

Sukhdev Singh Vs. Chhinder Pal Kaur

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Court : Punjab and Haryana

Decided On : Sep-28-2000

Reported in : II(2001)DMC172

Judge : R.L. Anand, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 4, 5, 9, 11, 12, 12(2), 13, 16, 16(3), 24 and 25; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125 and 488

Appeal No. : Civil Revision No. 45 of 2000

Appellant : Sukhdev Singh

Respondent : Chhinder Pal Kaur

Advocate for Def. : Mr. D.S. Brar, Adv.

Advocate for Pet/Ap. : Mr. Ashok Singla, Adv.

Judgement :

R.L. Anand, J.

1. This is a Civil Revision and has been directed against the order dated 15.11.1999, passed by the Court of Additional District Judge, Muktsar who allowed the application of respondent-Chhinder Pal Kaur under Section 24 of the Hindu Marriage Act and granted Rs. 5,000/- by way of litigation charges besides Rs.

1,000/- per month as maintenance pendents lite.

2. Some facts can be noticed in the following manner. Earlier, Smt. Chhinder Pal Kaur filed a petition under Section 11 of the Hindu Marriage Act against her husband Shri Sukhdev Singh and the said petition was allowed on 18.4.1998. In the said petition, it was alleged by Smt. Chhinder Pal Kaur that Shri Sukhdev Singh had spouse living by the name of Naseeb Kaur at the time of her marriage with Sukhdev Singh and, therefore, marriage between the parties was a nullity. The petition was not contested by Sukhdev Singh, as a result of that ex parte decree was passed on 18.4.1998 and it was held by the Court of Additional District Judge, Muktsar that the marriage between the parties was a nullity under Section 11 of the Hindu Marriage Act and necessary declaration was granted and the petition was allowed. Later on Smt. Chhinder Pal Kaur filed the petition under Section 25 of the Hindu Marriage Act in the Court of Additional District Judge, Muktsar and during the pendency of that petition, she also filed an application under Section 24 of the Hindu Marriage Act and claimed litigation expenses amounting to Rs. 10,000/- besides Rs. 10,000/- per month as maintenance pendente lite.

3. This application was contested by the respondent mainly on the ground that the application under Section 24 of the Hindu Marriage Act, is not legally maintainable so much so even the main petition under Section 25 of the Hindu Marriage Act is not maintainable because the status of the parties as per the own admission of Smt. Chhinder Pal Kaur, was not that of a valid husband and wife because the decree under Section 11 of the Hindu Marriage Act was passed in favour of Chhinder Pal Kaur. The learned Additional District Judge vide impugned order dated 15.11.1999 allowed the application under Section 24 of the Hindu Marriage Act by rejecting the contention of the present petitioner and awarded a sum of Rs. 5,000/- by way of litigation expenses and Rs. 1,000/- per month a maintenance pendente lite.

4. Aggrieved by the order dated 15.11.1999 passed by the learned Additional District Judge, the present revision has been filed.

5. I have heard Shri Ashok Singla, learned counsel appearing on behalf of the petitioner and Shri D.S. Brar, learned counsel appearing on behalf of the

respondent and with their assistance have gone through the record.

6. Learned Counsel appearing on behalf of the petitioner vehemently submitted that since Smt. Chhinder Pal Kaur obtained a decree under Section 11 of the Hindu Marriage Act vide which it was held by the Court that there was never a valid marriage between the spouses because Shri Sukhdev Singh had a spouse living at the time of his marriage with Chhinder Pal Kaur and, therefore, that marriage was a nullity in the eye of law and it will have to be inferred as if the parties were never married in a valid manner. In these circumstances, there was hardly any status of wife upon Smt. Chhinder Pal Kaur, therefore, she had no locus standi to file the petition under Section 25 of the Hindu Marriage Act and similarly, she had no locus standi to file the application under Section 24 of the Hindu Marriage Act.

7. In support of his contention, the learned counsel for the petitioner has relied upon AIR 1988 S.C, 644, Smt. Yamunabai Anantrao Adhav v. Anant Rao Shivram Adhav and another, wherein, the Hon'ble Supreme Court, was pleased to observe as follows :-

'Clause (i) of Section 5 lays down, for lawful marriage, the necessary condition that neither party should have a spouse living at the time of the marriage. A marriage in contravention of this condition, therefore, is null and void. The plea that the marriage should not be treated as void because such a marriage was earlier recognised in law and custom cannot be accepted. By reasons of the overriding effect of the Act as mentioned in Section 4, no aid can be taken of the earlier Hindu Law or any custom, or usage as apart of that Law inconsistent with any provision of the Act. Such a marriage cannot also be said to be voidable by reference to Section 12. So far as Section 12 is concerned, it is confined to other categories of marriages and is not applicable to one solemnised in violation of Section 5 Cl. (i). Sub-section (2) of Section 12 puts further restrictions on such a right. The cases covered by this section are not void ab initio, and unless all the conditions mentioned therein are fulfilled and the aggrieved party exercises the right to avoid it, the same continues to be effective. The marriages covered by Section 11 are void ipso jure, that is, void from the very inception, and have to be

ignored as not existing in law at all if and when such a question arises. Although the section permits a formal declaration to be made on the presentation of a petition, it is not essential to obtain in advance such a formal declaration from a Court in a proceeding specifically commenced for the purpose. The provisions of Section 16 also throw light on this aspect. Section 16(3) prominently brings out the basic difference in the character of void and voidable marriages as covered respectively by Sections 11 and 12. It is also to be seen that while the legislature has considered it advisable to uphold the legitimacy of the paternity of a child born out of a void marriage, it has not extended a similar protection in respect of the mother of the child.'

