

Uttam Numala Vs. State and ors.

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Court : Kolkata

Decided On : Nov-28-2003

Reported in : 2004(1)CHN233

Judge : P.N. Sinha, J.

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

Appeal No. : C.R.R. No. 2165 of 2003

Appellant : Uttam Numala

Respondent : State and ors.

Advocate for Pet/Ap. : Amales Roy and ;D.N. Mukherjee, Advs.

Disposition : Revision dismissed

Judgement :

P.M. Sinha, J.

1. This application under Section 482 of the Code of Criminal Procedure (hereinafter called the Code) is for setting aside the judgment and order dated 23.6.2003 passed by the learned Sessions Judge, Bankura in Criminal Revision No. 64 of 2002 setting aside the judgment and order dated 18th July, 2002 passed by the learned Sub-Divisional Judicial Magistrate (hereinafter called S.D.J.M.),

Khatra in Misc. Case No. 4 of 2001 under Section 125 of the Code rejecting O.P. No. 2-wife's application for maintenance.

2. Learned advocate for the husband petitioner contended that in the instant matter marriage between petitioner and O.P. No. 2 is denied and the petitioner never married O.P. No. 2 and O.P. No. 2 is not the legally married wife of petitioner. The learned S.D.J.M. rightly discussed the evidence of the witnesses adduced by both the parties and came to the finding that the wife has failed to prove that she was married with this petitioner. The husband-petitioner who was opposite party before learned S.D.J.M. also examined five witnesses and O.P.W. 3 Sadananda Lohar in his evidence stated that Ashalata is his cousin sister and Ashalata was not married with Uttam, the present petitioner. From evidence it was not established that essential ceremonies of the marriage were performed and the evidence of the alleged priest P.W. 4 Amiya Chouni is unbelievable. There was no barber in the alleged marriage. But, the learned Sessions Judge in the revision proceeded on a different footing and without considering the evidence properly, allowed the application of the wife under Section 125 of the Code. Learned Sessions Judge did not consider at all that in the instant case marriage between petitioner and O.P. No. 2 was not proved at all and O.P. No. 2 is not the wife of the petitioner. When O.P. No. 2 is not the legally married wife of petitioner she cannot claim any maintenance from petitioner. The order of the learned Sessions Judge being bad in law and improper should be set aside and O.P. No. 2's application under Section 125 of the Code should be dismissed and the order of the learned S.D.J.M. should be restored. In support of his contention he placed reliance on the decisions reported in 1985 Cri. L. J. 528, 2000 Cri. L. J. 1 and 2002 C Cr LR (Cal) 800.

3. I have duly considered the arguments canvassed before the learned advocates for the petitioner and perused the averments of the application and annexures made therein. In Sumitra Devi v. Bhikan Choudhary, reported in 1985 Cri. L.J. 528, the Supreme Court observed that, in order that there may be a valid marriage according to Hindu Law, certain religious rites have to be performed. Invoking the fire and performing saptapadi around the sacred fire have been considered by the Supreme Court to be two of the basic requirements for a traditional marriage. It is

equally true that there can be a marriage acceptable in law according to customs which do not insist on performance of such rites as referred to above and marriages of this type give rise to legal relationship which law accepts.

4. In *Dwarika Prasad Satpathy v. Bidyut Prabha Dixit*, reported in 2000 Cri. L. J. 1, the Supreme Court observed that the validity of marriage for the purpose of summary proceeding under Section 125 of the Code is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceeding is not as strict as is required in a trial of offence under Section 494 of the I.P.C. If the claimant in proceeding under Section 125 of the Code succeeds in showing that she and the respondent have lived together as husband and wife, the Court can presume that they are legally wedded spouses, and in such a situation, the party who denies the marital status can rebut the presumption. Once it is admitted that the marriage procedure was followed then it is not necessary to further probe into whether the said procedure was complete as per Hindu rites in the proceedings under Section 125 of the Code.

5. In *Ashim Dey v. Khuku Dey*, reported in 2002 C Cr LR (Cal) 800, this Court observed that in a claim for maintenance under Section 125 of the Code proof of marriage is essential. In the said reported case there was no evidence of performance of essential function and no witness of the marriage was examined. It was also established that the wife was never taken to the house of the husband. Accordingly this Court held that marriage was not proved and wife was not entitled to claim maintenance.

6. The scope of revision is very limited particularly the second revision before this Court under Section 397(3) of the Code and this Court would not interfere unless there is patent illegality in the order of the learned Sessions Judge. Crux for consideration in this case would be whether there was no evidence of performance of marriage ceremony at all between the petitioner-husband and O.P.-wife and whether no witness of the marriage was examined. Another point of consideration would be whether the learned Sessions Judge made mistake by discussing the evidence adduced by the parties before the learned S.D.J.M. and coming to a different view setting aside the order of the learned S.D.J.M. and

thereby granting maintenance to the wife.

7. It is not desirable for this Court to enter into detailed discussion of evidence but, it is clear from the certified copy of the order of the learned S.D.J.M. and certified copy of the order of the learned Sessions Judge that the wife in order to prove her case examined five witnesses and the husband also examined five witnesses. The evidence of the husband opposite party is denial of the marriage and naturally all the O.P.Ws.' in same tune stated that there was no marriage between this petitioner husband and O.P. wife. On the other hand, the witnesses examined by the wife are different and they have deposed about performance of the marriage and also stated what essential ceremony or function of the marriage were performed.

