

2024.PHHC.149633



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

CWP- 26905-2023

Judgment Reserved on: 25.10.2024

Judgment Pronounced on: 14.11.2024

SHANTI DEVI

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Vinod Bhardwaj and Mr. Nipun Bhardwaj,
Advocates for the petitioner.

Mr. Suneel Ranga, DAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order bearing No.2612 dated 16.01.2019, whereby a notice has been served upon the petitioner to deposit the amount received by her towards widow pension, to the tune of Rs.1,06,500/- alongwith interest @ 12% per annum, despite solemnizing a second marriage (Krewa). A further prayer has also been made for directing the respondents to refund the amount of Rs.2,73,291/- that has already been recovered from the petitioner.

Briefly summarized, the facts of the present case are that the petitioner was married to one Sube Singh, who died on 20.04.1981, leaving behind the petitioner namely Shanti Devi and her three children. It is further submitted that Omi Devi wife of Buja Ram- brother-in-law (Jeth) of the



petitioner had also died in the year 1980. The petitioner had applied for and was granted the widow pension in the year 1999 as per the scheme. It is specifically stated in the petition that as per the customary practices, the petitioner had performed a krewa marriage in the year 1983 with her Jeth namely Buja Ram and from the said krewa marriage, four children were born out. It is averred that despite the performance of the krewa marriage, the name of her deceased husband continued to be and the name of Buja Ram is not reflected as her husband in any of the documents. It is averred that notwithstanding that the krewa marriage is only a social obligation and did not have the callings of a valid marriage, yet, some residents of the village submitted a complaint, due to factionalism, alleging that the petitioner is not entitled to widow pension for having solemnized second marriage with Buja Ram and as such, the amount received by her under the scheme of widow pension ought to be recovered from her. A notice/communication vide letter No.690 dated 26.06.2018 was served upon the petitioner, to which a reply was filed on 06.07.2018 giving each and every fact in detail and a request was made that the notice/communication be withdrawn as the same is invalid and baseless. However, instead of withdrawing the said notice/communication, another letter dated 24.08.2018 was served upon the petitioner calling for an explanation. The same was also replied to on 28.08.2018. Nonetheless, in continuation of earlier letters, the impugned letter No.2612 dated 16.01.2019 was sent to the petitioner conveying that her widow pension has been stopped w.e.f. 14.12.2018 and she was called upon to deposit a total sum of Rs.2,73,291/-.



Aggrieved thereof, the present petition has been filed.

A written statement had been filed on behalf of the respondents, wherein it was averred that the petitioner was availing the benefit of widow pension since October 1999 to November 2018 under the Social Security Scheme namely “The Haryana Pension to Widows and Destitute Women” issued by the State Government vide Notification dated 24.08.1992 as amended from time to time. A complaint dated 07.05.2018 was received from one Nawaja son of Rampal, who is a co-villager of the petitioner, alleging that the petitioner was receiving widow pension from the Government for the last 32 years whereas she had performed a krewa marriage with her brother-in-law (jeth) Buja Ram after the death of her earlier husband. It was also mentioned in the said complaint that four children were born out of her second marriage.

Taking cognizance of the said complaint, a show cause notice was served on the petitioner and she was called upon to explain her position. In the reply furnished to the said notice, she denied the allegations of unlawful receipt of widow pension levelled against her but admitted that her husband had died in the year 1981. She claimed to have never solemnized a second marriage and instead claimed that she is residing with the family of her elder brother-in-law (jeth). She appended some documents i.e. Aadhar Card, Ration Card, voter list and copy of jamabandi, which show the name of her deceased husband. The documents furnished by the petitioner were found to be unsatisfactory by the State. It was also averred that the social security scheme was introduced by the Government with an object of providing financial assistance to the destitute



women and widows, who are unable to sustain themselves from their own resources. As per the eligibility criteria laid down in the said notification, only such women were eligible for getting the benefit of the said scheme, who were widows or unmarried or married but deprived of financial support from their husbands. The said eligibility criteria prescribed in the above Social Security Scheme is reproduced as under: -

“..... A woman, in the age group of 18 years and above is eligible for grant of pension, if she is a widow or unmarried or a married woman who has been deprived of the financial support from her husband because of his physical/mental incapacity or desertion by husband or any other reasons and her close relative such as parents, sons, son's son are not supporting her and her own income from all sources is less than the income prescribed by the Government in this regard in consultation with Finance Department, provided she is a domicile of Haryana and has been residing in Haryana State for the last one year at the time of submission of application.”

Noticing that the petitioner was not eligible, an inquiry was conducted into the dispute and the statements of various persons of the village were recorded. The said witnesses specifically deposed about solemnization of krewa marriage by the petitioner with her brother-in-law (Jeth) Buja Ram after the death of earlier husband Sube Singh.

It was thus contended that the status of the petitioner was not that of a widow, at the time of submission of application for grant of widow pension, hence, she was not entitled to draw the benefits under the said widow



pension scheme from the Government from the very beginning and the same was accordingly stopped rightly.

