Shailesh Bopche Vs Anita Bopche

Court: Madhya Pradesh High Court

Date of Decision: April 2, 2024

Acts Referred: Code Of Criminal Procedure, 1973 â€" Section 125, 482
Indian Penal Code, 1860 â€" Section 376, 494

Hon'ble Judges: Gurpal Singh Ahluwalia, J

Bench: Single Bench

Advocate: Priyal Rahangdale

Final Decision: Dismissed

Judgement

Gurpal Singh Ahluwalia, J

1. This application under Section 482 of Cr.P.C. has been filed against order dated 16/07/2012 passed by Magistrate, Gram Nyayalaya Balaghat in

MJC No.36/2010 and order dated 03/12/2015 passed by First Additional Sessions Judge, Balaghat in Criminal Revision No.54/2015, by which Courts

below have directed the applicant to pay monthly maintenance to the respondent at the rate of Rs.1,500/- per month.

2. It is submitted by counsel for the applicant that although the order of maintenance was passed by Gram Nyayalaya on 16/07/2012 and the Revision

was filed on 12/02/2014 and the Revision was dismissed on 03/12/2015 but since there is no period of limitation for filing an application under Section

482 of Cr.P.C., therefore belated filing of application even after nine years of the dismissal of Revision will not make the present application not

maintainable or barred by time. It is further submitted that the Trial Court had given a finding that the marriage of respondent with the applicant did not

take place in the Temple and even the respondent could not point out the rituals which were performed at the time of marriage, therefore it was held

that respondent has failed to prove that her marriage with the applicant took place in the Temple. However, on account of the fact that respondent had

given birth to a child and since the applicant and respondent were residing as husband and wife for considerable long time, therefore respondent has

been held to be entitled for maintenance under Section\ 125 of Cr.P.C. It is submitted by counsel for the applicant that applicant is much younger to

the respondent. Since applicant is Patel by caste and belongs to a very respectable family of the village, therefore respondent was making false

allegations against the applicant. Respondent had also lodged an FIR against the applicant for offence under Section 376 of IPC for which applicant

was tried by the J.J.B. as a juvenile and ultimately, he has been acquitted. However, it is fairly conceded by counsel for the applicant that she is not in

possession of judgment passed by J.J.B. and also does not know about the reasons for acquittal of the applicant. It is further submitted that since

father of the applicant is a rich person having 20 acres of land, therefore applicant has been falsely implicated. However, it is submitted that applicant

is a labourer working as a labour in Nagpur.

3. Heard learned counsel for the applicant.

4. The only bone of contention of counsel for the applicant is that since the respondent is not the legally wedded wife of the applicant, therefore

application under Section 125 of Cr.P.C. is not maintainable.

5. Considered the submissions made by counsel for the applicant.

6. The Trial Court has not given a specific finding that the respondent is not the legally wedded wife of the applicant. However, the findings are that

the respondent could not prove the rituals as well as the fact that marriage was performed in the Temple but later on Trial Court has given a finding

that since the applicant and respondent were living as husband and wife for considerable long time and the respondent has also given birth to a child,

therefore respondent is entitled for maintenance.

7. The Supreme Court in the case of Kamala and Others Vs. M.R. Mohan Kumar reported in (2019) 11 SCC 491 has held as under:-

15. Unlike matrimonial proceedings where strict proof of marriage is essential, in the proceedings under Section 125 CrPC, such strict standard of

proof is not necessary as it is summary in nature meant to prevent vagrancy. In Dwarika Prasad Satpathy v. Bidyut Prava Dixit, (1999) 7 SCC 675 :

1999 SCC (Cri) 1345, this Court held that

Ã¢â‚¬Å“27. Ã¢â‚¬Â¦ the standard of proof of marriage in a Section 125 proceeding is not as strict as is required in a trial for an offence under Section 494 IPC.

