

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 356 OF 2015

Sumitra Malsidha Ghale & Anr. .. Petitioners
vs.
Malsidha Malleshi Ghale & Anr. .. Respondents

Mr. A. B. Tajane for Petitioners.
Mr. B. G. Vaidya for Respondent No. 1.
Mrs. A. A. Mane - APP for Respondent No. 2 - State.

CORAM : M. S. SONAK, J.
DATE : 26 FEBRUARY 2016

P.C :

1] Rule. With the consent of and at the request of the learned counsel for the parties, the Rule is disposed of finally.

2] The challenge in this petition is to the judgment and order dated 24 September 2014 made by the Sessions Judge, Solapur, to the extent, it reverses the order dated 4 September 2012 made by the JMFC, Solapur, who had awarded maintenance of Rs.2,000/- per month to the petitioner no. 1 (wife).

3] In this petition, we are not concerned with the award of maintenance to the petitioner no. 2. Therefore, that part of the impugned order dated 24 September 2014, which grants maintenance at the rate of Rs.4,000/- per month to the petitioner no.

2 is obviously not interfered with.

4] In this case, the JMFC, by his order dated 4 September 2012, had granted maintenance of Rs.2,000/- to the petitioner no. 1. The Sessions Judge, by the impugned judgment and order dated 24 September 2014 has reversed the JMFC and held that the petitioner no. 1 is not entitled to any maintenance on the ground that the petitioner no.1 is not a legally wedded wife of the respondent no. 1.

5] Mr. Tajane, the learned counsel for the petitioners has submitted that the Sessions Judge has transgressed the scope of revisional jurisdiction by purporting to re-assess the material on record. He submitted that findings of fact were recorded by the JMFC and there was absolutely no perversity in the record of the same. On the basis of re-assessment of the material on record, the Sessions Judge, has virtually purported to exercise appellate jurisdiction, when in fact, no such jurisdiction was at all vested in him. That apart, Mr. Tajane submitted that proceedings under Section 125 of the Cr.P.C. are summary in nature and the object of such proceedings is not to determine civil rights between the parties. Mr. Tajane submitted that since this perspective was not taken into consideration by the Sessions Judge, the impugned

judgment and order is vitiated by jurisdictional errors. Mr. Tajane submitted that there was overwhelming material on record to establish that the petitioner no. 1 and the respondent no. 1 were legally married to one another and further out of this wedlock, son Niraj (petitioner no. 2) was also born. The school records clearly indicate that the respondent no.1 is the father. In fact, the petitioner no. 1 and the respondent no. 1 have continued to live as husband and wife from 1992 to 2008 until, differences arose. Mr. Tajane has pointed out that there are several documents like ration card etc., which establish that unequivocally the petitioner no.1 is the legally wedded wife of the respondent no. 1.

6] Mr. Vaidya, the learned counsel for the respondent no. 1 by relying upon the decision of the Hon'ble Apex Court in the case of *Savitaben Somabhai Bhatiya vs. State of Gujarat & Ors.*¹ has submitted that the term 'wife' referred to in Section 125 of the Cr.P.C. means and implies '*legally wedded wife*'. In the present case, the material on record, establishes that the respondent no. 1 was already legally married to Indumati about 40 years ago and therefore, there was no question of the respondent no. 1 entering into any legal matrimony with the petitioner no. 1. The so-called marriage between the petitioner no. 1 and the respondent no. 1, being a nullity, the petitioner no. 1 can never claim the status of

1 AIR 2005 SC 1809 (1)

'legally wedded wife'. Mr. Vaidya submitted that in the present case the first wife has deposed in the proceedings and the Sessions Judge has acted within the bounds of his jurisdiction to hold that the petitioner no. 1, being not a legally wedded wife of the respondent no. 1, was not entitled to any maintenance under Section 125 of the Cr.P.C.

7] Rival contentions now fall for determination.

8] At the outset, it is to be noted that the proceedings under Section 125 of the Cr.P.C. are summary in nature. The purpose of such proceedings is not to determine the civil rights between the parties. The Hon'ble Apex Court in the case of *Dwarika Prasad Satpathy vs. Bidyut Praya Dixit & Anr.*² has held that the validity of marriage for purposes of summary proceedings under Section 125 of the Cr.P.C. is to be determined on the basis of 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 burden upon a party who denies such presumption

2 AIR 1999 SC 3348

is quite substantial.

