

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M No.15550 of 2013 (O&M)
Date of Decision: 01.04.2015

Chhinder Kaur

.....Petitioner

Vs

Bant Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Malkeet Singh, Advocate
for the petitioner.

Mr. Jasbir Singh, Advocate
for respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

Petitioner has assailed the order dated 06.09.2011 (Annexure P-1) passed by Sub Divisional Judicial Magistrate, Samrala and order dated 05.10.2012 (Annexure P-2) passed by Additional Sessions Judge, Ludhiana, whereby revision petition of the petitioner against the order dated 06.09.2011 was dismissed by Additional Sessions Judge, Ludhiana.

2. Facts leading to filing the present petition are that the petitioner filed petition under Section 125 Cr.P.C. for the grant of maintenance to the tune of ₹5000/- per month. Petitioner alleged that her marriage was solemnized with the respondent in the year 1999 by means of *Karewa* marriage. *Karewanama* was executed between the parties on 26.05.1999 at Khanna. Both the parties belong to *Ramdasia* caste where *Karewa* marriages are prevalent

under custom of Sikh Sect. Petitioner was widow and respondent was widower at the time of *Karewa*. The petitioner further alleged that the behavior of respondent after the marriage was not good. He used to make demand and harass and torture the petitioner. The allegations of beating and paying some amount by the brother of the petitioner have been pleaded in the petition. Complaints to the police and Human Rights Commission are also alleged to have been moved by the petitioner. Petitioner also pleaded that the respondent is a man of means who is running business of sale and purchase of buffaloes and other cattles and used to earn ₹25,000/- per month by the aforesaid business and by selling milk. On the other hand, petitioner claimed herself to be helpless and workless lady.

3. The petition was contested by the respondent and the respondent denied all the pleas raised by the petitioner. The respondent alleged that the petitioner never resided and cohabited with the respondent. Actually petitioner is known to one Mohinder Singh relative of Sant Singh (brother of respondent). The daughter of Sant Singh is married to son of Mohinder Singh. Mohinder Singh used to perform ritual functions like *Kirtan* and the petitioner used to come with him at the house of respondent and used to stay at night. Further allegations were denied altogether.

4. Petitioner in her evidence appeared as PW-1 and examiner her brother Mangat Singh as PW-2 and one Kaka Singh, Lamberdar/Ex-Sarpanch of her village as PW-3. *Karewanama* Ex.C1 was also produced on record. On the other hand, respondent appeared as RW-1 and also brought one Bhajan Singh as RW-2. PW-1 and PW-2 reiterated the stand and the case of the petitioner was corroborated by Kaka Singh, *Lambardar* as PW-3. A notarized copy of *Karewanama* has been brought on record as Ex.C-1.

5. Sub Divisional Judicial Magistrate, Samrala, emphasized the factum of marriages performed in the families of the petitioner and respondent by means of *Anand Karaj* and not by

way of *Karewa*. Respondent-husband while appearing in his evidence could not admit or deny his thumb impression on *Karewanama* Ex.C-1. To that extent his statement was vague or has to be decided in the context of other material available on record. In the written reply filed by respondent visits of petitioner to the house of respondent are admitted but in different context. Sub Divisional Judicial Magistrate, Samrala, dismissed the petition under Section 125 Cr.P.C. vide order dated 06.09.2011, which was maintained in revision by Additional Sessions Judge, Ludhiana.

6. Admittedly, both the Courts below have given much stress on the point that marriages are performed in the family of both the sides by means of *Anand Karaj* ceremony and in this way factum of *Karewa* marriage was denied altogether.

7. I have heard the learned counsel for both the parties and have gone through the material on record with the able assistance of both the sides.

8. Learned counsel for the petitioner has argued that notarized copy of *Karewanama* has been duly brought on record as Ex.C-1 and the respondent could not deny his thumb impression on the said *Karewwanama*. The statements of PWs are sufficient to prove the execution of *Karewanama* and the vague reply given by the respondent is sufficient to prove *Karewawnama* and living the petitioner with the respondent under said management.

9. Parties belonged to *Ramdasia* community where *Karewa* custom is prevailing. Learned counsel emphasized from the fact that the proceedings under Section 125 Cr.P.C. are summary in nature. Under *Sikh Maryada*, marriage of widow and widower cannot be performed under *Anand Karaj* ceremony and the same can only by means of *Chadar Andazi* i.e. *Karewana* management. Learned counsel by referring to Para No.2 of the written reply i.e. admission of visits of petitioner to the house of respondent and living at nights and vague reply in the context of admission or denial to the thumb impression appeared on the *Karewanama* Ex.C-1 to contend that broad and wide interpretation

should be given to the relationship of long living and for that strict proof of marriage can not be a precondition for maintenance under Section 125 Cr.P.C. Section 125 Cr.P.C. being a beneficial provision and the long living of the petitioner should have been accepted by the Courts. Even without undergoing legal necessities of marriage. Respondent should not be allowed to take benefit after taking advantage of *de-facto* marriage without undertaking the obligations as it would lead to the petitioner vagaries and destitution. The provision of Section 125 Cr.P.C. is in consonance with social justice and is meant to uphold the dignity of individual.

