

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-F-170-2024 (O&M)
Date of order: 12.03.2024

Mange Ram

.....Petitioner(s)

Vs.

Tina

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Abhishek Bansal, Advocate
for the petitioner.

Nidhi Gupta, J.

Challenge in the present revision is to judgment dated 31.10.2023 passed by learned Principal Judge, Family Court, Yamuna Nagar at Jagadhri, whereby petition filed by respondent/wife under Section 125 Cr.P.C. for grant of maintenance has been partly allowed and petitioner/husband is directed to pay Rs.6,000/- per month to the respondent/wife as maintenance and Rs.5,500/- as litigation expenses.

2. Learned counsel for the petitioner inter alia submits that the impugned order is on the face of it unfair and unjust as the petitioner is a labourer and does not have means to pay maintenance as directed. It is further contended that respondent is not the legally wedded wife of the petitioner. It is submitted that petitioner was earlier married to one Rajni. No child was born out of the said wedlock. However, said Rajni died in 2017. Thereafter, the petitioner solemnized marriage with one Asha Rani in January, 2018. No child was born out of the said wedlock either. It is submitted that thereafter without getting divorce from the said Asha Rani,

who is still alive, the petitioner entered into contract marriage with the respondent on 08.06.2018. As per the terms and conditions of the contract, the respondent had to take care of the petitioner and his father for which the petitioner agreed to maintain the respondent and her children born from her first marriage. It is further stated that the alleged marriage between the petitioner and respondent was never consummated. It is submitted that accordingly, any alleged marriage between the parties is null and void ab initio and thus, there is no question of seeking maintenance from the petitioner, and therefore, petition of the respondent under Section 125 Cr.P.C. was not maintainable.

3. No other argument is made on behalf of the petitioner.

4. I have heard learned counsel for the petitioner and perused the case file in detail.

5. Perusal of record of the case shows that it was pleaded on behalf of the respondent before the learned Family Court that the marriage between the parties was solemnized on 08.06.2018 as per Hindu rites. In the marriage, all the household articles, clothes, jewelry and valuable gifts were given by the mother and sisters of the respondent to the petitioner. It is claimed that Mother of respondent had spent Rs.10 lacs in the marriage. After marriage, petitioner and respondent cohabited as wife and husband and though the marriage was consummated, no child was born out of the wedlock. Prior to her marriage with the petitioner, respondent was married with Sandeep Kumar son of Shri Jai Singh, on 17.11.2007. Out of the said marriage, first child was born on 26.11.2008.

On 02.02.2016, Sandeep Kumar i.e. first husband of respondent died in a

motor vehicle accident, while respondent was pregnant. After the death of Sandeep Kumar, respondent gave birth to 2nd child on 17.09.2016. It has been pleaded that first wife of petitioner namely Rajni died without giving birth to any child. Further, it has been pleaded that the petitioner was made aware of the factum of previous marriage of respondent and he and his family members whole heartedly accepted the said scenario and agreed for the marriage.

6. It has further been pleaded that after marriage on 08.06.2018, an agreement regarding the marriage was prepared, which was signed by the parties to the marriage, and petitioner and respondent i.e. parties to the marriage also executed affidavits, which were got attested from Ms. Anita Sharma, Advocate/Notary Public, Jagadhri. It has been pleaded that petitioner had also agreed to accept and adopt the minor children of the respondent, and undertook to nourish and educate them, and to bear all their expenses.

7. Be that as it may, perusal of the impugned judgment shows that the learned court below has returned the findings of fact that the petitioner had never pleaded in his reply that he was married to one Asha Rani, who was still alive, and therefore his marriage to the respondent was null and void. On the contrary, as per the agreement (Ex.P1/Ex.P5) entered into between the parties, not only is there no mention of Asha Rani, in fact, it has been stated by the petitioner that keeping their good interest in mind, and without any pressure from anyone, he is entering into marriage with the respondent as per Hindu rites and ceremonies, and the parties have accepted each other as husband and wife.

8. Besides that, the petitioner has also admitted in his affidavit of assets and liabilities that he owns 3 1/2 acres of agricultural land. It is in the circumstances that the respondent has been granted the impugned maintenance.

