Smt. Bina Agarwal alias Shahjahan Begum Vs Mahesh Chandra Agarwal and Another

Court: Allahabad High Court

Date of Decision: Dec. 16, 1982

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 125

Citation: (1983) 7 ACR 149

Hon'ble Judges: V.N. Misra, J

Bench: Single Bench

Advocate: V.M. Zaidi, for the Appellant; Vijai Bahadur, A.G.A., for the Respondent

Final Decision: Allowed

Judgement

V. N. Misra, J.
This is an application in revision by Smt. Bina Agarwal alias Shahjahan Begum against the judgment and order dated 21-

7-1981 passed by Sri B.D. Agarwal, Sessions Judge, Kanpur, in Criminal Revision No. 138 of 1981, which was allowed by him and the

application made by the applicant u/s 125 of the Code of Criminal Procedure was dismissed.

2. Briefly stated the case of the applicant in her petition u/s 125 of the Code of Criminal Procedure was that she was initially a Mohammdan and

her name was Shahjahan Begum. In 1962, the opposite-party No. 1 developed illicit intimacy with her. He became a convert to Islam and they

were married according to Muslim rites. In due course the applicant became pregnant. Then on the insistence of the opposite-party No. 1, she was

converted to Hinduism and the parties were again married according to Hindu rites. Four children were born out of this wedlock. The opposite-

party No. 1, however, treated her with cruelty, hence she brought this petition and claimed rupees five hundred as her monthly maintenance.

3. The opposite-party No. 1 denied that he ever became a Muslim or that any marriage was celebrated between him and the applicant. The

learned Magistrate allowed the applicant rupees two hundred per month as maintenance because he said that the parties were living as husband

and wife since about 1964 and had four children, therefore, it had to be accepted that the applicant was married to the opposite party No. 1. In

revision the learned Sessions Judge found that it was not proved that the opposite-party No. 1 became a Muslim or was married to the applicant,

therefore, the revision was allowed by the learned Sessions Judge and the petition u/s 125 of the Code of Criminal Procedure moved by the

applicant was dismissed.

4. PW 1 Bina Agarwal in her statement said that she was formerly a Muslim; when the opposite-party No. 1 wanted to marry her, on her

suggestion he became a Muslim; his Khatna ceremony was performed and they started living together as husband and wife in 1962. In due course,

she became pregnant and then on the insistence of the opposite-party No. I she became a Hindu and her marriage with the opposite-party No. 1

was again performed at Bithoor. The applicant asserted that because the opposite-party No. 1 was converted to a Muslim, therefore, his Khatna

ceremony took place. This was denied by the opposite-party; but he refused to undergo a medical examination for a check-up whether Khatna

had been performed on him or not. In his cross-examination he also admitted that operation was performed and not Khatna. If a person at an

elderly age agrees to undergo Khatna operation, it would naturally be indicated that he has become a convert to Muslim. Besides, whether the

opposite-party was converted to Muslim or not was a question of fact and if the learned Sessions Judge was not satisfied that the finding given by

the learned Magistrate was proper, he could have set aside the finding and remanded the case back to the learned Magistrate. But this was not

done and the learned Sessions Judge himself proceeded to give a finding after completely reversing the finding that the opposite-party No. 1 was

not proved to have converted to Muslim. The applicant contended that after the opposite-party No. 1 became a Muslim, she was married to him

according to Muslim rites. She was not corss-examined on the point nor was she asked what ceremonies were performed and this part of her

statement remained unchallenged.

5. Then the applicant''s case was that after their marriage according to Muslim rites, they started living together, she became pregnant and on the

insistence of the opposite-party she became a Hindu and she was again married to the opposite-party No. 1 according to Hindu rites at Bithoor.

Even if it was not proved that the opposite-party No. 1 was converted to Muslim, it would mean that he continued to be a Hindu, when, therefore,

the applicant was converted to Hinduism, she could certainly marry him and their second marriage, in any case, would be valid.

6. The opposite-party No. 1 contended that he was never married to the applicant and according to him for 14 or 15 years the applicant

periodically came, stayed with him and then went away. He said that he did not know where she went: but whenever she came back, they started

again living together and that is how four children were born to her from opposite-party No. 1. It is very difficult to believe that for about 15-20

years or so the applicant lived merely as mistress of the opposite-party No. 1 and they were never married. It is also unbelievable that she came

for a month or two months to the opposite-party No. 1; stayed with him and then went away and the opposite-party No. I did not even know

where she had gone. When they were living together the opposite-party No. 2 was bound to have known where she had gone and because it is

not disclosed where she went after every one or two months it would seem that this assertion by the opposite-party No. 1 is false. The learned

Magistrate found that the parties were living as husband and wife since about 1964 and had four children, therefore, it had to be accepted that the

applicant was the wife of the opposite-party No. 1 and this to my mind was a proper finding. It was held in Badri Prasad Vs. Dy. Director of

Consolidation and Others, that where the partners lived together for a long spell as husband and wife there would be a presumption in favour of

wedlock. The presumption was rebuttable but a heavy burden lies on the person who seeks to deprive the relationship of legal origin to prove that

no marriage took place. Law leans in favour of legitimacy and frowns upon bastardy. In view of this law laid down by the Supreme Court since

both the parties lived as husband and wife for a fairly long time of 15 to 20 years and four children born to them, there would be a presumption

that their marriage was performed in a regular manner and it was for the opposite-party No. 1 who denied this marriage to prove that no such

marriage took place. But this was not done.

7. Maintenance was, therefore, rightly allowed by the learned Magistrate and the Sessions Judge could not set aside his order with a finding that

conversion of the opposite party No. 1 to Islam was not proved.

8. This revision is, therefore, allowed and the impugned order of the learned Sessions Judge, Kanpur, is hereby set aside.