

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1769 of 2019

Smt. Anju Sharma

Vs

Sri Binod Kumar Sharma & Anr.

For the Petitioner

: Mr. Satadru Lahiri,
Mr. Safdar Azam,
Mr. Jyotirmoy Talukder.

For the Opposite Party No. 1

: Mr. Rabi Shankar Chattopadhyay,
Mr. Sayan Chattopadhyay,
Ms. Payel Shome,
Mr. Soumen Bandopadhyay,
Mr. Kaustav Sen.

Hearing concluded on

: 07.02.2024

Judgment on

: 01.03.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated 22.04.2019 passed by the Additional Sessions Judge, 1st Court, Hooghly Sadar, Chinsurah in Criminal Motion 35 of 2017 thereby dismissing the prayer for maintenance of the petitioner and affirming the order of the Judicial Magistrate, 2nd Court, Hooghly under Section 125 of the Code of Criminal Procedure, 1973.
2. The petitioner's case is that the opposite party no. 1 is the husband of the petitioner and works in the Indian Railways, and earns approx Rs. 15,000/- monthly apart from other allowances.
3. The petitioner married the opposite party no. 1 on 12.05.2001 according to Hindu rites and customs, and started residing in her matrimonial home.
4. The marriage was duly consummated and out of the said wedlock, the petitioner gave birth to a child on 16.10.2002, who was unfortunately a 'still born' male child.
5. In due course of their matrimony, the petitioner gave birth to another child on 03.03.2005. Unfortunately, however, the child passed away just a day after i.e. on 04.03.2005.
6. The petitioner was mentally and physically heartbroken and was hospitalized for a considerable span of time, and subsequently shifted to her parental house for healing her mental anguish and agony.

7. However, the opposite party no.1 started expressing his disinterest towards the petitioner, and stated disassociating himself from the petitioner, and refused to accept her as his wife.
8. The opposite party no. 1 then refused to accept the petitioner at her matrimonial house, and deserted her citing odd reasons.
9. The petitioner then discovered that the opposite party No. 1 while deserting the petitioner, started residing with another lady namely Lalita Devi, and entered into a family tie with her, acting in gross violation and injustice in the span when she was residing at her parental house.
10. It is stated by the petitioner that she was earlier married to the elder brother of the opposite party no.1 herein, namely Ajay Sharma in the year 1995 and a son was born out of the said wedlock. However, in the year 1999, said Ajay Sharma passed away and subsequently upon the requests of the petitioner's in laws and the opposite party no.1 herein, the petitioner entered into a matrimonial tie with the opposite party no.1 in the year, 2001.
11. As soon as the opposite party no. 1/husband realized that the second child too failed to see the world, and that the petitioner was suffering from physical breakdown due to the untimely loss of the child, he left her in midway, and instead chose to start his life afresh with another lady, leaving the petitioner in a pool of unending sorrows.
12. The petitioner, finding little alternative preferred/moved an application claiming maintenance under Section 125 of the Code of Criminal

Procedure, 1973 before the Court of the Learned Judicial Magistrate, 1st Class, 2nd Court, Hooghly being MC4/2007.

- 13.** The opposite party no.1, denied all material allegations, and denied the very factum of marriage with the petitioner. The Learned Court, then by an order dated 24.12.2012 dismissed the case, by holding that the petitioner is not entitled to any relief.
- 14.** The petitioner preferred a Revision before the Court of the Learned Sessions Judge, Hooghly, Chinsurah, being Criminal Motion No. 28 of 2013.
- 15.** By an order dated 04.03.2015, the Learned Additional Sessions Judge, 1st Court, Hooghly, upon scanning the records came to a conclusive finding that additional evidences ought to be considered, and the maintenance prayer cannot be brushed aside at a go. The Learned Judge held that the impugned order suffered from impropriety and incorrectness, and directed the Learned Trial Court to dispose of the entire case by considering the fresh documents.
- 16.** The opposite party no.1/husband assailed the aforesaid order dated 04.03.2015 before the Hon'ble High Court, Calcutta in CRR 1077 of 2015. The Hon'ble High Court by an order dated 20.08.2015 held that strict proof of marriage is not necessary in course of a proceeding under Section 125 of the Code of Criminal Procedure, and held that the order of the Learned Sessions Judge, 1st Court, Hooghly does not call for any interference.

- 17.** The matter was thus remanded before the Court of the Learned Judicial Magistrate, 2nd Court, Hooghly wherein the petitioner's additional evidence was adduced along with some documents.
- 18.** It is stated that the stage of recalling of her evidence same absurd statements were recorded on her behalf, which would, on a plain reading, appear to be absurd and inconsistent.
- 19.** The petitioner's witnesses were distorted, her evidence was wrongly recorded, and a case was made out to establish that she is not the legally wedded wife of the opposite party no.1.
- 20.** The Learned Judicial Magistrate, 2nd Court, Hooghly, Chinsurah after considering the additional evidences adduced therein, and the documents exhibited, came to a finding that the petitioner is not entitled to any maintenance, and rejected the same, vide order dated 06.01.2017 in M.C. Case No. 04 of 2007.
- 21.** The said order of the Learned Judicial Magistrate, 2nd Court was challenged before the Court of the Learned Sessions Judge, Hooghly Chinsurah vide Criminal Motion no. 35 of 2017.
- 22.** By an order dated 22.04.2017, the Court of the Learned Additional Sessions Judge, 1st Court, Hooghly, Chinsurah, by way of a reasoned order dismissed the petitioner's claim and affirmed the order passed by the Learned Judicial Magistrate, 2nd Court, Hooghly in M.C. Case no. 4 of 2007 dated 06.01.2017, which is impugned herein.

