

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-25780 of 2015

Date of decision : 03.06.2016

Robin

..... Petitioner

versus

Jasbir Kaur

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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

**Present: Mr. Nand Lal Sammi, Advocate
for the petitioner**

**Mr. Rajinder Sharma, Advocate
for the respondent**

ANITA CHAUDHRY, J.

This petition has been filed under Section 482 Cr.P.C. for quashing the order dated 18.02.2015 passed by Addl. Sessions Judge, Amritsar who dismissed the revision filed by the petitioner seeking quashing of the order dated 07.05.2014 passed by Addl. CJM Amritsar who had allowed interim maintenance of Rs. 2500/- per month to the respondent in the application filed under Section 125 Cr.P.C.

A petition seeking maintenance was filed under Section 125 Cr.P.C. in November 2012. The wife sought interim maintenance and had pleaded that their marriage was solemnized in May 2011 as per Hindu/Sikh rites at a Gurdwara in Amritsar. The parties had cohabited as husband and wife but they had no issue. Difference arose and the wife was beaten and turned out from the house on 25.05.2011.

The applicant had claimed that the husband was teacher in a Senior Secondary School and was drawing Rs. 27,000/- p.m. as salary.

In the reply, the respondent had submitted that application was not

maintainable as the marriage was never solemnized as per Sikh Religion and he was a Christian, the petitioner was a hindu and no marriage between the Christian and Sikh could be solemnized. It was pleaded that the petitioner was a divorcee and was highly educated and the alliance had been fixed through an advertisement in the newspaper. It was pleaded that wife had taken divorce earlier from different persons and had extracted huge amount. It was pleaded that since there was no legal or valid marriage, therefore, the petitioner did not have the status of a wife and she was a teacher and had sufficient resources.

The trial Court allowed application and granted Rs. 2500/- as maintenance from the date of appellation.

Aggrieved against the order, the petitioner had filed a revision before the Addl. Sessions Judge who passed the following order:-

“The respondent wife filed the petition under Section 125 Cr.P.C. claiming maintenance from the petitioner herein. Alongwith the petition the application for interim maintenance was also filed which has been partly allowed by the Ld. Trial Court vide impugned order. The provisions of Section 125 Cr.P.C. are in the nature of beneficial legislation in order to avoid vagrancy and to provide help to wife, children and parents who are not able to maintain themselves at that stage. Section 125 Cr.P.C. also provided for interim maintenance during the pendency of the petition. The case law relied upon by the Ld. Counsel for the petitioner is not applicable in the facts and circumstance of the present case. As such the present case pertains to a petition under Section 125 Cr.P.C. whereas the case law relates to cases under Section 13 of the Hindu Marriage Act and Section 16 of the Hindu Marriage Act. The nature of relationship between the

parties is yet to be proved by way of leading evidence between the parties before the Ld. Trial Court. At this stage no opinion can be expressed on the legality of the marriage. The pleading have to be taken at the face value. It has been contended by the respondent wife that she has no source of income in order to maintain herself. At this stage strict proof of marriage is also not required. The allegations and counter allegations between the parties are yet to be proved by leading evidence. The interim maintenance of Rs. 2500/- per month at this stage can not be termed as on higher side.

I have heard both the side.

Learned counsel for the petitioner had contended that there was no legal and valid marriage between the parties as the petitioner is a Christian and the respondent is Sikh and when the validity of marriage is an issue, maintenance could not have been allowed. Reliance was placed upon *Sarabjit Singh vs. Lourdes Serrato, 2014(3) RCR(Civil) 783*, *Gullipilli Sowria Raj vs. Bandaru Pavani @ Gullipili Pavani, (Civil Appeal No. 2446 of 2005) decided on 4.12.2008*, *Badshah vs. Sou. Urmila Badshah Godse & Anr. (Special Leave Petition (Crl.) No. 8596/2013 decided on 18.10.2013*, *Sangeeta vs. Preston Gomes, MAT.APP. 116/2010, decided on 13.12.2010* and *Dwarika Prasa Satpathy vs. Bidyut Prava Dixit, 1999(4) RCR(Criminal) 577*.

On the other hand it was submitted that the petitioner had filed a civil suit for declaration that the marriage was null and void and their suit was dismissed in default and the judgments referred to by the petitioner were under the Hindu Marriage Act.

Admittedly, the husband is a Christian whereas the wife is a Sikh and

the marriage between them took place as per Hindu rites. The question that arises

for consideration is whether the marriage is valid for the purposes of granting maintenance under Section 125 Cr.P.C.

To decide the issue, it is first necessary to refer to the provisions of the Hindu Marriage Act and the other Marriage Laws.

Section 2 of the Hindu Marriage Act reads thus :

"2. Application of Act :- (1) This Act applies -

(a) to any person who is a Hindu by religion

(b) xx xx xx xx

(c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion

Explanation :- The following persons are Hindus

(a) xx xx xx

(b) xx xx xx

(c) any person who is a convert or reconvert to the Hindu religion.

(2) xx xx xx (3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is nevertheless a person to whom this Act applies by virtue of the provisions contained in this section."