It is stated that Clause 9(i) of the said Scheme prescribes the right of District Social Welfare Officer with respect to stoppage of widow pension, which is extracted as under: -

“..... Pension shall be sanctioned for the entire life of the applicant. However, the District Social Welfare Officer shall have the right to stop payment of pension, if at any stage it is found that it was sanctioned on mistaken ground or false information or the condition for which the pension was granted no longer exists.”

It is further averred that since the petitioner was not found eligible for grant of widow pension during the inquiry proceedings, the recovery notices dated 16.01.2019 and 30.01.2019 had been issued against the petitioner for effecting the recovery of Rs.2,73,291/- that were already received by her towards widow pension in a wrongful manner. Clause (e) of the notification dated 10.06.2011 mandates such recovery alongwith interest @ 12% per annum, where a benefit has been obtained by suppressing the true information or by making a false and wrong information. The said Clause (e) reads thus: -

“(e) Any benefits received under the Scheme by suppressing true information or making wrong claim would be recovered as arrears of land revenue with 12% interest per annum.”

It is also averred that pursuant to issuance of repeated recovery notices, the amount in question was also deposited by the petitioner vide receipt

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No.4474 dated 06.03.2019. Hence, the impugned recovery notice dated 16.01.2019 (Annexure P-8) is lawful and justified.

No replication/rejoinder was filed by the petitioner to the written statement filed by the respondents-State.

Learned counsel for the petitioner has vehemently argued that the petition is a poor lady and is being subjected to unnecessary harassment by the Authority concerned and that she has been forced to deposit the pension amount under the threat of registration of a criminal case against her. It is contended the krewa marriage performed in the family does not debar a widow from the benefits of her deceased husband and that the benefit of the Social Security Scheme cannot be denied to her as it would be contrary to the object of the said scheme.

He places reliance on the judgment ***Shanti Devi Versus State of Haryana and others*** bearing ***CWP No.17970 of 2008*** decided on ***05.09.2009*** to contend that performance of krewa marriage cannot be construed as a bar for getting benefits under the abovementioned Social Security Scheme.

Responding to the arguments advanced above, learned State Counsel has submitted that the petitioner cannot claim accrual of a right to retain the amount that was obtained by her towards widow pension, by suppressing her marital status. He further contends the Social Security Scheme was notified by the Government of Haryana for the welfare of widows and destitute women who were unable to sustain themselves, from their own resources and were in need of financial assistance. A widow, unmarried woman



or a married woman who was deprived of financial support from her husband because of his physical/mental incapacity or desertion or for any other reason and where the children are not supporting such woman, was also eligible for the benefit under the Scheme. It is contended that the petitioner had claimed the benefit under the said Scheme in her capacity as a widow, which such eligibility criteria, she did not fulfill having performed a krewa marriage with her Jeth, Buja Ram after the death of her earlier husband. The provisions of the scheme, empower the District Social Welfare Officer to stop the disbursement of the pension and to effect recovery thereof where such pension has been obtained by suppression of true facts and information. An inquiry into the allegations was also made and statements of various persons were recorded, who reiterated the fact that there was a krewa marriage solemnized between the petitioner and her Jeth and four children were born out of the said relationship/marriage.

It is stated that the judgments cited by the petitioner are not applicable to the facts of the present case and thus do not advance the purpose of filing the present petition.

I have heard the learned counsel for the respective parties and have gone through the documentary evidence available on record with their able assistance.

Undisputedly, the parties herein are Hindus and are governed by Hindu Marriage Act, 1955. Sections 5 and 7 of the Hindu Marriage Act, 1955 provide the conditions for a valid Hindu marriage and the rites and ceremonies required to be performed for the same. The same are extracted as under: -



“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 21 [twenty-one years] and the bride, the age of 18 [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;*

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7. Ceremonies for a Hindu marriage.

- (1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.
- (2) *Where such rites and ceremonies include the Saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.”*

It is evident from a perusal of the above that as per the conditions of Hindu Marriage Act, 1955, the petitioner would otherwise be eligible under



all categories except for the relationship between the petitioner and her Jeth being originally within the prohibited degrees. However, the said condition No.5 (iv) is subject to the customs or usage governing or allowing marriage between said two persons. Similarly, Section 7 (1) of the Hindu Marriage Act, 1955 provides that a Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto and the requirement of a *Saptpadi* is prescribed only where such rites and ceremonies also include *Saptpadi*.

It was specifically held by this Court in the matter of ***Randeep Singh Vs. State of U.T. Chandigarh*** reported as ***2019 SCC Online P&H 6353*** that the customary rites and ceremony between the parties does not mandate that the rites and ceremonies should be common between both the parties and that even where such ceremonies are applicable to one of the parties, the marriage would still be deemed to have been solemnized, after performance of the necessary rituals and ceremonies. This Court was dealing with the issue of *Chunni Ceremony*, a form of marriage prevalent in various communities in certain areas of States of Punjab, Haryana and Rajasthan, wherein the boy puts a *Chunni (Dupatta)* over the girl and accepts her as his wife. It was held by this Court that where the parties have chosen a special form of marriage for themselves and have resided and cohabited together, they are estopped from denying the same to be a valid form of marriage.

