

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

**CRR-2152-2011 (O&M)
Date of Decision: 19.7.2019**

Randeep Singh

.....PETITIONER(s).

VERSUS

Rupinder Kaur

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

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

Mr. Vivek K. Thakur, Advocate, for
Mr. Divanshu Jain, Advocate,
for the complainant.

RAJ SHEKHAR ATTRI, J.

The above named petitioner has challenged the judgment dated 6.1.2011 passed by Judicial Magistrate, 1st Class, Chandigarh vide which the petitioner was directed to pay a sum of ₹ 3,000/- per month as maintenance to the respondent as well as the order of the appellate court dated 13.7.2011 vide which the appeal filed by him was dismissed.

Filtering out unnecessary details, the factual position is as follow : -

The respondent wife has submitted an application under Section 125 of the Code of Criminal Procedure against her husband i.e. the petitioner for grant of maintenance asserting therein that she is the

legally wedded wife of the petitioner but the petitioner has neglected and refused to make payment. Various instances of cruelty have been given.

Said application was contested on the ground that no marriage took place between the parties and only a ring ceremony took place between the parties. However, the remaining averments of the petition were denied.

Learned Magistrate awarded maintenance @ ₹ 3,000/- per month vide order dated 6.1.2011 which was challenged by filing an appeal before the learned Sessions Judge which has been dismissed vide impugned order dated 13.7.2011.

I have heard learned counsel for the parties and gone through the record.

Learned counsel for the petitioner has vehemently contended that in fact, there was no valid marriage between the parties, therefore, the respondent wife is not entitled to maintenance.

On the other hand, learned counsel for the respondent wife has submitted that the marriage was solemnized in accordance with the custom of the parties which customs and ceremonies have been accepted by the petitioner and that is why they started residing together and cohabited for a long time and the petitioner is now nobody to challenge the marriage.

I have given my thoughtful consideration to the rival contentions.

While appearing her own witness, Rupinder Kaur has categorically stated that she was married with the petitioner on

20.11.2004 and it was a second marriage of both the parties. She has categorically stated that because of the second marriage of both the parties, they opted to marry each other with *chunni* ceremony.

Chunni ceremony is prevalent in various communities in some areas of State of Punjab and Haryana. Generally, the boy puts a *chunni (dupatta)* around the girl and accepted her as his wife. Even in Himachal Pradesh and Jammu & Kashmir, it is called a *Chaddar Andazi*.

Learned counsel for the petitioner has vehemently contended that the prosecution has miserably failed to establish if the petitioner and the respondent belong to Jatt Sikh family. If the version of the petitioner is presumed to be gospel truth for the sake of arguments that they are not Jatt Sikh, even then it is for the petitioner to prove the factum of marriage.

PW2 Baldev Singh Bains is the father of the complainant. He has stated that he solemnized marriage of his daughter with the petitioner according to Sikh rites and traditions by way of *chunni* ceremony on 20.11.2004. The petitioner asserts that only engagement ceremony was solemnized with Smt. Rupinder Kaur on 20.11.2004. A specific suggestion was given to her to this effect.

Parties are *Jatt Sikhs*. There are numerous customs with regard to marriage and divorce; some of them are general and some are special. Even after codification of the Hindu Law, the customs have been protected.

Section 7 of Hindu Marriage Act specifically provides that a Hindu marriage may be solemnized in accordance with the customary

rites and ceremonies of the parties. It is not necessary that the customary ceremonies and rites may be of both the parties, rather it may be of either of the parties to the marriage.

There is ample evidence available on the record that *chunni* ceremony was a prevalent form of marriage. The form of marriage by way of *chunni* ceremony was accepted by the petitioner. Both the parties called a Priest (*Granthi*) to perform holy *Ardas* at that time. Thereafter, both the parties started residing and cohabited together. Even under customary law, certain customary forms of marriage including *Chadhar Andazi* have been recognised. Sir W. H. Rettigon in his classic treatise on customs which was published under title Customary Law As At Present Ascertained 16th edition, 2007 has stated with regard to marriage customs among Jatts as under : -

“It is well-known that *Jats*, specially Sikh *Jats*, hold very liberal views on questions relating to marriage and even at the height of the *Brahmanical* supremacy they did not show much inclination to be bound by the caste-iron rules laid down in the later Hindu Smritis interdicting marriage outside the caste, and prescribing elaborate ritual for the performance of the marriage ceremony. Among them (*Jats*), the re-marriage of widows has all along existed commonly, and *Chadar Anadazi* in which the ceremonial has been reduced to the very minimum is one of the recognised forms of marriage. Indeed, the *Rivaj-i-ams* of the Districts and the records of the cases decided judicially are full of instances in which mere cohabitation as man and wife for a long period without any strict matrimonial ceremony, has been considered sufficient to validate the marriage. The presumption of marriage arising from long cohabitation can,

however, be rebutted by showing that marriage between the parties would have been unlawful.”

A bare perusal of the above said paragraph from the customary law digest by Sir Rettigon makes it abundantly clear that mere co-habitation as man and wife for a long period, without any strict matrimonial ceremony, has been considered sufficient to validate the marriage and that the presumption of marriage arise from long co-habitation which can be rebutted by showing that the marriage between the parties would have been unlawful. Nothing has been brought if the marriage between the parties is unlawful.

For the purpose of grant of maintenance, PW1 has categorically stated that it was a valid marriage. Her version is supported by the photographs. Even *granthi* of the Gurudwara was called who recited the holy *ardaas* and thereafter, both the parties started residing together. Similarly, PW-2 and PW-3 also corroborated the case of the respondent wife.

To the mind of this Court, there was a valid marriage between the parties by way of *chunni* ceremony. At that time, a holy *ardaas* was performed by the *granthi* of the Gurudwara.

Apart from it, the proceedings under Section 125 of the Code are summary in nature. No intricate questions of law and fact can be finally disposed of. It is sufficient if the wife establishes that the parties have been residing together as husband and wife and there was co-habitation, then the wife is entitled to maintenance.

Explaining the ethos of modern trend in social legislation,

Hon'ble Supreme Court in **Badshah v. Urmila Badshah Godse**, AIR 2014 SC 869 observed as follows:-

“....Purposive interpretation needs to be given to the provisions of S. 125 CRPC. 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 achieve 'Social Justice' which is the constitutional vision, enshrined in the preamble to the Constitution of India, Preamble to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specially highlights achieving their social justice. Therefore, it becomes the bounden duty of the Courts to advance the cause of social justice. While giving interpretation to a particular provision, the Court is supposed to bridge the gap between the law and society.”

However, the facts in **D. Velusamy v. D. Patchaiammal**; 2010 (4) RCR (Criminal) 746 and **Savitaben Somabhai Bhatiya v. State of Gujarat and others**; 2005 (2) RCR (Criminal) 190 are distinguishable.

In view of the above and after going through the material available on record, this Court is of the view that no case is made out by the petitioner-husband to set aside the impugned order dated 13.7.2011 or to reduce the amount of maintenance. Consequently, the revision petition filed by the husband petitioner stands dismissed.

(**RAJ SHEKHAR ATTRI**)

JUDGE

July 19, 2019

Paritosh Kumar

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No