

Jagdish Vs. Shobha

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Court : Mumbai

Decided On : Feb-10-2006

Reported in : 2(2006)DMC307

Judge : R.C. Chavan, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 5; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 125 and 482; Indian Penal Code (IPC) - Sections 109 and 494

Appeal No. : Criminal Application No. 1483 of 2001

Appellant : Jagdish

Respondent : Shobha

Advocate for Def. : A.M. Quazi, A.P.P.

Advocate for Pet/Ap. : G.G. Bade, Adv.

Disposition : Application dismissed

Judgement :

R.C. Chavan, J.

1. By this application under Section 482 of the Code of Criminal Procedure, the applicant challenges the order passed by learned Additional Sessions Judge, Bhandara in Criminal Revision No. 49/1997, directing the applicant to pay

maintenance allowance at the rate of Rs. 400 per month to the non-applicant.

2. The facts, which gave rise to the present proceeding are as under:

Non-applicant Shobha Nandeshwar claims to have been married to applicant Jagdish after she had carried the applicant's child in her womb. Since, the applicant neglected and failed to maintain her, in spite of the fact that he owns four acres land and also earns Rs. 50 per day from agricultural labour, the said Shobha filed an application under Section 125 of the Code of Criminal Procedure before the learned Judicial Magistrate, First Class, Sakoli. She claimed maintenance allowance at the rate of Rs. 500 per month from applicant Jagdish.

3. Jagdish filed reply, denying that Shobha was married to him as per the customs or the prevalent rites applicable to the Buddhists. He denied having consented to any such marriage, though he admitted that Shobha was carrying pregnancy of nine months and also that she had given report to Police Station Arjuni Morgaon against Jagdish. He also admitted that Shobha had delivered a child in a hospital at Nawegaon Bandh and that the child died. He claimed that he was a teenage student of Junior College and, therefore, neither possessed any means nor any income, to be able to pay any maintenance to Shobha.

4. Upon consideration of the evidence tendered before him, the learned Judicial Magistrate, First Class, Sakoli rejected the application of Shobha for grant of maintenance, holding that the marriage was not proved. When Shobha took the matter in revision before the learned Additional Sessions Judge, the learned Additional Sessions Judge reversed the order passed by the learned Magistrate, holding that the marriage was proved and that Jagdish was liable to pay maintenance at the rate of Rs. 400 per month to Shobha. Aggrieved thereby, Jagdish has preferred this application.

5. I have heard the learned Counsel for applicant Jagdish and also learned Counsel for non-applicant Shobha.

6. Relying on the decision of this Court in *Babi w/o Jayant Jagtap v. Jayant Mahadeo Jagtap and Ors.* reported at 1981 Mh. L.J. 614 the learned Counsel for

applicant Jagdish stated that customary ceremony of Buddhist marriage enumerated in the aforesaid judgment had not been proved to have been followed in the present case. Therefore, according to him, the learned Trial Magistrate had rightly concluded that the marriage was not proved. The learned Counsel assailed the finding of the learned Additional Sessions Judge that the law does not require strict proof of ceremonies and rites of the marriage for the purpose of invocation of jurisdiction under Section 125 of the Code.

7. The learned Additional Sessions Judge had observed that some sort of ceremony and formalities were observed by the parties at the time of marriage and, therefore, it was a valid marriage for the purpose of Section 125 of the Code. The learned Judge had observed that unless the provision of Section 5 of the Hindu Marriage Act is shown to have been violated, the marriage would not be void and since, such was not the present case, the marriage was valid, entitling Shobha to maintenance allowance.

8. The contention of the learned Counsel for the applicant that the ceremonies referred to in *Babi w/o. Jayant Jagtap v. Jayant Mahadeo Jagtap and Ors.*, have not been proved has to be rejected because the decision in *Babi w/o. Jayant Jagtap v. Jayant Mahadeo Jagtap and Ors.*, came in the context of the offence punishable under Section 494 r/w 109 of the Penal Code. In that case, the complainant alleged that she was married to accused according to the Buddhist rites, which she had described in her complaint. It was the allegation of the complainant that during the subsistence of said marriage accused No. 1 had married accused No. 2 and, therefore, an offence punishable under Section 494 of the Penal Code had occurred. In that context the Court examined customary form of Buddhist marriage, which had evolved over 25 years ago. Now, since the form of marriage evolved 25 years ago as discussed in the aforesaid judgment, is on the basis of evidence tendered in the said case, and not after taking evidence as to what was the custom in the community, it may be appropriate to hold that there could be minor variations, here and there, according to the local usage so long as essentials of taking vows of marriage in the manner described in *Babi w/o. Jayant Jagtap v. Jayant Mahadeo Jagtap and Ors.*, are followed.

9. In this case, the evidence tendered by the applicant would show that Jagdish had tied marriage necklace and also applied vermilion on Shobha's forehead in the presence of several others, excepting her father. Witness Radheshyam had stated that marriage had taken place at Buddha Vihar and both the parties were sitting on chairs and that 100 to 150 people had gathered. One Ramesh Sahare read 'Ashtagatha' and the parties garlanded each other. Thus, the fact that parties had accepted each other as husband and wife, in the presence of people, has been sufficiently established. The standard of proof of marriage for the purpose of proving an offence would obviously be stricter than that for the purpose of proving liability to pay maintenance.

10. The learned Counsel for non-applicant Shobha submitted that for the purpose of grant of maintenance under Section 125 of the Code of Criminal Procedure, it should be enough, if the Magistrate is prima facie satisfied about the marital status of the parties and that final decision about the status may be left to the Civil Court. For this purpose, he relied on the decision of the Supreme Court in Santosh w/o Naresh Pal v. Naresh Pal reported at 1999 (2) Mh. L.J. 262

11. The finding recorded by the learned Additional Sessions Judge duly takes into consideration all the relevant facts regarding marital status of the parties. The contentions of the learned Counsel for the applicant that the learned Additional Sessions Judge erred, first in holding that the marriage was proved and secondly, in treating the revision petition as appeal, has to be rejected because it may be seen that though the marriage certificate was sought to be tendered before the learned Additional Sessions Judge, he had not taken it into consideration, holding that it should have been produced before the Trial Court. Therefore, since findings recorded by the learned Additional Sessions Judge are not shown to be, in any manner, erroneous on their face and since they are neither perverse nor improbable, no interference is called for in exercise of inherent jurisdiction of this Court.

In view of this, this application is rejected.