

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.797 of 2016

Order Reserved on : 4.9.2018

Order Passed on : 22.11.2018

Anil Kumar Mahilange, aged about 26 years, S/o Ude Ram Mahilange, R/o Village Temri, P.S. Nandghat, Tahsil Navagarh, District Durg, At present District Bemetara, Chhattisgarh

---- Applicant

versus

Sashita Bai, aged about 27 years, W/o Anil Kumar Mahilange, R/o Village Temri, P.S. Nandghat, Tahsil Navagarh, District Durg, At present District Bemetara, Chhattisgarh

--- Respondent

For Applicant	:	Shri B. Madhava Rao, Advocate
For Respondent	:	Shri Vishwanath Shrivastava, Advocate on behalf of Shri Paras Mani Shrivastava, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. The present revision is directed against the order dated 23.7.2016 passed by the 3rd Additional Principal Judge, Family Court, Durg, Link Court Bemetara in M.Cr.C. No.196 of 2011, whereby the Family Court has granted monthly maintenance of Rs.1,000/- in favour of the Respondent.
2. The Respondent filed an application under Section 125, Cr.P.C. stating that she is legally wedded wife of the Applicant. Their marriage took place according to social and vaidic customary rites at Village Temri on 5.1.2011. Thereafter, she started residing with the Applicant at his house. Though the Applicant had earlier

married to one Saritabai and due to some dispute Saritabai was living at Bhatapara with her parents, the Applicant saying Respondent Sashita Bai that divorce had taken place between him and Saritabai socially married the Respondent. After one month of the marriage with the Respondent, Saritabai returned to the house of the Applicant. Thereafter, the Applicant and his family members including Saritabai started subjecting the Respondent to harassment and they also demanded cash of Rs.20,000/- from her. The Respondent was also being beaten. She made a report on 13.4.2011, but no action was taken on her report. It was further pleaded that on 21.5.2011, the Applicant again took the Respondent back with him after making a compromise. Thereafter, on 18.8.2011, ultimately, he expelled the Respondent out of his house after beating her. Since then, she is residing separately from the Applicant. She is unable to maintain herself. The Applicant earns Rs.1,00,000/- per annum.

3. In his reply, the Applicant denied that he performed marriage with the Respondent. It was pleaded by him that he had married Saritabai 4 years before, Saritabai is his legally wedded wife, out of their wedlock 1 daughter Ku. Laxmi has taken birth and presently also, Saritabai is pregnant. It was also pleaded that the villagers deliberately threatened him and kept the Respondent at his house. No divorce has taken place with Saritabai nor did he perform any marriage with the Respondent saying her that divorce has taken place between him and Saritabai. Since the Respondent is not his legally wedded wife, she is not entitled to get any maintenance from him.

4. Respondent Sashita Bai examined herself as Applicant Witness No.1. She also examined Mayaram as Applicant Witness No.2. Applicant Anil Kumar Mahilange examined himself as Non-Applicant Witness No.1. He also examined one Deonarayan as Non-Applicant Witness No.2. He also examined his first wife Saritabai as Non-Applicant Witness No.3.
5. Relying upon **AIR 2014 SC 869 (Badshah v. Sou. Urmila Badshah Godse)**, the Family Court has allowed the application of the Respondent for grant of maintenance on the ground that the Applicant had performed marriage with the Respondent by concealing the fact that he had already married Saritabai.
6. Learned Counsel appearing for the Applicant submitted that there is sufficient evidence on record on the basis of which it is clear that Saritabai is legally wedded wife of the Applicant. From the evidence on record, it is clear that the Applicant never got any divorce from Saritabai. This fact is also within the knowledge of the Respondent. Therefore, if the Applicant has performed any marriage with the Respondent, she cannot be said to be his legally wedded wife and as such she is not entitled to get any maintenance from the Applicant. He further submitted that both the Applicant and the Respondent are residents of same village Temri and the Respondent was aware of the fact that the Applicant had already married Saritabai. Had any divorce taken place between the Applicant and Saritabai socially, the Respondent would have been aware of this fact because she was also a resident of the village where the Applicant was residing. There is nothing on record on the basis of which it could be inferred that the Applicant

had allured the Respondent that he had obtained a divorce from Saritabai and performed marriage with the Respondent. Therefore, **Badshah case** (supra) is not applicable to the present case.