- 23.** The Learned Sessions Judge though admitted the marriage in view of the adduced evidence, i.e. school register, the Railway Records and the birth certificates of the children (since deceased) came to a finding that the said marriage is a void one being the second marriage in terms of the additional evidence of the petitioner/wife herself, wherein she contended that the opposite party no.1 had married her in 12.05.2001 whereas he married one Lalita Devi in the year 2000.
- 24.** Hence the revision.
- 25.** The opposite party's case is that the petitioner is his widowed sister in law. It is the positive case of the opposite party that he never married the petitioner but he has taken the responsibilities of the minor son of the petitioner as his uncle and on humanitarian grounds his family members had also given shelter to the petitioner as the widow of his elder brother. It has also been alleged that after the death of his elder brother, the petitioner used to reside at her paternal home and on a number of times came to the house of the opposite party and demanded more money and share of the properties as the widow of his elder brother from them. She also gave proposal of marrying the opposite party but he refused the same. In 2000 the opposite party married one Lalita Sharma. With a view to pressurize the opposite party and his family members, the petitioner has lodged this false case.
- 26.** The petitioner, Anju Sharma has examined herself as P.W.1. The head master of Mahatma Gandhi Hindi Bidyalaya. Shyam Narami Sharma as

P.W.2, Priest Dadam Tiwari as P.W.3, the section Engineer Indian Railways, Golam Motiar Rahaman as P.W.4 Kanti Sharma the sister-in-law of the petitioner as P.W.5. On the other hand the opposite party Binod Sharma has examined himself as O.P.W.1. Lalita Sharma his wife as O.P.W.2, Dhanjit Shaw as O.P.W.3 and barbar Suresh Thakur as O.P.W.4.

27. From the Materials on record including the evidence and Exhibits before the Trial Court, it is evident that:-

- i) The petitioner claims that she was married with the opposite party no.1 (her brother-in-law) on 12.05.2001 after the death of her husband on 29.06.1999. The said marriage is denied.
- ii) The opposite party no.1 denies the same and submits that he married the opposite party no. 2, Lalita Sharma on 11.02.2000.
- iii) The opposite party no.1 has admitted that he got Anju and his elder brother's son Bibek Sharma admitted in School as "guardian". Exhibit 1 is the extract from the Admission register. Date of admission is shown as 12.05.2004 and the opposite party no.1 has been **shown as the father guardian's column is left blank.**
- iv) The Trial Court/Revisional Court refused to give importance to this evidence.

- v) Ext-2 series and 3 is the entries in the service book of the opposite party no.1. The nominee's name is Anju Sharma and shown as 'wife'.
- vi) His declaration as to his marital status is 'Married'.
- vii) The petitioner's son has been shown as his son in the service book.
- viii) Exhibit-4 is a certificate issued by the Medical Superintendent of J.N. Hospital, Kalyani, showing that the petitioner had delivered a still born child on 18.10.2002.
- ix) Exhibit-5 is a Death Certificate issued by the Kolkata Municipal Corporation about the death of the child of the petitioner and opposite party no.1 on 04.03.2005. The said certificate shows that the child is of the petitioner and the opposite party no.1 has been shown as the father.
- x) Exhibit-6, a sick memo of the year 2008 shows the petitioner as the wife of the opposite party no.1. It also bears the signature of the opposite party no.1.
- xi) Exhibit 8 is a reply to a RTI by the petitioner. It shows that the opposite party gave a declaration on 10.07.2006 in office stating that the nominee was his wife Anju Sharma (the petitioner no. 1).
- xii) On the other hand, the opposite party no. 1 has produced his pay slip (Exhibit-A) and a copy of an invitation card marked

Exhibit –B, which shows that the opposite party no.1 married the opposite party no.2 on 11.02.2000.

28. The trial and revisional Court have believed the two Marriage Invitation Cards filed by the opposite party no.1 but has disbelieved the petitioner who has not only produced several documents in support of her contention but also has proved the same before the court in accordance with law. Mere denial by the opposite party no.1 about the nomination is not valid, in view of the fact that if not him, who would make the said entries showing the petitioner as his wife and Bibek Sharma as his son.
29. The school records also show that the opposite party no. 1 has declared that he is the father of the petitioner's child.
30. Though the opposite party no.1 has brought witnesses to prove his marriage with the opposite party no.2, the documents (official records) of the petitioner clearly show that the opposite party has declared the petitioner as his wife in all official documents including the official documents showing the death of their two children.
31. **But in spite of all these documents** being prima facie in favour of the petitioner, there is no proof of marriage. The documents mentioning the petitioner as the wife are **mere declarations, subject to proof, if challenged.**
32. The documents exhibited (Ext. A+B) on behalf of the opposite party no.1 including the evidence of opposite party witness no.2, as the wife

of the opposite no. 1, prima facie proves that the marriage between the opposite party no.1 & Lalita Sharma (O.P.W. no. 2) took place in the year 2000. The petitioner claims that her marriage with the opposite party no.1 took place in the year 2001. The declarations in official records could not prove the marriage of the petitioner with the opposite party no.1 to be prior in time. The declarations are all after 2001, and there is no such document prior to the year 2000.

33. This thus prima facie proves that the petitioner, (if at all) is the second wife of the opposite party no.2. Thus the marriage, if any is not lawful and **the findings of the trial Court requires no interference by this Court.**

34. CRR 1769 of 2019 is dismissed.

35. All connected applications, if any, stand disposed of.

36. Interim order, if any, stands vacated.

37. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

38. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)