9] The proceedings under Section 125 of the Cr.P.C. do not determine the civil rights and obligations of the parties. The object of the provisions contained in Section 125 of the Cr.P.C. is to afford a summary remedy to a destitute wife to claim maintenance from her husband. In the case of *Vimala (K.) vs. Veerswamy (K.)*³, the Hon'ble Apex Court dealing with the contention of the husband that the second marriage was void on the grounds of subsistence of the first marriage between his wife and some other person, it was held that provisions under Section 125 of the Cr.P.C. are 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 earlier marriage. The Hon'ble Apex Court has observed that provisions contained in Section 125 of the Cr.P.C. are a measure of social justice intended to protect women and children. The object of such provisions is to prevent vagrancy and destitution. The object is to provide speedy remedy for the supply of food, clothing and shelter to the deserted wife. In the same case, the Hon'ble Supreme Court has observed that when an attempt is made by the husband

3 (1991) 2 SCC 375

to negative the claim of the neglected wife depicting her as a kept-mistress on the spacious plea that he was already married, the Court would insist on strict proof of the earlier marriage.

10] No doubt, in the case of *Savitaben* (supra) it has been held that the expression 'wife' referred to in Section 125 of the Cr.P.C. means '*legally married wife*'. However, it is to be noted that another Bench of the Hon'ble Supreme Court in the case of *Chanmuniya vs. Virendra Kumar Singh Kushwaha & Anr.*⁴, upon consideration of several aspects in the context of provisions contained in Section 125 of the Cr.P.C., including, the decisions in the case of *Dwarika Prasad* (supra) and *Savitaben* (supra) has expressed an opinion that an expansive interpretation should be given to the expression 'wife' so as to even include those cases where a man and woman had 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 claim of maintenance under Section 125 of the Cr.P.C. The Hon'ble Apex Court has held that such an interpretation would be in accord with the true spirit and essence of the beneficial provision of maintenance under Section 125 of the Cr.P.C. and further that such an interpretation would be a just application of the provisions enshrined in the preamble to our Constitution, namely, social justice and upholding the dignity of the individual.

4 (2011) 1 SCC 141

11] Turning to the facts and circumstances of the present case, it is quite apparent that the view taken by the Sessions Court, is contrary to the decisions of the Apex Court in the cases of *Dwarika Prasad* (supra), *Vimala (K.)* (supra) and *Chanmuniya* (supra). That apart, the Sessions Judge has clearly exceeded the bounds of revisional jurisdiction, by purporting to re-assess the entire material on record as if it were exercising appellate jurisdiction. To be fair to the Sessions Judge, it must be noted that the Sessions Judge has also returned and upheld the findings of fact that there is overwhelming material on record to establish that the petitioner no. 1 and the respondent no.1 have been living as husband and wife for a considerable period and from out of such relationship even son Niraj has been born. However, it appears that the Sessions Judge was not apprised of the legal position arising out of the judgments of the Hon'ble Apex Court in the cases of *Dwarika Prasad* (supra), *Vimala (K.)* (supra) and *Chanmuniya* (supra).

12] There are concurrent findings of fact, which establish that from 1992 to 2008, the petitioner no. 1 and the respondent no.1 have been living as husband and wife. In fact, even the Sessions Judge, in paragraph 11, has noted that from 1994 till 2008-2009, the parties were living as husband and wife and this was represented to

the public at large. The Sessions Judge has taken note of admission of the respondent no. 1 that he belongs to Mali community and in the course of marriage in this community, the husband garlands the wife with a '*mangalsutra*', further *the 'bashing'* is tied to the husband's forehead. There is evidence on record in the form of photographs which establish the solemnization of a marriage wherein, the respondent no. 1 is shown as wearing '*bashing*' and the petitioner no. 1 a '*mangalsutra*'. The Sessions Judge has himself noted that there was no explanation whatsoever offered by the respondent no. 1 to explain such material on record. Besides, there is material on record to indicate that the name of the petitioner no.1 is appearing on the voter's list along with the respondent no. 1. There is material to indicate that the parties were living in the same home for number of years. In the school records of Niraj, the names of the parties appear as parents. All this material was more than sufficient for establishing that the petitioner no.1 was the legally wedded wife of the respondent no.1 at least for the purpose of summary jurisdiction under Section 125 of the Cr.P.C.

13] In so far as deposition of Indumati is concerned, it is to be noted that even she has stated that her marriage with the respondent no.1 was solemnized about 40 years ago. As has been held by the Apex Court in the cases of *Dwarika Prasad* (supra) and

Vimala (K.) (supra) where the husband seeks to avoid payment of maintenance on the spacious plea that the marriage with the wife who claims maintenance is a nullity on the ground of existence of previous marriage, the burden is quite heavy upon such husband. Such husband is required to adduce proper evidence to establish that earlier some marriage had indeed been solemnized and that the same was subsisting. There is no such evidence on record.

14] For all the aforesaid reasons, the impugned judgment and order dated 24 September 2014 made by the Sessions Judge to the extent it denies the petitioner no. 1 maintenance is hereby set aside. The order of the JMFC awarding maintenance of Rs.2,000/- per month to the petitioner no.1 is hereby restored. The respondent no. 1 to pay the arrears within a period of six weeks from today.

15] Rule is made absolute to the aforesaid extent. In the facts and circumstances of the present case there shall be no order as to costs.

16] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)