8. The wife as P.W. 1 in her examination-in-chief stated nothing about performance of ceremonies of the marriage but, this husband petitioner as O.P. in cross-examination extracted from her mouth the ceremonies which were performed. In cross-examination P.W. 1 stated that in their marriage 'Hastabandhan', 'Sindurdan', 'Khaipuran', 'Kanyadan' etc. ceremonies were performed. Her evidence and evidence of her father (PW 3) reveals that the marriage was solemnised on 6th May, 1406 B.S. and after that she went to her husband's house, on 24th Bhadra, 1407 B.S. she was driven out of husband's house after assault. Evidence of P.W. 4 the priest reveals that in the marriage between Ashalata and Uttam he was the priest and ceremonies like 'Gayehalud', 'Hastabandhan', 'Sindurdan', 'Hom', 'Tagnya' etc. were performed and his cross-examination reveals that process of Saptapadi was also performed. The evidence which I have just quoted from statement of witnesses clearly reveals that it is not a case where there was no evidence of performance of essential function of a marriage. The evidence rather establishes that essential ceremonies of marriage were observed and witness of the marriage was also examined. There is also evidence that the petitioner was sent to husband's house after marriage and about a year after that, she was driven out of husband's house.

9. The decisions cited by the learned advocate for petitioner are, therefore, not properly applicable in the instant case. In *Sadhu Mondat v. Sarathi Bala Mondal*,

reported in 1985 Cri. L. J. 979, this Court observed that evidence of prosecution witnesses that the couple was living as husband and wife is sufficient proof of marriage in maintenance proceeding under Section 125 of the Code, notwithstanding absence of evidence of performance of Sampradan and Saptapadi. In the reported case there was evidence of marriage between the husband and wife though there was no evidence regarding performance of Sampradan and Saptapadi, two vital ceremonies of a Hindu marriage. It was observed by this Court that in a maintenance proceeding under Section 125 it was sufficient proof of marriage and the revision preferred by the husband was held as incompetent.

10. In Rudramma v. H. R. Puttaveerabhadrapa, reported in 1987 Cri. L. J. 677, it was held that a Magistrate is not competent to decide validity of marriage in a proceeding under Section 125 of the Code where challenge as to validity of marriage on ground of nullity was raised. It was ordered by the High Court that proper course is to grant maintenance, leaving husband to establish invalidity in competent Civil Court. In Gabriel Antony v. Thressya Gracy and Anr., reported in 1987 Cri. L. J. 688, it was held that in an application under Section 125 of the Code a Magistrate is not competent to refuse maintenance holding that marriage is null and void. In this case the High Court interpreted as to how a language of a statute is to be interpreted and referred to the decision of State of Madhya Pradesh v. Ram Ragubir Prasad Agarwal, reported in A.I.R. 1979 SC 888 and State of Kerala v. Varghese, reported in 1987 Cri. L. J. 308 and observed that, 'The Supreme Court emphasised the need for giving purposeful interpretation so as to effectuate the intention of the legislature and not a purposeless one in order to defeat the intention of the legislatures wholly or in part. It is not the literal meaning of the words but that meaning which is warranted from the context is the one to be preferred.'

11. In Krishan Kaur v. Kartar Singh, reported in 1988 Cri. L. J. 717, it was observed that standard of proof of marriage in a proceeding under Section 125 of the Code is of not as high as for Divorce Act or Penal Code provisions. It was observed that if marriage being proved maintenance should be granted and the aggrieved party can raise legal validity before Civil Court. It was further observed

that in a revision under Section 125 of the Code Court can re-appreciate evidence to decide correctness, legality or propriety of order.

12. In *Jemamani Das @ Panda v. Umesh Chandra Panda*, reported in 1988 Cri. L. J. 1041, it was observed that in a proceeding under Section 125 of the Code strict proof of marriage is not necessary. In this reported case there was evidence of marriage being performed according to Hindu rites and Hastabandhan and Saptapadi were held during night. It was held by the High Court, that the marriage between the parties was proved for the purpose of petition under Section 125 of the Code.

13. The argument of learned advocate for petitioner that if the wife feels aggrieved by the order of the learned Magistrate she should move the Civil Court for proper relief, is not acceptable at all. The ratio of decisions of different High Courts and the Apex Court of India clearly indicates that when there is evidence of marriage and performance of ceremonies in the said marriage there is sufficient proof of marriage in a proceeding under Section 125 of the Code and the husband who denies the marriage should move the competent Civil Court to invalidate the marriage.

14. Above discussion on evidence of marriage and legal principles to be followed in a proceeding under Section 125 of the Code makes it clear that the learned S.D.J.M, was in error in coming to the conclusion that there was no marriage between the wife Ashalata Namta and husband Uttam Namta. Learned Sessions Judge was right by setting aside the order of the learned Magistrate and allowing maintenance in favour of the wife-O.P. No. 2. I also find the amount of maintenance granted by the learned Sessions Judge @ Rs. 500/- per month requires no interference and this amount in these hard days when market price of every essential commodities are on the rise, can be regarded as reasonable, if not, regarded as inadequate. Denial of everything including marriage by this petitioner clearly indicates that he neglected to maintain his wife and there was also no evidence that he ever paid any maintenance to the wife. There was no error apparent on the face of the record to justify interference by this Court in the instant matter. The order passed by the learned Sessions Judge being correct,

legal and proper requires no interference.

15. In the result, the revisional application fails and is dismissed.

16. Urgent xerox certified copy be given to the parties, if applied for, expeditiously.

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