightly interfered by the Revisional Court.

5] In case of *Dwarika P. Satpathy Vs. Bidyut Prava Dixit and anr.*¹, the Hon'ble Apex Court has held that the validity of marriage for the purpose of summary proceeding under Section 125 of Cr.PC. 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

1 AIR 1999 SC 3348

legally wedded spouses, and in such a situation, the party who denies the marital status can rebut the presumption. In the present case, the material on record indeed establishes marriage. There is no dispute that the parties belong to Lonari community and therefore, it is futile to insist upon strict compliance with marriage procedures particularly, whilst exercising summary jurisdiction under Section 125 of the Cr.P.C.

6] The proceedings under Section 125 of Cr.P.C. do not finally determine the rights and obligation of the parties. The object for enactment of Section 125 of Cr.P.C. is to provide a summary remedy to avail maintenance to a destitute wife, children or parents. The object is not to determine the civil rights to the parties. In this case, the Applicant has not even disputed the paternity of Vaishali. The Applicant also has not disputed the factum of cohabitation with the Respondent-wife over a considerable period. In these circumstances, there is no question of accepting the Applicant's plea that there was not valid marriage as there is no evidence with regard to performance of essential rites at the marriage ceremony. The provisions of Section 125 of Cr.P.C. are not to be utilised for defeating the rights conferred by the Legislature to the destitute

women, children or parents who are victims of social environment.

7] In case of *Vimala (K) v. Veeraswamy (K.)* ², dealing with the contention of husband that the second marriage of the Applicant was void on the ground that her first marriage was subsisting, the Hon'ble Apex Court held that the proceeding under Section 125 of Cr.P.C. 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. The Apex Court observed that 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.

² (1991) 2 SCC 375

8] In view of the aforesaid legal position as also the facts and circumstances brought on record, it is not possible to interfere with the impugned judgment and order dated 14 August 2001, by which the Revisional Court has awarded maintenance of Rs.500/- per month to the Respondent-wife. This criminal revision application is therefore, dismissed. There shall, however, be no order as to costs.

(M. S. SONAK, J.)

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