

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.42218 of 2017 (O&M)
Date of decision: 23.04.2024

Amit Kapoor ... Petitioner

Vs.

Bhawna ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Rahul Sharma-I, Advocate,
for the petitioner.

MANISHA BATRA, J.

1. The petitioner herein is praying for quashing of order dated 21.03.2016 passed by the Judicial Magistrate, 1st Class, Yamuna Nagar in Criminal Petition No.68 of 2012 titled as *Smt. Bhawna v. Amit Kapoor* filed under Section 125 of Cr.P.C. as well as the judgment dated 08.09.2017 passed by the Court of learned Sessions Judge, Yamuna Nagar in Criminal Revision No.61 of 2016 titled as *Amit Kapoor v. Smt. Bhawna*.

2. For the sake of continuity and coherence, parties shall be referred to hereinafter as per the same nomenclature as given before the

learned trial Court.

3. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned petition under Section 125 of Cr.P.C. had been filed by the petitioner submitting therein that previously she was married with one Atam Parkash but due to temperamental differences, a decree of divorce by way of mutual consent was passed between them on 02.11.2007. Subsequently, a love affair had been developed between the petitioner and the respondent and as the family members of the latter were not agreeing to their marriage, therefore, they had solemnized their marriage in Panchmukhi Hanuman Mandir on 17.10.2008 according to Hindu rites and ceremonies. The marriage was duly consummated between the parties though on representation made by the respondent that the petitioner should live with her parent's house till their marriage was accepted by parents, she had been living with them. However, when she was not taken by the respondent to his house for a considerable period, she started insisting to disclose the factum of their being married to his family members. The respondent then assured to get their marriage registered through Court for her satisfaction. Applications were moved twice for the purpose of registration of their marriage but on one pretext or the other, the respondent avoided even registration of the their marriage. Ultimately, the petitioner was constrained to move an application to SHO Yamuna Nagar on 20.01.2011 and the respondent admitted the factum of performing marriage with the petitioner before his family members and

that is why no action was taken by the police. She alleged that the respondent subsequently refused to keep him with her and to maintain her thereby compelling her to live with her parents. She prayed for directing him to give maintenance allowance to the tune of Rs.15,000/- per month to her by claiming that he was running a Printing Press under the name and stle of Shalu Printing press and was not earning less than Rs.30,000/- per month whereas she neither owned any moveable or immoveable property nor was able to maintain herself.

4. It is revealed from the record that the respondent on receipt of notice of the said petition had appeared and contested the petition filed by the petitioner by denying that any relationship of husband and wife existed between them and alleging that no marriage in accordance with Hindu rites and ceremonies was performed and no spatpadi ceremony was performed. It was alleged by him that since the petitioner was living in his neighbourhood due to her having dispute with her husband as such on her request, he used to assist her on some occasions but had never performed marriage with her. He also denied that he owned any shop and had any independent source of income. The factum of his agreeing for performing Court marriage with the petitioner was also denied and dismissal of the petition had been prayed for.

5. The parties were given opportunity to lead evidence and on considering the evidence so produced, the learned trial Magistrate vide order dated 21.03.2016, had observed that though the petitioner had failed to prove that the respondent was earning a sum of Rs.30,000/- per

month but as he was an able bodied young man and while considering him to be a labourer, his income was assessed to be Rs.4,000-5,000/- per month and he was directed to pay maintenance allowance @Rs.2500/- per month to the petitioner. It was also observed that relationship of husband and wife existed between the parties.

6. Feeling dissatisfied, the respondent had filed a revision petition before the Court of learned Sessions Judge, Yamuna Nagar who dismissed the petition filed by the respondent by observing that petitioner was wife of the respondent and he was responsible to maintain her and that the amount of maintenance directed to be paid by the learned Magistrate was proper.

7. It is argued by learned counsel for the respondent that the impugned orders are not sustainable in the eyes of law and are liable to be set aside as the learned Judicial Magistrate as well as the learned Sessions Judge while passing the impugned orders respectively, wrongly considered the petitioner to be his wife by ignoring that no cogent, convincing and reliable evidence could be produced by her to prove that the respondent had performed marriage with her according to Hindu rites and ceremonies. Both the Courts below also erred in granting/affirming grant of payment of amount of Rs.2500/- per month as maintenance to the petitioner without making any proper assessment as to the income of the respondent. With these broad submissions, it is argued that the present petition deserves to be allowed and the impugned orders are liable to be quashed.