9. The relevant findings of the learned Court below in this regard are as under:-

“19. In view of these respective contentions, let us first examine as to whether petitioner No.1 is legally wedded wife of the respondent. Contention of respondent as already stated is that his marriage with petitioner No.1 was only a contract marriage in the sense that it was agreed that if she will co-habit/reside with him, and will take care of him and his father, he will maintain her and her children (born from her first marriage with Sandeep Kumar). He has not whispered even a single word in his reply to the petition that his marriage with petitioner No.1 is void because he was already married to one Asha Rani resident of Solan (Himachal Pradesh), (who was alive at the time of his alleged marriage with petitioner No.1), and that he solemnized marriage with petitioner No.1 without obtaining divorce from the said Asha Rani. So, he has tried to take benefit of his own wrong, and that too by pleading the said state of affairs in his affidavit, which he tendered in his examination-in-chief. It was not at all his contention in the written statement/reply to the petition that his marriage with petitioner No.1 is void as he had a living spouse at the time of alleged marriage with petitioner No.1, and since that is so, therefore the said averment regarding his marriage with Asha Rani, and his alleged act of entering into marriage/contract with petitioner No.1 without obtaining divorce from Asha Rani, cannot be taken into account, so as to put petitioner No.1 to disadvantage, being beyond pleadings. Not only that, though respondent himself is relying upon agreement regarding

marriage, which is on record as Ex.P1/Ex.P5, on the basis whereof he is alleging that it was only a sort of contract between him and petitioner No.1, where under she was to reside with him, to take care of him and his father and to give him physical comforts, but even in the said agreement there is no mention about any Asha Rani, who as per respondent was alive at the time of his so called marriage with petitioner No.1. Further, in the agreement Ex.P1/Ex.P5 (which has not been denied by the respondent, and which infact has been admitted in para No.5 of the reply filed by the respondent) there are clear recital to the effect that "Ab Hum Freekainbala Ne Apna Bhla-Bura Sochte Hue Hindu Riti-Riwaj Ke Anusar Aaj Dinak 08.06.2018 Ko Yamuna Nagar Mein Apni Ichha Marji Se Bina Kisi Dabav Shadi Kar Li Hai Aur Ek Dusre Ko Pati Patni Ke Roop Mein Savikar Kar Liya Hai Jo Ki Aaj Se Hum Dono Batoor Pati-Patni Ho Chuke Hai." Further, in the affidavit of respondent-Mange Ram (Ex.P6), which has been got duly proved by the petitioner No.1 by getting examined Ms. Anita Sharma, Advocate and Notary Public, District Courts, Jagadhri, there is clear recital to the effect that "Ab Mujh Shapathkarta Ne Smt. Tina Se Hindu Riti Riwaj Ke Anusar Yamuna Nagar Mein Aaj Dinak 08.06.2018 Ko Prem Vivah Kar Liya Hai Jo Shadi Meri Marji Se Hui Hai Mere Upar Kisi Parkar Ka Koi Dabav Nahi Hai." Further, there are on record certain photographs (Ex.P8 to Ex.P14), wherein parties i.e. petitioner No.1 and respondent can be seen garlanding each other, taking blessings from elders, performing other ceremonies, which have not been disputed by the respondent, and which infact have been admitted by him during his cross-examination.

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26. Now, let us discuss the aspect of quantum of maintenance. Petitioner No.1/wife in her petition has submitted that she has no source of income to maintain herself and she is totally at the mercy of her parents since 03.12.2018. She has submitted that

respondent is an able bodied person, is owner of 6/7 acres of agricultural land, is also into property dealing, and from these sources he is earning Rs.1 lac per month. In her affidavit of assets and liabilities, she has mentioned the same things. Respondent, on the other hand in his written statement has mentioned that petitioner No.1 is doing knitting and stitching work, and is earning more than Rs.10,000 per month. Further, he has stated that it is wrong to allege that he owns 6/7 acres of agricultural land, and is doing property business, and that from these sources he is earning Rs.1 lac per month. He has stated that he is just a casual labour, earning Rs.5,000/6,000 per month. In his affidavit of assets and liabilities, he has stated that he is an agriculturist, and he owns 3½ acres of agricultural land.

27. There is no material on record that petitioner No.1 has any source of income, as has been alleged by the respondent, and therefore her earnings are to be taken as 'Nil'. There is also no material on record to gauge that respondent is earning Rs.1 lac per month by doing the business of property dealing, and by cultivating 6/7 acres of agricultural land, as has been alleged by petitioner No.1. Under normal circumstances, this Court in the absence of any positive material regarding income and occupation of the respondent would have taken his monthly income equivalent to the monthly minimum wages earned by a daily wager i.e. Rs.12,000/Rs.13,000 per month, but here respondent himself in his affidavit has stated that he owns 3½ acres of agricultural land, and in these circumstances, it will not be fair to equate him with a monthly wager or a casual labour so as to take his income as Rs.12,000/Rs.13,000 per month."

10. Learned counsel for the petitioner is unable to dispute the above said findings of the learned Court below.

11. In view of the above, I find no ground is made out to interfere in the impugned order dated 31.10.2023. Present petition accordingly stands **dismissed**.
12. Pending application(s) if any also stand(s) disposed of.

12.03.2024
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No