

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 4115 of 2012

Mst. Rukia Begam

-Vs-

Sk. Musaraf & Anr.

For the Petitioner	: Ms. Devipriya Mitra
For the O.P. No.1	: Mr. F. Rahaman Mr. Rameshwar Sinha
For the State	: Mr. Narayan Prasad Agarwala Mr. Pratick Bose
Heard on	: 10.01.2024
Judgment on	: 15.03.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by petitioner praying for quashing the order dated 16th August, 2012 passed by the Learned Additional Sessions Judge, Fast Track Court-II, Howrah, in Criminal Revision No. 04 of 2012 arising out of order dated 23.11.2011 passed by the Learned Judicial Magistrate, 2nd Court, Uluberia, Howrah in Misc. Case No. 320 of 2008.
2. The petitioner stated that the petitioner is the wife of opposite party no. 1 herein.

3. The petitioner stated that the petitioner Mst. Rukia Begam filed an application to the Court of the Learned Additional Chief Judicial Magistrate, Uluberia, District- Howrah, under Section 125 of the Code of Criminal Procedure against the opposite party no. 1 namely Sk. Mosaraf which gave rise Misc. Case No. 320 of 2008 (T.R. No. 550 of 2008) and in the said petition under Section 125 of the Code of Criminal Procedure contending, inter alia, that the marriage in between the petitioner and the opposite party was held on 16.02.2005 by executing Kabilnama as per Muslim rites and customs and said Kabilnama was duly authenticated by the Notary Public, Uluberia, dated 16.02.2005 vide Sl. No. IF-40/05 by signing their signature/LTI and attesting witnesses were Sifia Begum and Sk. Rajis and the Den Mohor was fixed in the said marriage was fixed at Rs.5001/-. The opposite party was aged about 24 years at the time of the marriage and he was a jori work by profession. As per the demand of the inmates of the opposite party, a sum of Rs.10000/- was paid along with 2 bhoris of golden ornaments and other gifted articles were given to the opposite party as dowry. After the solemnization of the said marriage, the petitioner went to her matrimonial house at village Mallikpara, Bohira, Uluberia, Howrah to lead her conjugal life. There she lived her conjugal life with opposite party. After some days, the petitioner learnt that the opposite party was a characterless person and drunker. As the days and months rolled, the petitioner began to be subjected to routine assault by flimsy ground. Such unusual character of the opposite party was never made known to the petitioner and her mother at the time of negotiation of the marriage. The

opposite party and his family members began to pressurize the petitioner to bring further cash of Rs.10000/- for the business of the opposite party but the petitioner failed to provide the said money. As a result, she was subjected to torture both physically and mentally severely on many occasions. The petitioner bore all these mental and physical pain with a hope that by the passage of time, the opposite party might go corrected but such hope ends in fiasco. The petitioner had been continuously subjected to mental and physical cruelty in various ways. Lastly, on 10.10.2008 the petitioner was severely beaten and driven out from her matrimonial house by the opposite party and no maintenance was given to the petitioner although opposite party earns Rs. 6000/- to 7000/- per month from his 'jori business' and 5 to 10 labourers are working under him in said business. Opposite party earns Rs.1000/- per month in additional to his business income from his landed property. Petitioner has no source of income and she is dependent upon his poor mother. As such she prays maintenance of Rs.3,000/- per month.

4. The petitioner stated that the opposite party no.1 herein Sk. Musaraf appeared by vakalatnama and submitted the written objection denying all the allegations brought against him and stating that he never married the petitioner Rukia Begam according to Muslim rites and customs and he never resided with the petitioner as husband and wife. He denied the solemnization of the marriage on 16.08.2005. He denied the fact of giving ornaments and cash of Rs.10000/- and other articles. He denied the execution of Kabilnama. The petitioner is the cousin sister of the opposite

party. The petitioner got married to one person named Khidirpur and one daughter was born to them and the said daughter was 12 years old. No divorce was held between them. Marriage tie between them still subsisted. In spite of that, Rukia Begum got married to one Bihari man and resided with him as husband and wife. The marriage still subsists. No divorce had taken place between them. Petitioner left the house of her husband and resided voluntarily at her father's house. Petitioner is an expert 'jori' worker and she is earning about Rs.600/- to Rs.700/- per month. On the other hand, the opposite party is a daily labourer and he earns Rs. 500/- to Rs.700/- per month and he has his parents to look after. Opposite party had no landed property and prayed for the dismissal of the case.

