

**Shankar Singh Vs. State of U.P.**

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**SooperKanoon Citation :** [sooperkanoon.com/463446](http://sooperkanoon.com/463446)

**Court :** Allahabad

**Decided On :** Dec-19-1994

**Reported in :** I(1995)DMC499

**Judge :** N.B. Asthana, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125

**Appeal No. :** Cr. Revision No. 787 of 1993

**Appellant :** Shankar Singh

**Respondent :** State of U.P.

**Disposition :** Revision dismissed

**Judgement :**

**N.B. Asthana, J.**

1. This revision by the husband has been directed against the judgment and order dated 7.7.1993 passed by Vth Additional Sessions Judge, Bijnor in Criminal Revision No. 287 of 1991 (Smt. Shobha Rani v. Shankar Singh and Anr.) setting aside the order dated 26.10 91 passed by Additional Chief Judicial Magistrate, Nagina, Bijnor in Misc. Case No. 37 of 1990 under Section 125 Cr.P.C. and granting maintenance allowance at the rate of Rs. 200/- per month to opposite party No. 2, Smt. Shobha Rani, from the date of application.

2, Application under Section 125 Cr.P.C. was filed upon the allegation that Smt. Shobha Rani was married to Shankar Singh on 4th May, 1985 at Nagina. Immediately after the marriage, she came to know that her husband had earlier married to one Smt. Adesh Kumari. She enquired about it from him whereupon he replied that Smt. Adesh Kumari was married to one Rajesh Kumar of Nangal and that she was not his wife. However, on 25.8.1985, her husband came alongwith Smt, Adesh Kumari and told her that she was her first wife, that he has brought her from Nai Basti. Bijnor and that she would now live in the house alongwith them and that she will have to serve Smt. Adesh Kumari. The applicant protested and told him that he had earlier told her that he had not married any other women whereupon Shankar Singh Verma became annoyed, beat her and turned her out of the house. She claimed maintenance allowance at the rate of Rs. 500/-per month stating that Shankar Singh Verma is employed in Janpriya Insurance Company, Bijnor and is earning Rs. 1,000/-per month.

3. Shankar Singh contented the application. He denied her marriage with the applicant and all the other allegations made in the application. He stated that Smt. Adesh Kumari is his legally wedded wife and therefore no question of his marrying the revisionist arises. He also stated that after deductions he is getting Rs. 544/-per month as salary and he is not in a position to pay the maintenance allowance. He further stated that some of his relations wanted to marry him a second time but when Smt. Adesh Kumari came to know about it, she filed Suit No. 175 of 1985, in which, injunction order was passed on 2.5.1985 restraining them from marrying. The applicant in support of her case examined herself and P.W. 2, Rameshwar Prasad. Both of them in their examination-in-chief supported the applicant's version of the case. The opposite party No. 2 did not adduce any evidence defence.

4. The Trial Court came to the conclusion that Shankar Singh had earlier married Smt. Adesh Kumari and therefore his second marriage with the applicant was void and as such she was not entitled to claim any maintenance allowance and therefore the application was dismissed. Smt. Shobha Rani filed Criminal Revision No. 287 of 1991, which was allowed. The maintenance allowance was granted to her at the rate of Rs. 200/- per month from the date of application. The Revisional

Court held that Shankar Singh failed to prove that Smt. Adesh Kumari was his legally wedded wife and as such his marriage with Smt. Shobha Rani was not null and void and she was entitled to maintenance. The husband has now come to this Court in revision.

5. The first point urged is that it has not been proved that Smt. Shobha Rani was married to the revisionist. In this respect the statement of Smt. Shobha Rani and that of the witness examined by her clearly go to indicate that the marriage had taken place. P.W. 2, Rameshwar Prasad in his statement has clearly described as to how the marriage ceremony was performed at the time of marriage. He has clearly stated that Saptapadi was performed. He also described in short the ceremonies which were performed as required Hindu Religion at the time of marriage. No woman would have alleged her marriage with a person with whom she was not married. There is nothing on record to indicate as to why she would have made such a wrong allegation.

6. The Trial Court was of the opinion that Smt. Shobha Rani admits that Shankar Singh was married to Smt. Adesh Kumari and therefore her marriage with Shankar Singh is void. There is nothing on the record to indicate that Smt. Shobha Rani admitted the marriage of Smt. Adesh Kumari with Shankar Singh. She has simply stated that after marriage Shankar Singh denied that he had married Smt. Adesh Kumari and then on 25.8.1915 he brought Smt. Adesh Kumari. There is no admission of Smt. Shobha Rani regarding the marriage. No evidence has been adduced on behalf of Shankar Singh in this respect. The findings of the Trial Court that Smt. Shobha Rani admits the marriage of Shankar Singh with Smt. Adesh Kumari is perverse and not supported by any evidence on record and therefore the Revisional Court was justified in coming to the conclusion that the marriage of Shankar Singh and Smt. Adesh Kumari has not been proved.

7. It was next urged that from the statement of P.W. 2. Rameshwar Prasad it would clearly appear that at the time of marriage it was brought to the notice of Smt. Shobha Rani that Shankar Singh had married earlier. In his cross-examination Rameshwar Prasad gave out that when this information reached Smt. Shobha Rani, the marriage had already taken place. It appears that on that basis it

is stated in the application under Section 125 Cr.P.C. that the applicant immediately after the marriage enquired from Shankar Singh thereupon he told that this story is false. It cannot, therefore, be said that Smt. Shobha Rani knew about the marriage of Shankar Singh with Smt. Adesh Kumari before her marriage. Had she come to know of this marriage then I do not think in the ordinary course she would have married him.

8. It was also urged that the stay order passed in Suit No. 175 of 1985 was duly served and executed. If it was so then Sankar Singh would not have gone through the marriage with Smt. Sobha Rani. In para-7 of the ground of Revision, it is stated that the injunction order was obtained against solemnisation of marriage between the revisionist and the opposite party No. 2 namely Smt. Shobha Rani. The stay order appears to be received after marriage was solemnized.

9. No-specific plea has been taken on the grounds of revision that the revisionist is not in a position to maintain his wife nor it is stated that Smt. Shobha Rani is in a position to maintain herself. The maintenance allowance at the rate of Rs. 200/- per month cannot be said to be excessive. Rather it would be in-sufficient for Smt. Shobha Rani to keep her body and soul together in these hard days. It has also not been challenged in the grounds of revision that the maintenance allowance could not have been granted from the date of application. The Revision has no force and is dismissed. The stay order granted on 10.11.1993 is vacated.