

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.857 of 2018

Arising Out of PS. Case No.- Year-1111 Thana- District-

Devesh Malviya Son of Late Anjani Kumar Malviya @ Anjani Kumar,
Resident of Mahalla-Gyanpur Road, S.R.D. Nagar, P.S.- Gyanpur, Dist.-
Bhandoi, Uttar Pradesh.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sangita Devi @ Gudiya, Wife Of Kanhai Chaudhary, D/O Rajendra Sah.
Resident Of Village- Koyali, P.S.- Nanpur, District- Sitamarhi, At Present
Address As Resident Of Village- Nagar Panchayat Janakpur Road Pupari
Ward No. 10, P.S. Pupari, District- Sitamarhi. Puja Pallavi, D/O Shri
Baidyanath Sharma, Resident Of Village- Andar Quila, Konhara, P.S.-
Hajipur Town, District- Vaishali
3. Rajlaxmi D/O Kanhai Chaudhary Resident Of Village- Koyali, P.S.- Nanpur,
District- Sitamarhi, At Present Address As Resident Of Village- Nagar
Panchayat Janakpur Road Pupari Ward No. 10, P.S. Pupari, District-
Sitamarhi. Puja Pallavi, D/O Shri Baidyanath Sharma, Resident Of Village-
Andar Quila, Konhara, P.S.- Hajipur Town, District- Vaishali

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Gauri Shankar Thakur, Advocate
For the Respondent/s	:	Mr. Ram Bilash Roy Raman, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 06-02-2024 Heard learned advocate for the petitioner and learned
Additional Public Prosecutor for the State.

2. It is submitted on behalf of the petitioner/husband
that the opposite party no.2 filed an application under Section
125 of the Cr.P.C. claiming herself to be his legally married
wife. The petitioner has not disputed that her marriage was
solemnized on 21.06.2014 at Bindhyawasini Temple, Mirzapur
(U.P.) under Hindu Rites and Customs. Subsequently, the
petitioner came to know that at the time of marriage, the



opposite party no.2 had a subsisting marriage with one Santosh Kumar of village -Narainpur in the District of Vaishali. The said Santosh Kumar filed a suit for divorce being Divorce Suit No. 364 of 2006.

3. It is submitted on behalf of the petitioner that on the date of marriage, the above mentioned matrimonial suit was pending. The opposite party no.2 did not take any attempt to get herself divorced before her marriage with the petitioner. Therefore, so called marriage between the petitioner and the opposite party no.2 is not maintainable under the Hindu Marriage Act. It is also contended on behalf of the petitioner that the petitioner resides in Uttar Pradesh, it was not possible for him to appear regularly in the maintenance case and the Trial Court passed an ex-parte order directing the petitioner to pay maintenance at the rate of Rs.5,000/- per month in favour of the opposite party no.2. However, fact remains that the opposite party no.2 entered appearance in the said maintenance proceeding. He took part in reconciliation but he was obstructed, prevented and harass by the family members of the opposite party no.2. A case under Section 498A of the I.P.C. was filed against him, he faced incarceration in the said case and thereafter, did not dare to contest the instant revision.

4. Be that as it may though, this Court is aware of the fact that in a maintenance proceeding strict proof of marriage is



not necessary but if a marriage is void abinitio because of the fact that the opposite party no.2 had a subsisting marriage and at the time of marriage with the petitioner her spouse living, the second marriage cannot be held to be a valid marriage. The learned Trial Judge failed to considered the said aspect of the matter.

5. Since, the opposite party no.2 is afraid to appear before the Trial Court. If any, application is made before the local police authority, the petitioner will be given witness protection by the jurisdictional police station. The learned Trial Judge shall decide the issue as to whether the marriage between the parties is legal and valid or void abinitio.

6. On determination of such fact, the learned Trial Court shall reconsidered the case.

7. For the reasons stated above, ex-parte order passed by the learned Trial Judge is set aside and quashed. The instant revision is allowed.

8. The petitioner is directed to act on the server copy of the order and the Trial Court is directed to dispose of the entire proceeding within six months from the date of this order.

(Bibek Chaudhuri, J)

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