5. The petitioner stated that after considering the papers and documents as also examined the witnesses of both parties, the Learned Additional Chief Judicial Magistrate, 2nd Court, Uluberia, Howrah passed an order of maintenance of Rs.1,500/- (Rupees one thousand five hundred) per month and directed the opposite party no. 2 to pay maintenance allowance to the petitioner to the amount of Rs.1,500/- per month payable according to English calendar month and the maintenance amount for each month shall be payable within 10th of the next calendar month and the maintenance amount for each month shall be payable within 10th of the next calendar month and this order will take effect from the date of filing of the application.
6. The petitioner stated that being aggrieved and dissatisfied with the order dated 23.11.2011 passed by the Learned Judicial Magistrate, 2nd Court,

Uluberia, District- Howrah in Misc Case No. 320 of 2008 the opposite party no. 1 herein Sk. Musaraf filed a Criminal Revision Application to the Court of the Learned District and Sessions Judge, Howrah which gave rise to Criminal Revision No. 04 of 2012.

7. The petitioner stated that in the aforesaid Criminal Revisional Application, the opposite party no. 1 herein Sk. Musaraf contended herein that the petitioner/opposite party herein had an earlier marriage. It was disputed by the opposite party no. 2 that she had an earlier marriage with a person and the said marriage was dissolution by a 'Talak' and her first husband was still living under the Muslim law, the wife was not entitled to contract the second marriage during the subsistence of a valid marriage and on that score the opposite party no. 1 herein prayed for setting aside the order passed by the Learned Trial Court.
8. The petitioner stated that after hearing both parties and considering the papers and documents, the Learned Additional Sessions Judge, Fast Track Court-II, Howrah passed an order setting aside the order passed by the Learned Judicial Magistrate, 2nd Court, Uluberia, Howrah in Misc Case No. 320 of 2008.
9. The petitioner stated that the order dated 16.08.2012 passed by the Learned Additional Sessions Judge, Fast Track Court-II was highly erroneous. The Learned Judge actually did not consider the evidence of both parties and without considering the material on record the said order was passed.

10. In the case of **Raj Kumari and Ors. vs. Bishamber Singh**¹, the Hon'ble High Court of Himachal Pradesh held the following:-

15. Unlike matrimonial proceedings where strict proof of marriage is essential, in the proceedings under Section 125 Cr.P.C., such strict standard of proof is not necessary as it is summary in nature meant to prevent vagrancy. In Dwarika Prasad Satpathy v. Bidyut Prava Dixit MANU/SC/0673/1999 : (1999) 7 SCC 675, this Court held that:

"the standard of proof of marriage in a Section 125 proceeding is not as strict as is required in a trial for an offence under Section 494 IPC. The learned Judges explained the reason for the aforesaid finding by holding that an order passed in an application under Section 125 does not really determine the rights and obligations of the parties as the section is enacted with a view to provide a summary remedy to neglected wives to obtain maintenance. The learned Judges held that maintenance cannot be denied where there was some evidence on which conclusions of living together could be reached."

When the parties live together as husband and wife, there is a presumption that they are legally married couple for claim of maintenance of wife under Section 125 Cr.P.C. Applying the well-settled principles, in the case in hand, appellant No. 1 and the respondent were living together as husband and wife and also begotten two children. Appellant No. 1 being the wife of the respondent, she and the children appellants No. 2 and 3 would be entitled to maintenance under Section 125 Cr.P.C.

16. It is fairly well settled that the law presumes in favour of marriage and against concubinage when a man and woman have

¹ MANU/HP/2050/2023

cohabited continuously for a number of years. After referring to various judgments, in Chanmuniya v. Virendra Kumar Singh Kushwaha MANU/SC/0807/2010 : (2011) 1 SCC 141, this Court held as under:-

"11. Again, in Sastry Velaider Aronegary v. Sembecutty Vaigalie (1881) 6 AC 364, it was held that where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary is clearly proved, that they were living together in consequence of a valid marriage, and not in a state of concubinage.

12. In India, the same principles have been followed in Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy, in which the Privy Council laid down the general proposition that where a man and woman are proved to have lived together as man and wife, the law will presume, unless, the contrary is clearly proved, that they were living together in consequence of a valid marriage, and not in a state of concubinage.

