

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE No.2587 OF 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of Code of Criminal Procedure, 1973 (for short "Cr.P.C"), is filed by the petitioner aggrieved by the order dated 07.08.2017 passed in M.C.No.152/2015 by the learned Additional Metropolitan Sessions Judge for the Trial of JHCBBC-cum-Additional Family Judge, Hyderabad, in dismissing the M.C filed under Section 125 Cr.P.C claiming maintenance from the respondent No.2 herein.

2. Heard arguments of Sri C. Raghu, learned counsel appearing for Sri V.B.Gopal Krishna, learned counsel for the petitioner; learned Additional Public Prosecutor for the respondent No.1/State; Sri Maj Pankaj Rai/respondent No.2 appeared as party-in-person and perused the record.

3. It is contended by learned counsel for the petitioner that the petitioner is the legally wedded wife of respondent No.2 and the marriage was solemnized on 13.12.2014 as per the customs prevailing in the Hindu law. The respondent No.2 being widower, married the petitioner, who is a divorcee. The second marriage of the parties was hurriedly fixed at the behest of the respondent No.2, after consulting astrologers, after the death of his first wife. Thereafter, the petitioner was subjected to lot of mental and physical torture and was also subjected to cruel behaviour in the hands of the 2nd respondent/party-in-person and this ultimately driven the petitioner out of matrimonial house. Therefore, she was

constrained to file complaint against the respondent No.2 for the offences under Sections 498-A, 406 and 500 IPC and the police also filed charge sheet. Learned counsel contended that though the second marriage of the petitioner was performed with the respondent No.2 during pendency of the FCA No.109/2007 before the Hon'ble High Court, the provision under Section 15 of Hindu Marriage Act, 1955 have no application. It operates only against the husband and in support of his submission, he relied upon the decision reported in *Anurag Mittal v. Shaily Mishra Mittal*¹ and contended that without taking the aforementioned factors into consideration, the Court of Sessions was pleased to allow the CrI.R.P.No.192/2017 on 23.01.2018 filed by the 2nd respondent herein, which is irregular and erroneous. The petitioner herein would come under the purview of 'wife' as defined under Section 125 (b) Cr.P.C and is entitled for maintenance as sought for, and ultimately prayed to set aside the order impugned. In support of his submissions, he relied upon the following decisions:

- i) *Ashok Ratti Lal Trivedi v. Anjani Madhusudan Oza*²
- ii) *Deoki Panjhiyara v. Shashi Bhushan Narayan Azad and others*³

4. Respondent No.2 appeared as party-in-person and vehemently contended that the petitioner by suppressing the fact of her first marriage married him on 13.12.2014, and that the second marriage is a nullity. Even after the grant of divorce in O.P.No.847/2000 by the Family Court, petitioner herein filed appeal vide FCA No.109/2007 before the Hon'ble High Court.

¹ AIR 2018 SC 3983

² MANU/DE/0130/1967= 4(1968) DLT 235

³ AIR 2013 SC 346

During the pendency of the appeal and by not disclosing the material facts, the petitioner performed the second marriage with the respondent No.2. Section 15 of the Hindu Marriage Act, 1955 applies to both the parties to the dispute. Having come to know the mischief played by the petitioner i.e., suppressing the pendency of appeal and existence of first marriage, respondent No.2 filed O.P.No.475/2015 before the Judge, Additional Family Court, Hyderabad under Section 12(1) of Hindu Marriage Act on 20.04.2015. Respondent No.2 further argued that as the second marriage is a nullity, the petitioner herein does not come under the definition of 'wife' as envisaged under Section 125 (b) Cr.P.C and she is not entitled for any maintenance. Ultimately, the 2nd respondent/party-in-person prayed to dismiss the revision. In support of his submission, the 2nd respondent/party in person relied upon the following decisions:

- i) *Anurag Mittal v. Shaily Mishra Mittal* (1 supra)
- ii) *Smt. Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav*⁴
- iii) *M.M.Malhotra v. Union of India and others*⁵

5. In view of the submissions made by both sides, the following point has come up for determination:

“Whether the impugned order dated 07.08.2017 passed in M.C.No.152/2015 by the learned Additional Metropolitan Sessions Judge for Trial of JHCBBC-cum-Additional Family Judge, Hyderabad, is liable to be set aside?”

⁴ AIR 1988 SC 644

⁵ AIR 2006 SC 80

6. POINT:

There is no dispute with regard to the performance of marriage in between the petitioner and the respondent No.2 on 13.12.2014 as per the customs prevailing in Hindu law. It is also a fact that the petitioner has preferred an appeal vide FCA No.109/2007 before the High Court against the grant of divorce on 28.06.2005 in O.P.No.847/2000. It is pertinent to state that before performance of the second marriage on 13.12.2014, the said appeal was pending and it was dismissed as withdrawn on 02.09.2016 i.e., after performance of the second marriage.

7. It is appropriate to refer the provisions under Sections 5, 11 and 15 of Hindu Marriage Act, 1955, which reads as follows:

“Section 5 - Conditions for a Hindu marriage

A marriage may be solemnized 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

(iii) the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the 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;

Section 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.”

Section 15 - Divorced persons when may marry again

When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again.”

8. It is also apt and appropriate to refer the decision in *Anurag Mittal's case* (1 supra), wherein the Apex Court held thus:

“18. Section 15 of the Act provides that it shall be lawful for either party to marry again after dissolution of a marriage if there is no right of appeal against the decree. A second marriage by either party shall be lawful only after dismissal of an appeal against the decree of divorce, if filed. If there is no right of appeal, the decree of divorce remains final and that either party to the marriage is free to marry again. In case an appeal is presented, any marriage before dismissal of the appeal shall not be lawful. The object of the provision is to provide protection to the person who has filed an appeal against the decree of dissolution of marriage and to ensure that the said appeal is not frustrated. The purpose of Section 15 of the Act is to avert complications that would arise due to a second marriage during the pendency of the appeal, in case the decree of dissolution of marriage is reversed. The protection that is afforded by Section 15 is primarily to a person who is contesting the decree of divorce.