In the said scenario, it has been understood that the krewa marriage is a recognized form of remarriage practiced primarily in the part of north India



and especially amongst the Jat Community in the States of Punjab, Haryana and Rajasthan, which allows a widow to remarry within the family of her deceased husband and more often to his brother or his near male relative. The said practice has a wide social acceptability and aims to provide social security to the widow while keeping property and familial responsibility within the family. Thus, even though the Hindu Marriage Act, 1955 does not exclusively recognize or regulate the krewa marriages as a separate form of marriage, however, a co-joint reading of Sections 5 and 7 of Hindu Marriage Act, 1955 establishes that a marriage, which has a customary practice and social acceptability and is performed in a socially acceptable norm, would have the sanctity and callings of a valid marriage.

Once the krewa marriage fulfills such requirements under the Hindu Marriage Act, 1955 such as having been performed with free consent and neither party had a living spouse at the time of the marriage and the parties did not suffer from any disqualification of performance of marriage and fulfilled the statutory age of performance of marriage, the marriage shall have all the callings of a valid and enforceable marriage.

The customary practices having been recognized in the Indian Personal Law jurisprudence, validity of krewa marriage has largely been upheld where the same is supported by local customs of the community in which the practice is prevalent.

The reference may also be made to the judgment in the matter of ***Harjit Kaur Versus State of Punjab and Others*** reported as **2013 SCC Online**



P&H 7595 wherein the Punjab and Haryana High Court accepted the krewa marriage for acknowledging the inheritance rights of the claimants.

Now adverting to the judgment in the matter of **Shanti Devi (Supra)**, cited by the counsel for the petitioner, it is evident from a perusal of the same that the said judgment was passed in the context of service law, where the benefit of family pension was given to the widow after demise of her husband, who was working in Irrigation Department of Haryana. A complaint was lodged by the *Dewar* (younger brother of the deceased husband) about her remarriage. It was submitted by the petitioner that there was a litigation pending between her son and the complainant/brother-in-law regarding a separate plot and that the complaint in question had been filed in a bid to grab the said plot. The inquiry into the allegations was conducted and a report was filed by the officials therein that the petitioner had not remarried after the death of her husband and that she had not performed the krewa marriage. The family pension was, however, still discontinued notwithstanding the report of the SDM concerned about the petitioner having not been remarried. Thus, the facts of the said case are not applicable to the facts and circumstances of the present case. Otherwise also, the entitlement of the family pension under Service Law is an altogether separate proposition of law as compared to the provisions of grant of financial assistance under the Social Security Scheme. The grant of family pension to a widow, despite remarriage, is under service law and is in the nature of a right of inheritance and the same cannot be taken away. As compared to the same, the financial assistance under the said Social Security Scheme is not a



right which vests in a person. The eligibility conditions for availing benefits under a Financial Assistance Scheme are required to be continued for the entire duration, for which the benefit under the said scheme is being availed. Service Law Jurisprudence does not mandate the continuation of the same status for claiming the benefit since the right to claim the widow pension accrues in favour of the widow on occurrence of a specific event i.e. death of her husband and does not require continuity of the same status.

It is thus apparent that the reference to the said judgment is misplaced and is not based upon the understanding the conceptual difference between the death-cum-retirement benefit vis-a-vis the Financial Assistance Scheme of the State Government.

Similarly, the judgment dated **22.04.2014** passed in the matter of ***Ram Rati Devi Versus State of Haryana and Others*** also relates to the grant of family pension. The same thus needs no further elaboration. It appears that the abovementioned judgments have been cited by the counsel for the petitioner by reading the title head “Pension” and without examining the applicability thereof.

For the grant of financial assistance under the Social Security Scheme, a widow claiming benefit, is required to establish that she fulfilled the eligibility conditions for the entire duration for which the financial assistance has been availed by her. As soon as the disqualification or ineligibility is acquired, the financial assistance under the Welfare Scheme is liable to be stopped.



Further, where a benefit has been obtained by suppression of true facts, recovery rights have been granted to the State Government. It is also noticed that the petitioner does not dispute having performed a krewa marriage with Buja Ram and that four children have also been born out of the said relationship. It is, of course, shocking for this Court that a woman would give primacy to her widowhood and empress her krewa marriage to be an invalid marriage, merely for seeking financial assistance meant for welfare of the widow women.

For the foregoing reasons, I find that there is no illegality in the order passed by the respondents directing the petitioner to deposit the amount of financial assistance obtained by her towards widow pension by suppressing true and correct facts about her marital status.

The present petition is devoid of merit and is accordingly dismissed.

14.11.2024.
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(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No