13. In Mohabbat Ali Khan v. Mohd. Ibrahim Khan MANU/PR/0068/1929 : AIR 1929 PC 135 the Privy Council has laid down that the law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for number of years.

14. In Gokal Chand v. Parvin Kumari MANU/SC/0077/1952 : AIR 1952 SC 231, this Court held that continuous cohabitation of man and woman as husband and wife may raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them.

15. Further, in *Badri Prasad v. Director of Consolidation* MANU/SC/0004/1978 : (1978) 3 SCC 527, the Supreme Court held that a strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin.

16. Again, in *Tulsa v. Durghatiya* MANU/SC/0424/2008 : (2008) 4 SCC 520, this Court held that where the partners lived together for a long spell as husband and wife, a presumption would arise in favour of a valid wedlock."

17. This Court in *Chanmuniya* case further held as under:-]

"24. Thus, in those cases where a man, who lived with a woman for a long time and even though they may not have undergone legal necessities of a valid marriage, should be made liable to pay the woman maintenance if he deserts her. The man should not be allowed to benefit from the legal loopholes by enjoying the advantages of a *de facto* marriage without undertaking the duties and obligations. Any other interpretation would lead the woman to vagrancy and destitution, which the provision of maintenance in Section 125 is meant to prevent."

18. *Chanmuniya* case referred to divergence of judicial opinion on the interpretation of the word "wife" in Section 125 Cr.P.C. In paras (28) and (29) of *Chanmuniya* case, this Court referred to other judgments which struck a difficult note as under:-

"28. However, striking a different note, in *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav* MANU/SC/0579/1988 : (1988) 1 SCC 530, a two-Judge Bench of this Court held that an attempt to exclude altogether personal law of the parties in proceedings under Section 125 is improper (see para 6). The learned Judges also held

(paras 4 and 8) that the expression "wife" in Section 125 of the Code should be interpreted to mean only a legally wedded wife.

29. Again, in a subsequent decision of this Court in Savitaben Somabhai Bhatiya v. State of Gujarat MANU/SC/0193/2005 : (2005) 3 SCC 636, this Court held that however desirable it may be to take note of plight of an unfortunate woman, who unwittingly enters into wedlock with a married man, there is no scope to include a woman not lawfully married within the expression of "wife". The Bench held that this inadequacy in law can be amended only by the legislature. While coming to the aforesaid finding, the learned Judges relied on the decision in Yamunabai case MANU/SC/0579/1988 : (1988) 1 SCC 530."

19. After referring to the divergence of judicial opinion on the interpretation of the word "wife" in Section 125 Cr.P.C., speaking for the Bench A.K. Ganguly J. held that the Bench is inclined to take a broad view of the definition of "wife", having regard to the social object of Section 125 Cr.P.C.

20. In Chanmuniya case, this Court formulated three questions and referred the matter to the larger Bench. However, after discussing various provisions of the Criminal Procedure Code, this Court held that a broad and extensive interpretation should be given to the term "wife" under Section 125 Cr.P.C. and held as under:-

"42. We are of the opinion that a broad and expansive interpretation should be given to the term "wife" to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a precondition for maintenance under Section 125 CrPC, so as to fulfil the true spirit and essence of the beneficial provision of maintenance under Section 125. We also believe that such an interpretation would be a just application of the principles

enshrined in the Preamble to our Constitution, namely, social justice and upholding the dignity of the individual."

11. The proof of marriage between the parties is not essential to claim maintenance under Section 125 of the Code of Criminal Procedure. If the parties resides together as a husband and wife for a considerable period of time the entitlement to maintenance of the woman so residing automatically generates and is undeniable.
12. In the instant case the marriage between the parties is disputed. The opposite party no. 2 denied to have married the petitioner as well as ever to have resided with her as a married couple. The petitioner in order to claim maintenance must adduce certain evidence to have resided with the opposite party like a married couple. Mere assertion on one part and subsequent denial on the other does not assist the Court to ascertain the veracity of the actual situation and status between the parties. The status of the parties in the instant case was not determined as to whether they had been a married couple or resided together like the same. The petitioner failed to produce any documentary evidence concerning her marriage to the opposite party no. 1 nor could establish her stance to have resided with the opposite party no. 1 through any independent witness.
13. In view of the above discussions, the instant criminal revisional application is dismissed.
14. There is no order to costs.
15. Copy of this judgment be sent down at once to the Learned Trial Court and concerned police station for necessary action.

16. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)