

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1464 OF 2001

Sidhappa Satappa Savali.] ... Petitioner

Versus

1. Smt. Mahananda Sidhappa Savali,]
 2. State of Maharashtra.] ... Respondents

Mr. Vaibhav P. Patankar for Petitioner.

Mrs. Jayshree Gite i/b Mr. A.B. Tajane for Respondent No.1.

CORAM :- M. S. SONAK, J.
JUDGMENT RESERVED ON : DECEMBER 03, 2015
JUDGMENT PRONOUNCED ON : DECEMBER 08, 2015

JUDGMENT :-

1. The challenge in this petition is to the order dated 03/07/2000 made by the Additional Sessions Judge ('ASJ'), Solapur, in Criminal Revision Application No.252 of 1999.

2. The Judicial Magistrate First Class ('JMFC'), Akkalkot, by Judgment and Order dated 17/09/1999, dismissed respondent no.1's Miscellaneous Criminal Application No.102 of 1997 under Section 125 of Code of Criminal Procedure, 1973 ('Cr.P.C.') on the ground that the marriage between the petitioner and the respondent no.1 was 'void'. The learned ASJ, Solapur, by the impugned Judgment and Order

dated 03/07/2001, has reversed the JMFC's order dated 17/09/1999. Hence the present petition.

3. Mr. Vaibhav Patankar, learned counsel for the petitioner, has submitted that the learned ASJ exceeded the bounds of revisional jurisdiction in interfering with well reasoned decision of JMFC dated 17/09/1999. He submitted that in the present case, there is no record of any marriage between the petitioner and respondent no.1. In any case, the so called marriage was void, as both the parties were minors and further, were related to each other with the prohibited degree of relationship. The Revisional Court in such circumstances could not have awarded any maintenance under Section 125 of Cr.P.C. upon spacious plea that the petitioner had not obtained from any declaration as to nullity of marriage.

4. Learned counsel for respondent no.1, on the other hand, submitted that the learned ASJ has not exceeded jurisdiction. The JMFC had failed to appreciate that the proceedings under Section 125 of Cr.P.C. are summary in nature and not intended to affect the civil rights of the parties. In proceedings of this nature, there is no question of insistence upon strict proof. The learned ASJ, in the circumstances, was right in reversing the learned JMFC.

5. The rival contentions now fall for determination.

6. In this case, it cannot be said that the learned ASJ has exceeded jurisdiction. If the judgment and order dated 17/09/1999 made by the JMFC is perused, it does appear that the learned JMFC applied a strict standard of proof, which is not standard required to be applied in summary proceedings under Section 125 of Cr.P.C.

7. 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.P.C. 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.

8. 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

¹ AIR 1999 SC 3348

² (1991) 2 SCC 375

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.

9. Considering the aforesaid legal position, it cannot be said that the learned ASJ has in any manner exceeded jurisdiction in making the impugned order. The learned ASJ has rightly rejected both the ground as well as plea that the marriage between the petitioner and the respondent no.1 was void. In the first place, there was no cogent evidence on record in relation to plea of voidness of marriage. That apart, the learned ASJ has made reference to Section 11 of the said Act which provides that any marriage solemnized after the commencement of the Act shall be null and void and may, on the petition presented by either party thereto against the other party, be so declared by a degree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5. There is no reference to clause (iii) of Section 5, which is the clause which makes reference to the age of the bride and bridegroom. On this

basis, the plea with regard to nullity appears to have been rightly rejected at least insofar as summary proceedings under Section 125 of the Cr.P.C. are concerned. The same is the position with regard to the allegation that parties were within the prescribed degree of relationship. There is no cogent material on record to sustain such a plea. In fact, such a plea was not even raised before the learned JMFC. Accordingly, there is no jurisdictional error in the making of the impugned order.

10. The proceedings under Section 125 of Cr.P.C. and orders made therein are never intended to affect the civil rights of the parties. In this case, the Petitioner, at no stage, has applied for declaration of nullity on the grounds urged in the petition or otherwise. The orders made in the summary proceedings under Section 125 of Cr.P.C., can never come in the way of the Petitioner obtaining appropriate declarations from the Civil Court. However, there is no merit in the contention that there was no marriage between the Petitioner and Respondent No.1 at all. Applying the appropriate standard of proof, it cannot be said that the evidence on record does not indicate the factum of marriage. In matters of this nature, strict proof with regard to marriage is really not necessary. The objective to provide some relief to destitute women, who are unable to maintain themselves cannot be denied on the basis of pleas raised in this petition. There is no jurisdictional error in the making of this order.

11. The Criminal Writ Petition is, accordingly, dismissed. Rule is discharged. There shall be no order as to costs.

(M. S. SONAK, J.)