19. Aggrieved by the decree of divorce, the Appellant filed an appeal and obtained a stay of the decree. During the pendency of the appeal, there was a settlement between him and his former spouse. After entering into a settlement, he did not intend to contest the decree of divorce. His intention was made clear by filing of the application for withdrawal. It cannot be said that he has to wait till a formal order is passed in the appeal, or otherwise his marriage dated 06.12.2011 shall be unlawful. Following the principles of purposive construction, we are of the opinion that the

restriction placed on a second marriage in Section 15 of the Act till the dismissal of an appeal would not apply to a case where parties have settled and decided not to pursue the appeal.

20. It is not the case of the Appellant that the marriage dated 06.12.2011 is lawful because of the interim order that was passed in the appeals filed by him against the decree of divorce. He rested his case on the petition filed for withdrawal of the appeal. The upshot of the above discussion would be that the denouement of the Family Court is correct and upheld, albeit for different reasons. The conclusion of the High Court that the marriage dated 06.12.2011 is void is erroneous. Hence, the judgment of the High Court is set aside."

9. In the aforementioned decision, an application to withdraw the appeal filed challenging the divorce granted in between the parties was filed on 28.11.2011 before the Registrar of the High Court of Delhi. Thereafter, the said appeal was dismissed as withdrawn on 20.12.2011. After filing the withdrawal application in the Registry, the second marriage in between the parties was performed on 06.12.2011. In the case on hand, the appeal filed by the petitioner/*de facto* complainant herein before the High Court vide FCA No.109/2007 was dismissed as withdrawn on 02.09.2016 and the second marriage in question was performed on 13.12.2014. Before the performance of second marriage, no application was filed by the petitioner to withdraw the said appeal. Moreover, the appeal was withdrawn much after the performance of second marriage i.e., on 02.09.2016 as indicated above. The facts in the afore-mentioned decision are distinct from the case of the petitioner/*de facto* complainant.

10. In *Ashok Ratti Lal Trivedi's* case (2 supra), wherein it was held that the husband on the ground of declaration of nullity of marriage cannot be exonerated from paying permanent alimony to

his wife. In *Deoki Panjhiyara's* case (3 supra), it was held that the wife was granted interim maintenance by the Trial Court and the same was confirmed by the Sessions Court, the Hon'ble High Court was pleased to set aside the same on the ground of nullity of the marriage. However, the Apex Court held that unless the marriage is declared as null and void by the competent Court, the interference by the High Court was unwarranted. The aforementioned decisions have no application to the case on hand as the marriage in between the parties to the lis is declared as nullity as indicated below.

11. In *Yamunabai Anantrao Adhav's* case (4 supra), the Apex Court observed that the marriage of a woman in accordance with the Hindu rites with a man having a living spouse is a complete nullity in the eye of law and she is not entitled to the benefit of Section 125 of the Code. It was further observed that Clause (1)(i) of Section 5 lays down, for lawful marriage, the necessary condition is that neither party should have a spouse living at the time of the marriage. A marriage in contravention of this condition is null and void under Section 11 of the Act. The marriages covered by Section 11 are void-*ipso-jure*, that is, void from the very inception, and have to be ignored as not existing in law at all if and when such a question arises. Although the Section permits a formal declaration to be made on the presentation of a petition, it is not essential to obtain in advance such a formal declaration from a Court in a proceeding specifically commenced for the purpose. The marriage of the appellant must, therefore, be treated as null and

void from its very inception. The above proposition was reiterated by the Apex Court in *M.M.Malhotra's* case (5 supra).

12. The material placed on record clearly establishes that there was marital relationship between the petitioner and her first husband and the marriage between them subsisted as on 13.12.2014. It establishes that the second marriage in between the petitioner and the 2nd respondent was performed during the subsistence of the first marriage of the petitioner. Therefore, it is a nullity. There is also material to substantiate that by suppressing the material facts with regard to the first marriage of the petitioner, the marriage in between the petitioner and respondent No.2 was performed. Even though there was a second marriage in between the parties to the litigation on 13.12.2014, it is not a marriage in the eye of law. It is only a nullity. Therefore, there is no marital relationship in between the parties to the dispute.

13. It is appropriate to extract the provisions under Section 125 Cr.P.C, which reads as follows:

"125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

x x x x x..."

14. No doubt, a legally wedded wife is entitled to claim maintenance from her husband when she has no sufficient means to maintain herself. As it has been pointed out, the marriage in between the petitioner and the respondent No.2 was performed on 13.12.2014 during the subsistence of first marriage in between the petitioner and her first husband. So the marriage held between the

parties to the lis is a nullity. When the marriage is declared as null and void, the wife is not entitled for maintenance under Section 125 Cr.P.C. The learned Sessions Judge has elaborately dealt with the legal validity of the second marriage and assigned number of reasons while dismissing the M.C filed by the petitioner herein. The contentions raised by the petitioner herein were rightly answered by the learned Sessions Judge. There is no illegality or impropriety in the impugned order passed by the learned Sessions Judge, dismissing the claim of the petitioner for maintenance. The Criminal Revision Case is devoid of merit and is liable to be dismissed.

15. Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any pending, shall stand closed.

Date: 09.04.2019
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Dr. SHAMEEM AKTHER, J