Section 5 of the Hindu Marriage Act basically contemplates solemnisation of the marriage between two Hindus and prescribe certain conditions thereof for its validity. The said section reads as follows :

"5. Conditions for a Hindu Marriage :- A marriage may be solemnised between any two Hindus, if the following conditions are fulfilled, namely :

(i) neither party has a spouse living at the time of the marriage;

(ii) at the time of the marriage, neither party -

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

- (b) 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 or;
- (c) has been subject to recurrent attacks of insanity or epilepsy.
- (iii) the bridegroom has completed the age of 21 years and the bride the age of 18 years at the time of marriage;
- (iv) the parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two;
- (v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;
- (vi) omitted by Act 2 of 1978."

Section 11 of the Hindu Marriage Act reads thus :

"11. Void Marriages :- Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, against the other party be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5."

The section as seen provides for grant of a decree declaring the marriage to be null and void on an application made by either party thereto when the marriage is performed in contravention of any of the conditions specified in Clauses (i), (iv) and (v) of Section 5 of the Hindu Marriage Act i.e., living spouse, degrees of prohibited relationship and sapinda relationship respectively.

Section 12 of the Hindu Marriage Act provides for grant of a decree of nullity of voidable marriages on any of the grounds mentioned thereof. It reads as follows :

"12. Voidable marriages :- (1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following

grounds, namely :-

- (a) that the marriage has not been consummated owing to the impotence of the respondent; or
 - (b) that the marriage is in contravention of the conditions specified in Clause (ii) of Section 5; or
 - (c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required under Section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978, the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or by any material fact or circumstance concerning the respondent; or
 - (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.
- (2) xx xx xx."

To sum up, as per Section 11 of the Hindu Marriage Act, the marriages performed in contravention of Clauses (i), (iv) and of Section 5 of the Hindu Marriage Act are void, whereas under Section 12 of the said Act, for contravention of any of the conditions enumerated therein, the marriages are voidable.

It is necessary to notice that neither Section 11 nor Section 12 of the said Act renders a marriage between a Hindu and a Christian void or voidable on the ground that the parties belong to two different religions.

The rigour of voidness covered by Section 4 of the Indian Christian Marriage Act is stressed and attached more to the persons that officiate in the solemnisation of the marriages, and it does not envisage as regards the validity or otherwise of a marriage simpliciter that took place between a Hindu and a Christian. This view is again fortified by Section 4 of the Special Marriage Act, which permits a marriage between two persons of different faiths. Therefore, a Hindu can marry a Christian under the Special Marriage Act. Such a marriage cannot be held to be void on the ground that it was not performed according to the provisions of Section

5 of the Indian Christian Marriage Act. Similarly, Section 4 of the Foreign Marriage Act permits a marriage between parties, one of whom at least is an Indian citizen residing outside India. On a similar analogy as noted supra, even a marriage under this Act, if performed between a Hindu and a Christian both or one of whom is an Indian citizen, cannot be held to be void on the ground that it is not performed in accordance with the provisions of Section 5 of the Indian Christian Marriage Act.

Accordingly, in view of the above discussion, it has to be held that the marriage between a Christian and a Hindu performed as per the Hindu rites with the full consent of both parties cannot be said to be invalid for purposes of claiming maintenance u/S. 125, Cr.P.C.

In *Kunhiraman Nair v. Annakutty*, 1967 Ker LT 24, it is noteworthy that the marriage was performed in accordance with the customs prevalent in Nair community between a Nair male and a woman following Roman Catholic faith. It was held that the very performance of the marriage and the fact that the parties thereto lived together as husband and wife were sufficient to confer on the woman the status of wife for claiming maintenance u/S. 488, Cr.P.C., 1898.

In *Pahtan Maung v. Ma San*, (1939) 40 Cri LJ 653 : AIR 1939 Rangoon 207, a Budhist woman married a Mohammadan and claimed maintenance. It was held that although the marriage was not strictly in accordance with Mohammadan Law, she was entitled to relief u/S. 488, Cr.P.C., 1898.

In *Smyth v. Mrs. Hannah Smyth*, , a Roman Catholic married a woman professing Jewish faith. It was held that the marriage was not invalid so as to render an order of maintenance passed by a Criminal Court illegal.

In *Sethurathinam Pillai v. Barbara Dolly @ Sethurathinam*, (1970) 1 SCWR 589, the Madras High Court upheld the marriage between a Christian woman and a Hindu male as also the claim for maintenance on the ground that there

is nothing in Hindu Law forbidding a marriage between a Hindu and non-Hindu. On appeal, the order granting maintenance by the Madras High Court was confirmed by the Supreme Court observing :

"We do not think it necessary in this case to decide the case on the merits. The order passed in an application filed u/S. 488, Cr.P.C. is a summary order which does not finally determine the rights and obligations of the parties thereto. It is an order made in a proceeding under a provision enacted with a view to provide a summary remedy for providing maintenance, and for preventing vagrancy. The decision of the Criminal Court that there was a marriage between Barbara and Sethurathinam and that it was a valid marriage will not operate as decisive in any civil proceeding between the parties for determining those questions."

In view of the above, it cannot be held that the marriage between the husband and the wife, who are Hindu and Christian respectively, is not valid for purposes of granting the relief u/s 125 Cr.P.C. At the same time, it is open to the aggrieved party to seek appropriate remedy from the Civil Court for a declaration that the marriage is void or voidable, inasmuch as the finding of the Criminal Court in these summary proceedings is neither conclusive nor decisive in the civil proceedings that may be initiated. The quantum of maintenance was not seriously challenged before me.

For the foregoing reasons, the petition is dismissed.

June 03, 2016

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**(ANITA CHAUDHRY)
JUDGE**