

Anima Biswas Vs. Dipanker Biswas

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Court : Kolkata

Decided On : Mar-10-2004

Reported in : 2004(4)CHN93

Judge : Asit Kumar Bisi, J.

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

Appeal No. : C.R.R. No. 259 of 2001

Appellant : Anima Biswas

Respondent : Dipanker Biswas

Advocate for Def. : Puspall Satapati, Adv. for the opposite party No. 1

Advocate for Pet/Ap. : Tapan Kumar Rakshit, Adv.

Disposition : Application dismissed

Judgement :

Asit Kumar Bisi, J.

1. Mr. Tapan Kumar Rakshit, learned Advocate, appears for the petitioner, Mr. Puspall Satapati, learned Advocate, appears for opposite party No. 1. None appears on behalf of opposite party No. 2.

2. Heard Mr. Rakshit for the petitioner and Mr. Satpati for opposite party No. 1.
3. This revision application has been preferred by the petitioner, Smt. Anima Biswas, against the judgment and order dated 24.12.98 passed by the learned Judicial Magistrate, 2nd Court, Krishnanagar, Nadia, in Misc. Case No. 408(IV) of 1995 corresponding to T. R. No. 18 of 1996.
4. By the judgment and order impugned, the learned Magistrate dismissed the application for maintenance, under Section 125 of the Code of Criminal Procedure, filed by the petitioner against opposite party No. 1, Dipanker Biswas.
5. On hearing the learned Advocates for the parties and going through the materials on record, I find that the petitioner filed the application under Section 125 Cr. P. C. claiming maintenance from opposite party No. 1 and by the order dated 30.6.97 passed earlier in the said misc. case, the learned Magistrate allowed the said application whereupon Criminal Motion No. 64/97 was preferred by present opposite party No. 1, Dipanker Biswas. The learned Sessions Judge, Nadia, allowed the said criminal motion and set aside the impugned judgment and order dated 30.6.1997 passed by the learned Magistrate. While allowing the said criminal motion, the learned Sessions Judge observed that it transpired in evidence that Anima Biswas was the daughter of one sister and Dipanker Biswas was the son of another sister and PW. 1 Anima Biswas admitted in her evidence that the second party was a son of the mother's sister. In view of such evidence, the learned Sessions Judge, Nadia, held that if that be so, the marriage between the parties was void and in case of void marriage, it could not be said that there was any marriage in the eye of law. Since the learned Magistrate did not consider this aspect of the matter, the learned Sessions Judge sent back the case to the learned Magistrate for assessing the said aspect according to law and pass appropriate order.
6. After the case was sent back on remand, the learned Magistrate dealt with the issue in terms of the direction of the learned Sessions Judge and arrived at the finding that there was no marriage in the eye of law and the petitioner, Anima Biswas, was not the legally married wife of opposite party, Dipanker Biswas. In view of such finding, the claim for maintenance under Section 125 Cr. P. C., made

by the petitioner, Anima Biswas, was refused by the learned Magistrate by his order dated 24.12.98, which has been challenged by the petitioner by preferring the instant revision application.

7. Mr. Rakshit, learned Advocate for the petitioner, does not dispute the fact the petitioner is the daughter of mother's sister of opposite party No. 1. In fact, there is clear admission of the petitioner on this score in her evidence. In view of relationship between the parties, it can well be held that even if there was marriage between the parties, such marriage was within the prohibited degree of relationship.

8. Mr. Rakshit, however, submits that unless the marriage is declared null and void by a competent Civil Court, the petitioner being the wife, is entitled to get maintenance under Section 125 of Code of Criminal Procedure from her husband/opposite party No. 1.

9. Mr. Satpati, learned Advocate for opposite party No. 1, on the other hand, has vehemently opposed such contention raised by Mr. Rakshit and urged that in order to get maintenance under Section 125 of Code of Criminal Procedure, the petitioner must, prima facie, satisfy the Court that she is the legally married wife of opposite party No. 1 and since this is an admitted fact that the marriage between the parties was within the prohibited degree of relationship, it cannot be said that the petitioner is the legally married wife of opposite party No. 1 and accordingly she is not entitled to claim maintenance under Section 125 of Code of Criminal Procedure from opposite party No. 1.

10. In support of his contention, Mr. Satpati has cited a Single Bench decision of this Court in Santi Bala Mondal v. Santosh Mondal, reported in 2001 C Cr LR (Cal) 234 wherein at page 239 (para 10) it has been held that the petitioner who falls within the prohibited degree of relationship cannot be said to have validly conducted the marriage with the opposite party and accordingly the learned Magistrate has rightly refused her prayer for maintenance claimed under Section 125 of the Code of Criminal Procedure.

11. Mr. Rakshit, on the other hand, has cited Single Bench decision of Allahabad High Court in Sheet Wati v. Ram Nandani, reported in : AIR1981 All42 wherein, it has been held, inter alia, at page 45 (para 9) that a marriage though null and void for contravening any of the conditions prescribed by Clauses (i), (iv) and (v) of Section 5 of the Hindu Marriage Act, has yet to be regarded a subsisting fact and in that sense it cannot be said to be wholly nan est in law or a nullity, so long it is not declared to be null and void by a decree of the District Court on a petition presented by either party thereto against the other party to the marriage.

12. In the case of Sheet Wati (supra), the learned Judge did not have any occasion to consider the question relating to claim of maintenance under Section 125 of the Code of Criminal Procedure where, as stated hereinbefore, the petitioner claiming maintenance as wife must satisfy, prima facie, essential requirement of the said Section that she is the legally married wife of the person from whom she claims maintenance.

13. Mr. Rakshit has cited the Single Bench decision of Jammu & Kashmir High Court in Krishan Kaur v. Kartar Singh, reported in 1988 Cr. LJ 717. In the case of Krishan Kaur (supra), there was enough material to show that both the parties in the said case lived as wife and husband and out of their matrimonial union three children were born to them. It is in such context, the learned Judge has held that the husband cannot be allowed to desert his wife and three children by his mere denial of having any relationship with them. The facts and circumstances of the case of Kishan Kaur (supra) have no manner of application to the present case where admittedly the marriage between the parties was within the prohibited degree of relationship.

14. Having regard to the facts and circumstances of the case, I am of the view that ratio of the Single Bench decision of this Court in the case of Santi Bala Mondal (supra) applies with full force to the case on hand and since it is an indisputable fact that both the petitioner and opposite party No. 1 are within the prohibited degree of relationship, the petitioner cannot be said to be legally married wife of opposite party No. 1. In my considered opinion, the learned Magistrate has rightly refused the prayer for maintenance made by the petitioner.

15. The order impugned cannot be interfered with. The revision application is devoid of merit. The same is liable to be dismissed.

16. The revision application is accordingly dismissed.

17. Let a copy of this order be sent down to the learned Court below forthwith.

18. Xerox certified copy of this order, if applied for, be given to the parties, as expeditiously as possible.

Asit Kumar Bisi, J.

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