10. Learned counsel relies upon **2010 (4) R.C.R. (Criminal) SC 704** titled as **Chanmuniya versus Virendra Kumar Singh Kushwaha & Anr.** in the context of living together by the parties for long time is a good arise presumption to a valid marriage and in order to dispel such relationship, husband is required to seek declaration from the civil Court. Learned counsel further relies upon **2011 (4) (SC) R.C.R. (Civil) 446** titled as **'Pyala Mutyalamma @ Satyavathi versus Pyala Suri Demudu'** to contend that the Hon'ble Supreme Court time and again had commented upon the nature of the proof of marriage required under Section 125 Cr.P.C. is not so strong or conclusive as is required in proceedings like 494 IPC. The jurisdiction of the Magistrate in proceedings under Section 125 Cr.P.C. is preventive in nature and the Magistrate cannot usurp the jurisdiction of regular matrimonial Court so as to decide marital status of the parties finally. The object of these proceedings is to grant immediate relief and the determination by the Magistrate as to the status of the parties is the final determination of the Civil Court, when the husband denies that the applicant is not his wife, all that the Magistrate has to find is whether there was some marriage ceremony between the parties, whether they have lived together as husband and wife in the eyes of neighbours and whether any child is born to them. The Magistrate is not obligated to enter into any complicated question regarding validity of marriage according to

sacrament element like performance of necessary ceremonies in terms of *Anand Karaj* and *Homadatta* and *Satpati*.

11. It is also a settled law that if the husband impeach the validity of marriage, he will have to file declaratory in civil Court where all the pleas would be go into. Learned counsel also relied upon the fact that in the voter list, the petitioner is shown to be the wife of respondent which also gives rise/presumption at this stage in respect of marriage so as to attract applicability of Section 125 Cr.P.C.. In this context, learned counsel relied upon **2013 (4) R.C.R. (Criminal) 225** titled as **Huding Kuri Hansda versus State of West Bengal**, and also cites judgment of the Hon'ble Supreme Court **2013 (4) R.C.R. (Criminal) SC 764** titled as **Badshah versus Sou. Urmila Badshah Godse and another'**, in the context of marriage of the husband wherein it was held that though the second wife during subsistence of first wife is entitled to maintenance under Section 125 Cr.P.C.

12. On the other hand, learned counsel for the respondent has vehemently argued that marriage between the parties is not proved. Admission qua occasionally visits of house of respondent cannot be treated as living together as husband and wife. Execution of *Karewanama* is not admitted and the petitioner has concealed the factum of her being in service which has also come on record in the testimony of PWs. Learned counsel states that in the absence of proof of any valid marriage, the petitioner is not entitled to maintenance.

13. Apparently, the proceedings under Section 125 Cr.P.C. is not the proper form to establish the factum of valid marriage. Strict proof of marriage is not required to be seen at this stage. The essence of this beneficial provision of maintenance is to do social justice and uphold the dignity of individual when semblance of interest in the form of existence of living together is brought on record either in the form of marriage ceremony, living together as husband wife in the eyes of neighbours. This provision is only to prevent vagaries and destitution to the lady if she has proved

some evidence to show that there was a marriage between them. In such situation, the presumption will come into and the husband would be obligated to seek declaration in order to dispel such relationship by way of civil suit. Secondly, para No.2 is suggestive of the fact that visits of petitioner to the house of respondent is an admitted fact, though in different context as pleaded by the respondent. The respondent while appearing as RW-1 could not deny or admit his thumb impression appearing on *Karewanama*. In a way, the respondent has tried to give evasive reply to *Karewanama* which is impliedly admitted in the present. Thirdly, even the notarized copy of *Karewanama* has been produced on record and with the evasive stand of the respondent even this *Karewanama* is sufficient to attract presumption for a valid marriage for the purposes of granting maintenance under Section 125 Cr.P.C. The Courts below have primarily formed their opinion on the basis of marriage performance in the families of parties by means of *Anand Karaj*. The Courts below have lost the side that the petitioner and respondent have not contracted their first marriage, but the present marriage was the second marriage of the parties. According to *Sikh Maryada* second marriage can not be performed by means of *Anand Karaj* and it can only by way of *Chadar Andazi*, which is nothing but *Karewa* management. The petitioner wife is entitled to maintenance according to the status of respondent.

14. Taking all the facts into consideration, this Court is of the opinion that it would be just and fair to ask the respondent to maintain the petitioner by way of maintenance so as to prevent petitioner from vagaries and destitution.

15. In view of aforesaid, impugned order dated 06.09.2011 (Annexure P-1) passed by Sub Divisional Judicial Magistrate, Samrala and order dated 05.10.2012 (Annexure P-2) passed by Additional Sessions Judge, Ludhiana, are quashed. Petition is allowed. Respondent is directed to pay an amount of ₹3000/- per month to the petitioner as maintenance. However, the petitioner

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would be at liberty to seek declaration against the marital status in some competent Court in accordance with law.

01.04.2015
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[RAJ MOHAN SINGH]
JUDGE