8. It will not be out of place to mention here that the petitioner had been duly served with notice of the present petition but none appeared on her behalf.

9. I have heard learned counsel for the respondent at considerable length and have gone through the material placed on record and on a perusal of the same, I am of the considered opinion that the findings as given by learned trial Magistrate and upheld by the revisional Court do not warrant any interference. There were specific averments in the petition as filed by the petitioner Bhawna that she had solemnized marriage with the respondent at Panchmukhi Hanuman Mandir on 17.10.2008 as per Hindu rites and ceremonies. Though this fact had not been specifically denied by the respondent but it was pleaded that no legal or valid marriage had taken place between the parties. No Hindu rites, ceremonies including spatpadi ceremony was performed. However, the trial Court as well as the revisional Court had observed that there were photographs of the parties showing the factum of performing marriage in a temple in the presence of a priest. Though the respondent had denied that he was shown in these photographs and claimed that the same were morphed, however, at the same time, he denied to get these photographs examined by some expert to ascertain their genuineness. As such, in my considered opinion, the learned revisional Court had rightly observed that these photographs were genuine and proved that the respondent had performed marriage with the petitioner in a temple in the presence of priest. Accordingly, no fault can be found in the findings as

recorded by learned trial Magistrate and affirmed by the learned revisional Court as to the relationship of the parties of being husband and wife.

10. During the course of arguments in this case, learned counsel for the respondent has tried to draw the attention of this Court to copy of judgment dated 27.07.2022 passed in a Criminal Appeal filed against judgment of conviction of the respondent in case arising out of FIR No.626 dated 23.12.2011 on the basis of complaint filed by the petitioner. This shows that though the respondent had been held guilty and convicted for commission of offences punishable under Sections 498-A and 506 of IPC by the trial Magistrate in the abovementioned FIR but the learned Appellate Court had extended benefit of doubt to him and by accepting his appeal, acquitted him of the charges so framed. A cursory observation is shown to have been made in para No.27 of this judgment that the relationship of the petitioner and the respondent as husband and wife was doubtful as no convincing evidence was produced in this regard. However, the observations so made cannot be stated to be having any relevance for the purpose of this case and are not binding for this case wherein by giving well reasoned findings based on facts and evidence produced on record, the Courts below had observed that the petitioner was the wife of the respondent and was entitled to receive maintenance from him as it was proved that she was neglected and refused to be maintained by him.

11. Proceeding further, so far as the amount of Rs.2500/- per

month which was directed to be paid as maintenance by the respondent to the petitioner is concerned, it was observed by both the Courts that the respondent had no other liability and a printing press was owned by his father. The petitioner had claimed that she was unable to maintain herself and was neglected and refused to be maintained by the respondent. The respondent failed to produce any evidence on record to prove that the petitioner was having any source of income and was capable of maintaining herself. Section 125 of Cr.P.C. provides a swift remedy against any person who neglects or refuses to maintain his wife. The primary object of this provision is to prevent starvation and vagrancy and to compel a man to perform the moral obligation which he owes to the society in respect of his wife or children so that they are not left beggared and destituted on the scrapheap of the society and thereby driven to a life of vagrancy, immorality and crime for their subsistence. The proceedings under this provision are summary in nature. The sufficiency of the quantum has to be judged so that the wife is able to maintain herself with reasonable comfort. The amount of Rs.2500/- which was directed to be paid by the respondent to the petitioner cannot be stated to be excessive or exorbitant but the same was just and proper keeping in view the overall facts and circumstances of the case and as such the orders passed by both the Courts below do not warrant any interference.

12. As per the discussion made above, it is held that the petition does not deserve to be allowed as no illegality much less infirmity has been found in the judgments passed by the Courts of learned trial

Magistrate as well as the revisional Court. Accordingly, the petition is dismissed.

13. Miscellaneous application(s), if any, also stand disposed of.

	(MANISHA BATRA)
	JUDGE
23.04.2024	
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No