7. Learned Counsel appearing for the Respondent supported the impugned order passed by the Family Court and submitted that since the Applicant saying that he had taken divorce from his first wife Saritabai performed marriage with the Respondent, according to the observation made by the Supreme Court in **Badshah case** (supra), the Respondent is entitled to get maintenance from the Applicant.
8. I have heard Learned Counsel appearing for the parties and perused the record with due care.
9. Respondent Sashita Bai has stated before the Court that on 5.1.2011, she was married with the Applicant. Mayaram (Applicant Witness No.2) has also supported this fact. Though the Applicant denied the fact that he married the Respondent, he has deposed that he had married Saritabai 8-9 years before and from Saritabai he has 2 children. He never married the Respondent. As stated by him, some villagers gathered and they forcibly sent the Respondent to his house. One previous statement of the Applicant is Ex.D-2 annexed with the record of the Court below wherein the Applicant has admitted the fact that the Respondent resided at his house as his wife for about 2 months. Apart from that, from the other evidence on record also, it is clear that the Respondent resided at the house of the Applicant as his wife for few months.

From the evidence adduced by the parties, it is also clear that first the Applicant married Saritabai and from her he has 2 children. From the evidence available on record, it is clear that Saritabai is first legally wedded wife of the Applicant. But, from the record, it is also established that later on the Respondent also resided with the Applicant as his wife for few months. In **Badshah case** (supra), it has been observed thus:

“13. No doubt, in Chanmuniya (supra), the Division Bench of this Court took the view that the matter needs to be considered with respect to Section 125, Cr.P.C., by larger bench and in para 41, three questions are formulated for determination by a larger bench which are as follows:

“1. Whether the living together of a man and woman as husband and wife for a considerable period of time would raise the presumption of a valid marriage between them and whether such a presumption would entitled the woman to maintenance under Section 125, Cr.P.C.?

2. Whether strict proof of marriage is essential for a claim of maintenance under Section 125, Cr.P.C. having regard to the provisions of the Domestic Violence Act, 2005?

3. Whether a marriage performed according to the customary rites and ceremonies, without strictly fulfilling the requisites of Section 7(1) of the Hindu Marriage Act, 1955, or any other personal law would entitled the woman to maintenance under Section 125, Cr.P.C.?”

14. On this basis, it was pleaded before us that this matter be also tagged along with the aforesaid case. However, in the facts of the present case, we do not deem it proper to do so as we find that the view taken by the courts below is perfectly justified. We are dealing with a situation where the marriage between the parties has been proved. However, the petitioner was already married. But he duped the respondent by suppressing the factum of alleged first

marriage. On these facts, in our opinion, he cannot be permitted to deny the benefit of maintenance to the respondent, taking advantage of his own wrong. Our reasons for this course of action are stated hereinafter.

15. Firstly, in Chanmuniya case, the parties had been living together for a long time and on that basis question arose as to whether there would be a presumption of marriage between the two because of the said reason, thus, giving rise to claim of maintenance under Section 125, Cr.P.C. by interpreting the term “wife” widely. The Court has impressed that if man and woman have been living together for a long time even without a valid marriage, as in that case, term of valid marriage entitling such a woman to maintenance should be drawn and a woman in such a case should be entitled to maintain application under Section 125, Cr.P.C. On the other hand, in the present case, respondent no.1 has been able to prove, by cogent and strong evidence, that the petitioner and respondent No.1 had been married to each other.

