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Balwinder Singh Vs. Manjit Kaur

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Court : Punjab and Haryana

Decided On : Oct-01-1994

Reported in : I(1994)DMC435

Judge : H.S. Brar, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 125 and 482

Appeal No. : C.M. No. 8017-M of 1991

Appellant : Balwinder Singh

Respondent : Manjit Kaur

Advocate for Def. : Sunil Gaur, Adv.

Advocate for Pet/Ap. : B.S. Walia, Adv.

Disposition : Petition allowed

Judgement :

Harphul Singh Brar, J.

1. This is a petition under Section 482 of the Code of Criminal Procedure, praying for quashing of the petition filed by respondent Manjit Kaur under Section 125 of the Code of Criminal Procedure annexed as Annexure P-1 with this petition.

2. In her petition under Section 125 of the Code for grant of maintenance, respondent Manjit Kaur alleged that petitioner Balwinder Singh Bedi's first marriage was dissolved by a decree of divorce, dated May 29, 1915 vide judgment of Shri G.S. Chahal, District Judge, Amritsar under Section 13B of the Hindu Marriage Act. She further alleged in her application that Balwinder Singh Bedi (petitioner in this case) and his parents falsely represented to her and to her parents that the petitioner had got divorce from his former wife Tajinder Kaur, daughter of Ajit Singh Sodhi, a resident of Chandigarh and deceitfully persuaded her and parents to soleminise her marriage with the petitioner. Their such representation to her and to her parents was false as it was in their knowledge that divorce proceedings for dissolution of the earlier marriage by Balwinder Singh Bedi with Tajinder Kaur were still pending in the Court of District Judge, Amritsar, at that time. The complaint and her parents not being aware of the act of deception played on the by Balwinder Singh Bedi and his parents, accepted the proposal for solemnisation of the marriage of Manjit Kaur with Balwinder Singh Bedi placing full reliance on the version as given out by them, and their accomplices. The marriage took place between the respondent and Balwinder Singh Bedi at Amritsar on August 24, 1986 according to Sikh religious rites.

3. It is then alleged in the application that Balwinder Singh Bedi with fraudulent intention to deceive went through the ceremony of being married her by wilfully concealing from the applicant-respondent the fact of his former marriage being intact and not having been dissolved. The applicant respondent stated that the second marriage of Balwinder Singh Bedi was void for reason of its taking place during the life of his former wife Tajinder Kaur and the earlier marriage had not been declared void by a Court of competent jurisdiction. Balwinder Singh Bedi disclosed to her for the first time that his former marriage with Tajinder Kaur was dissolved on July 16, 1987 and that his marriage with respondent Manjit Kaur which had been solemnised prior to the dissolution of the former marriage with Tajinder Kaur was quite illegal, and, as such, she could not legally prove or claim the status of a wife of respondent-petitioner. It is then stated in her application under Section 125 of the Code that she took refuge in her parental home at Amritsar, in August, 1989, to escape from the perpetual state of tyranny at the hands of Balwinder Singh Bedi and his parents, and was not possessed of any

property, movable or immovable, nor did she have any independent source of income for her support and maintenance. On the other hand, the respondent-petitioner was holding in executive post in the Punjab Civil Secretarial, Chandigarh, and was drawing quite a good salary which exceeded Rs. 3,500/- per month. In these circumstances, she had prayed for grant of Rs. 500/- per month for her support and maintenance from Balwinder Singh Bedi petitioner Under Section 125 of Code of Criminal Procedure.

4. The petitioner wants the quashing of application of Manjit Kaur respondent under Section 125 of the Code of Criminal Procedure, on the following grounds :--

(i) that a bare perusal of the application of respondent Manjit Kaur annexed as Annexure P 1 with the petition reveals that the basic requirement of Section 125 of the Code of Criminal Procedure of the respondent being a 'wife' which terms denotes a legally wedded wife, is not made out, because the main case of the respondent was that her alleged marriage took place with the petitioner when petitioner's earlier marriage was still subsisting. The term 'wife' includes a legally wedded wife and also the one who has been divorced, but it does not include a woman who cannot lay claim to the status of a legally wedded wife. The respondent herself admits that the she was married to the petitioner when his earlier marriage with one Tajinder Kaur was existing;

(ii) that initiation of proceedings under Section 125 of the Code of Criminal Procedure will, thus, be nothing except an abuse of process of the Court.

5. After hearing the learned Counsel for the parties, I am of the considered view that this petition needs acceptance. It is an admitted fact and is amply borne out from the record that the alleged marriage of Manjit Kaur respondent with Balwinder Singh Bedi petitioner took place when the latter was already lawfully married with one Tajinder Kaur and that marriage was still subsisting. It has been authoritatively hele by the Apex Court that the marriage of a woman in accordance with the Hindu rites with a man having a living spouse is a complete nullity in the eye of law and she is not entitled to the benefit of Section 125 of the Code of Criminal Procedure. In the case in hand, the alleged marriage of Manjit Kaur was solemnised with Balwinder Singh Bedi on August 24, 1986, that is, when Balwinder Singh Bedi was

already married with one Tajinder Kaur and that marriage was still subsisting. This factual position has not been questioned by either party. My above view is fortified by the observations of their Lordships of the Supreme Court in Smt. Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and Anr., 1988 (1) Recent C.R. 322. It has been held therein that if the husband contracts second marriage after coming into force of the Hindu Marriage Act, 1955 and his first wife is still alive, second marriage is null and void and no decree of the Court is required for the purpose of holding it null and void as such. In these circumstances, it has been held in Smt. Anantrao Adbav's case (supra) that the second wife is not entitled to any maintenance under Section 125 of the Code of Criminal Procedure.

6. In this view of the matter, this petition is allowed and the application filed by the respondent under Section 125 of the Code of Criminal Procedure, as also consequent proceedings thereto stand quashed.

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