The learned Judges explained the reason for the aforesaid finding by holding that an order passed in an application under Section 125 does not really

determine the rights and obligations of the parties as the section is enacted with a view to provide a summary remedy to neglected wives to obtain

maintenance. The learned Judges held that maintenance cannot be denied where there was some evidence on which conclusions of living together

could be reached.Ã¢â‚¬â€‹ [Ed.: As observed in Chanmuniya case, (2011) 1 SCC 141, SCC p. 147, para 27.]

When the parties live together as husband and wife, there is a presumption that they are legally married couple for claim of maintenance of wife under

Section 125 CrPC. Applying the well-settled principles, in the case in hand, Appellant 1 and the respondent were living together as husband and wife

and had also begotten two children. Appellant 1 being the wife of the respondent, she and the children, Appellants 2 and 3 would be entitled to

maintenance under Section 125 CrPC.

16. It is fairly well settled that the law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously

for a number of years. After referring to various judgments, in Chanmuniya v. Virendra Kumar Singh Kushwaha, (2011) 1 SCC 141, this Court held

as under: (SCC pp. 144-45, paras 11-16)

Ã¢â‚¬Å“11. Again, in Sastry Velaider Aronegary v. Sembecutty Vaigalie, (1881) LR 6 AC 364 (PC), it was held that where a man and woman are proved

to have lived together as man and wife, the law will presume, unless the contrary is clearly proved, that they were living together in consequence of a

valid marriage, and not in a state of concubinage.

12. In India, the same principles have been followed in AndrahennedigeDinohamy v. Wije tunge Liyanapatabendige Balahamy, 1927 SCC OnLine PC

51, in which the Privy Council laid down the general proposition that where a man and woman are proved to have lived together as man and wife, the

law will presume, unless, the contrary is clearly proved, that they were living together in consequence of a valid marriage, and not in a state of

concubinage.

13. In Mohabbat Ali Khan v. Mohd. Ibrahim Khan, 1929 SCC OnLine PC 21 : (1928-29) 56 IA 201 : AIR 1929 PC 135 the Privy Council has laid

down that the law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for number of

years.

14. In Gokal Chand v. Parvin Kumari (1952) 1 SCC 713 : AIR 1952 SC 231, this Court held that continuous cohabitation of man and woman as

husband and wife may\ raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is rebuttable and if there

are circumstances which weaken and destroy that presumption, the Court cannot ignore them.

15. Further, in Badri Prasad v. Director of Consolidation, (1978) 3 SCC 527, the Supreme Court held that a strong presumption arises in favour of

wedlock where the partners have lived together for a long spell as husband and wife.

Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin.

16. Again, in Tulsa v. Durghatiya, (2008) 4 SCC 520, this Court held that where the partners lived together for a long spell as husband and wife, a

presumption would arise in favour of a valid wedlock.Ã¢â‚¬â€‹

17. This Court in Chanmuniya case further held as under: (SCC p. 146, para 24)

Ã¢â‚¬Å“24. Thus, in those cases where a man, who lived with a woman for a long time and even though they may not have undergone legal necessities of

a valid marriage, should be made liable to pay the woman maintenance if he deserts her. The man should not be allowed to benefit from the legal

loopholes by enjoying the advantages of a de facto marriage without undertaking the duties and obligations. Any other interpretation would lead the

woman to vagrancy and destitution, which the provision of maintenance in Section 125 is meant to prevent.Ã¢â‚¬â€‹

(emphasis supplied)

18. Chanmuniya case referred to divergence of judicial opinion on the interpretation of the word Ã¢â‚¬Å“wifeÃ¢â‚¬ in Section 125 CrPC. In paras 28 and 29

of Chanmuniya case, this Court referred to other judgments which struck a difficult note as under: (SCC p. 147)

Ã¢â‚¬Å“28. However, striking a different note, in Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav, (1988) 1 SCC 530 : 1988 SCC (Cri) 182], a

two-Judge Bench of this Court held that an attempt to exclude altogether personal law of the parties in proceedings under Section 125 is improper (see

para 6). The learned Judges also held (paras 4 and 8) that the expression Ã¢â‚¬Å“wifeÃ¢â‚¬ in Section 125 of the Code should be interpreted to mean only a

legally wedded wife.