8. The counsel further supplemented his submission by stating that the observations of the Hon'ble Supreme Court in *Yamunabai's case* (supra) were not taken note of by the High Court in the judgment reported as AIR 1999 Punjab and Haryana 229 : 1998(4) RRR 657 (P&H);, *Devinder Singh v. Jaspal Kaur*. The counsel also placed reliance on a judgment of this Court reported as 1990(2) PLR 97, *Manjit Singh v. Parson Kaur*, Attention of this Court has also been invited to 1993(11) Divorce and Matrimonial Cases 398, *Bhaiyalal v. Phoolwati Bai*, an authority of Hon'ble Madhya Pradesh High Court. Yet my attention has been invited to AIR 1967 Patna 227, *Bansidhar Jha v. Chhabi Chatterjee*. Mr. Singla further relied upon 1985(1) HLR 214, *Smt. Ramvati Gupta v. State of U.P.* and another.

9. On the contrary, learned counsel appearing on behalf of the respondent has relied upon judgment of this Court reported as AIR 1999 Punjab and Haryana 229, *Devinder Singh v. Jaspal Kaur* and submitted that this judgment squarely covers the case of the respondent and this judgment has also taken note of the earlier judgments including that of the judgment of the Hon'ble Supreme Court reported as 1993 AIR SCW 2548 : 1994(1) RRR 574 (SC), *Smt. Chand Dhawan v. Jawahar Lal Dhawan*, 1993(2) Hindu Law Reporter 203. The counsel for the respondent submitted that the judgment of this High Court, namely, *Devinder Singh's case* (supra) is again based on a judgment of the D.B. of the Bombay High Court reported as 1987(2) Hindu Law Reporter 343 : AIR 1987 Bombay 182. Mr. Brar, learned counsel for the respondent further submits (that the case which has been

relied upon by the learned counsel for the petitioner is mainly under the provisions of Section 125 of the Code of Criminal Procedure or under Section 488 of the Code of Criminal Procedure (old).

10. I have considered the rival contentions of the learned counsel for the parties and am of the considered opinion that the case law which has been relied upon by the counsel for the petitioner is safely distinguishable.

11. Let us see the basic provisions which have been incorporated in the Hindu Marriage Act in this regard. Section 25 of the Hindu Marriage Act lays down that 'any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding (the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.'

12. While incorporating these provisions in the Act, the Legislature always wanted to secure the interest of female spouse by liberally using the word 'husband' or 'wife'. Otherwise, the very purpose of providing shelter to a woman will be defeated. The Legislature in its wisdom, if wanted to defeat the rights of a woman who has secured a decree under Section 11 of the Hindu Marriage Act, could conveniently say that 'any decree other than the decree obtained under Section 11 of the Hindu Marriage Act'. The moment the proceedings are launched under Section 25 of the Hindu Marriage Act, by a husband or by a wife in order to get the maintenance even after the passing of the decree, Section 24 of the Hindu Marriage Act will come into play as I will presently try to show.

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14. The proceedings under Section 24 of the Hindu Marriage Act are nothing but incidental proceedings to the main decree. By virtue of Section 11 of the Hindu Marriage Act, the status of Hindu Marriage Act and wife has been determined and severed between the petitioner and the respondent and in this view of the matter, the respondent Smt. Chhinder Pal Kaur had every right to file a petition under Section 25 of the Hindu Marriage Act. Since those proceedings are under this Act, therefore, she had the locus standi to file the petition under Section 24 of the Hindu Marriage Act.

15. Here, I consider my duty to discuss the case law which has been relied upon by the counsel for the petitioner. The star judgment relied upon was AIR 1988 S.C. 644, Smt. Yamunabai's case (supra), where the Hon'ble Supreme Court was interpreting the word 'wife', as expressed in Section 125 of the Code of Criminal Procedure and, therefore, their Lordships were pleased to observe that expression 'wife' means legally wedded wife and marriage of a woman with a man already having living spouse as per Hindu rites, is complete nullity and she is not entitled to maintenance under Section 125 of the Code of Criminal Procedure.

16. In fact, their Lordships never said that in such a -circumstance the petition under Section 25 of the Hindu Marriage Act is not legally maintainable or that she cannot file the application under Section 24 of the Hindu Marriage Act. The judgment of this Court reported as AIR 1999 Punjab and Haryana 229, has taken note of a Division Bench decision of Bombay High Court in which the similar proposition of law has been laid down, which was laid down by the Hon'ble Supreme Court.

17. In this view of the matter, I am not in a position to endorse the arguments and submissions raised by the learned counsel for the petitioner. Therefore, I hold that

respondent has locus standi to file a petition under Section 25 of the Hindu Marriage Act irrespective of the fact that she obtained a decree under Section 11 of the Hindu Marriage Act. With that decree, still, she has the right to file an application under Section 24 of the Hindu Marriage Act. In this case the maintenance and litigation expenses, which have been granted to the respondent, cannot be held to be on the excessive side. Therefore, I find this revision without any merit and dismiss the same with costs, which are assessed at Rs. 500/-.

18. Revision dismissed.

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