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Tilak Raj Vs. Usha Rani

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Court : Punjab and Haryana

Decided On : Apr-06-1994

Reported in : II(1994)DMC435

Judge : Harmohinder Kaur Sandhu, J.

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

Appeal No. : Criminal Revision No. 212 of 1993

Appellant : Tilak Raj

Respondent : Usha Rani

Advocate for Def. : B.R. Gupta, Adv.

Advocate for Pet/Ap. : I.P. Singh, Adv.

Judgement :

Harmohinder Kaur Sandhu, J.

1. Usha Rani filed an application under Section 125 of the Code of Criminal Procedure for grant of maintenance at the rate of Rs. 1500/- per month, alleging that her marriage was solemnised with Tilak Raj on Dec. 8, 1986 at Ram Darbar, Chandigarh. After marriage she went with her husband to Sunder Nagar, where she learnt that Tilak Raj was previously married and had children. She was

threatened not to disclose this fact to her parents and relatives. She resided with Tilak Raj as his wife till April, 1987 at Sunder Nagar. She was not treated properly and was subject to beating and abuses as a result of which she lost her mental balance and remained under treatment at P.G.I. Chandigarh. She was unable to maintain herself and Tilak Raj had neglected and refused to maintain her without reasonable cause.

2. The stand taken by the husband in the Trial Court was that no marriage was solemnised nor there was any relationship of husband wife between him and Usha Rani. His wife had died leaving three young children. There was no lady in the house who could take care of the children, as his mother was confined to bed for the last more than 8 years. So Usha Rani was brought to his house by one Manohar Lal Bedi as Sarpanch of Kiratpur Sahib. She was engaged as a maid servant to look after the children.

3. During the pendency of the proceedings Usha Rani filed an application for grant of interim maintenance. Vide order dated 6-1-1993 Judicial Magistrate 1st Class, Chandigarh allowed her interim maintenance at the rate of Rs. 300/- per month. Aggrieved by this order Tilak Raj has filed the present revision petition.

4. I have heard the Counsel for the parties, it was conducted on be-behalf of the revision petitioner that the learned Trial Court had wrongly relied upon the letters Exhibits P/1 to P/3 and a photograph mark A in order to hold that matrimonial tie existed between the parties. In fact Usha Rani in her statement in Court had deposed that no religious ceremonies took place regarding her marriage and only the ceremony of exchanging garlands was performed. It was further contended that a valid marriage could be performed only in two ways i.e. (i) according to Hindu Law certain religious rites have to be performed invoking the fire and performing the Saptapadi around the sacred fire; and (ii) there can be marriage acceptable in law according to customs which don't insist on performance of such rites. There were no averments made in the petition that there was any custom governing the parties by which exchange of garlands could be treated as a valid marriage. Usha Rani thus, had no legal status of a wife and was not entitled to receive maintenance. Marriage not performed according to Hindu Law or custom

lacks legal sanctity. This contention of the learned Counsel for the revision petitioners is quite tenable, but in the present case the letters alleged to have been written by the petitioner to the respondent and photograph mark 'A' Prima facie negatives the petitioner's contention that the respondent was engaged as a maid servant to look after the children. In the return filed by the respondent to the present revision petition it was alleged that marriage of the respondent was performed with the petitioner at Ram Darbar, Chandigarh in accordance with custom and law. At the time of performance of marriage garlands were exchanged between the parties and it could not be believed that the petitioner would garlands the respondent when she was only engaged as a maid servant.

The question whether the respondent is legally wedded wife of the petitioner is to be determined by the Trial Court after the parties led evidence. While disposing of the application for grant of maintenance the learned Trial Court rightly took into consideration the photograph and the letters produced on record. At present the only apprehension on the part of the petitioner can be that in case contention of the husband was proved that Usha Rani was not his legally wedded wife then he might not be able to recover the maintenance amount paid to her. In these circumstances the Trial Court can be directed to pass an appropriate order protecting the rights of the petitioner to recover maintenance in case he succeeded in his plea.

5. As a result the Trial Court is directed to pass an appropriate order protecting the rights of the petitioner to recover maintenance amount paid to Usha Rani by way of interim maintenance in case he succeeded in his plea. The petition is dismissed except to the extent of above direction.

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