16. Secondly, as already discussed above, when the marriage between respondent No.1 and petitioner was solemnized, the petitioner had kept the respondent No.1 in dark about her first marriage. A false representation was given to respondent No.1 that he was single and was competent to enter into marital tie with respondent No.1. In such circumstances, can the petitioner be allowed to take advantage of his own wrong and turn around to say that respondents are not entitled to maintenance by filing the petition under Section 125, Cr.P.C. as respondent No.1 is not “legally wedded wife” of the petitioner? Out answer is in the negative. We are of the view that at least for the purpose of Section 125, Cr.P.C., respondent No.1 would be treated as the wife of the petitioner, going by the spirit of the two judgments we have reproduced above. For this reason, we are of the opinion that the judgments of this Court in *Adhav and Savitaben cases (AIR 1988 SC 644 and AIR 2005 SC 1809 : 2005 AIR SCW 1601)* would apply only in those circumstances where a woman married a man with full knowledge of the first subsisting marriage. In such cases, she should know that second marriage with such a person is impermissible and there is an embargo under the Hindu Marriage Act and therefore she has to suffer

the consequences thereof. The said judgment would not apply to those cases where a man marries second time by keeping that lady in dark about the first surviving marriage. That is the only way two sets of judgments can be reconciled and harmonized.

17. Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125, Cr.P.C. While dealing with the application of destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalized sections of the society. The purpose is to achieve “social justice” which is the Constitutional vision, enshrined in the Preamble of the Constitution of India clearly signals that we have chosen the democratic path under rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the Courts to advance the cause of the social justice. While giving interpretation to a particular provision, the Court is supposed to bridge the gap between the law and society.”

- 10.** In the light of above observations made by the Supreme Court, in the instant case, the Family Court has granted maintenance to the Respondent on the ground that the Applicant had performed marriage with the Respondent by concealing the fact of his first marriage with Saritabai and also telling a lie that divorce had taken place between him and Saritabai . In the instant case, Respondent Sashita Bai, in her examination-in-chief, in para 2, has deposed that the Applicant had told her that Saritabai had left him and divorce had taken place between them socially. Therefore, she married with the Applicant. Applicant Witness No.2, Mayaram has also deposed that at the time when the Respondent was married with the Applicant, the Applicant had left his first wife Saritabai. But, Non-Applicant Witness No.3, Saritabai (first wife of the

Applicant) has deposed that no divorce had taken place between her and the Applicant and she never resided separately from the Applicant. In the year 2014, her father-in-law had taken the Respondent to the house of the Applicant due to pressure created by the villagers. From the record, it is also clear that both the Applicant and the Respondent are residents of same Village Temri. In these circumstances, had any divorce taken place between the Applicant and his first wife Saritabai socially, this fact would have been in the knowledge of the Respondent and her parents. Therefore, the statement of the Respondent that the Applicant had told her lie that divorce had taken place between him and Saritabai is not reliable. There is also a report dated 2.9.2011 (Ex.P4) made by the Respondent available on record, wherein the Respondent has reported that due to a dispute with the Applicant, his first wife Saritabai was residing at her maternal house and the Applicant told her that he will not take Saritabai back and he wanted to marry her, therefore, she performed marriage with the Applicant. Thus, it is clear that no divorce had taken place between the Applicant and his first wife Saritabai and Saritabai was residing at her maternal house and she is the legally wedded wife of the Applicant. Despite knowing this fact, the Respondent performed marriage with the Applicant. Therefore, it is not established that the Applicant performed marriage with the Respondent concealing from her the fact of his first marriage with Saritabai or saying her that divorce had taken place between him and Saritabai. Therefore, in my considered opinion, **Badshah case** (supra) is not applicable to the instant case and relying on this judgment of the Supreme Court, the grant of monthly maintenance to the Respondent by the Family Court is not in accordance with law. Hence, the finding of the

Family Court is set aside.

11. Consequently, the instant revision is allowed.
12. Record of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(**Arvind Singh Chandel**)
JUDGE