29. Again, in a subsequent decision of this Court in Savitaben Somabhai Bhatiya v. State of Gujarat, (2005) 3 SCC 636 : 2005 SCC (Cri) 787, this

Court held that however desirable it may be to take note of plight of an unfortunate woman, who unwittingly enters into wedlock with a married man,

there is no scope to include a woman not lawfully married within the expression of Ã¢â‚¬Å“wifeÃ¢â‚¬. The Bench held that this inadequacy in law can be

amended only by the legislature. While coming to the aforesaid finding, the learned Judges relied on the decision in Yamunabai case.Ã¢â‚¬â€‹

19. After referring to the divergence of judicial opinion on the interpretation of the word Ã¢â‚¬Å“wifeÃ¢â‚¬ in Section 125 CrPC, speaking for the Bench

A.K. Ganguly, J. held that the Bench is inclined to take a broad view of the definition of Ã¢â‚¬Å“wifeÃ¢â‚¬, having regard to the social object of Section 125

CrPC.

20. In Chanmuniya case, this Court formulated three questions and referred the matter to the larger Bench. However, after discussing various

provisions of the Criminal Procedure Code, this Court held that a broad and extensive interpretation should be given to the term Ã¢â‚¬Å“wifeÃ¢â‚¬ under

Section 125 CrPC and held as under: (SCC p. 149, para 42)

Ã¢â‚¬Å“42. We are of the opinion that a broad and expansive interpretation should be given to the term Ã¢â‚¬Å“wifeÃ¢â‚¬ to include even those cases where a

man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a

precondition for maintenance under Section 125 CrPC, so as to fulfil the true spirit and essence of the beneficial provision of maintenance under

Section 125. We also believe that such an interpretation would be a just application of the principles enshrined in the Preamble to our Constitution,

namely, social justice and upholding the dignity of the individual.Ã¢â‚¬‹

21. On the basis of the evidence of Appellant 1 (PW 1), birth certificates of Appellants 2 and 3 (Exts. P-7 and P-8 dated 25-5-2001 and 6-8-2003),

other documentary evidence, oral evidence of PW 2 who was co-worker of Appellant 1 and PW 3, landlord, the Family Court held that Appellant 1

and the respondent were living together as husband and wife and there is sufficient proof of marriage. The Family Court rightly drew the presumption

of valid marriage between Appellant 1 and the respondent and that they are legally married couple for claiming maintenance by the wife under Section

125 CrPC which is summary in nature. The evidence of PW 1 coupled with the birth certificates of Appellants 2 and 3 and other evidence clearly

establish the factum of marriage.

8. Similar view was taken by this Court in the case of Smt. Pushpa Pandey and Another Vs. Suresh Pandey decided on 24/11/2016 in Criminal

Revisions No.348/2006 & 356/2006 (Gwalior Bench).

9. Considering the totality of facts and circumstances of the case as well as in the light of law laid down by Supreme Court in the cases of

Chanmuniya Vs. Virendra Kumar Singh Kushwah and Another reported in (2011) 1 SCC 141, Badshah Vs. Urmila Badshah Godse & Another

reported in (2014) 1 SCC 188, in the case of Kamala (supra) as well as law laid down by this Court in the case of Smt. Pushpa Pandey (supra), this

Court is of considered opinion that since the applicant and respondent were residing as husband and wife for a considerable long time and in absence

of any specific finding by the Trial Court that respondent is not a legally wedded wife of the applicant, this Court is of considered opinion that the Trial

Court did not commit any mistake by awarding maintenance to the respondent under Section 125 of Cr.P.C.

10. Since the quantum of maintenance amount has not been challenged, therefore no further deliberations are required in the present case.

11. Accordingly, application fails and is hereby dismissed.