

(1998) 03 GAU CK 0009

Gauhati High Court

Case No: Criminal Revision No. 298 of 1995

Jahanara Begum

APPELLANT

Vs

Khowazuddin

RESPONDENT

Date of Decision: March 18, 1998

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 397

Citation: (1998) 4 GLT 217

Hon'ble Judges: P.C. Phukan, J

Bench: Single Bench

Advocate: A.S. Choudhury and A.R. Sikdar, for the Appellant; S. Muktar, for the Respondent

Final Decision: Allowed

Judgement

P.C. Phukan, J

1. This revision is directed against the judgment and order dated 16.1.95 passed by the learned Sessions Judge at Barpeta in CrI. Motion No. 1(B-1)/94 setting aside the judgment and order dated 27.9.93 passed by the learned Judicial Magistrate at Barpeta in Misc. Case No. 129m/91 u/s 125 Code of Criminal Procedure directing the second party-opp. party to pay a monthly allowance of Rs 200/- to the first party-Petitioner for her maintenance.

2. The first party's case in brief is that on 30.3.91 she was married to the second party according to the Muslim Law and after the marriage both on them live as husband and wife in her parents' house for about a week. Thereafter, the 2nd party left for his own house on the pretext of appearing in his college examination. He did not return to take the first party to his house, nor has he maintained her since then. The first party then instituted the above Misc. Case u/s 125 Code of Criminal Procedure in the court of the Judicial Magistrate claiming a monthly allowance of Rs. 400/- for her maintenance.

3. Second party contested the claim. He disputed the factum of marriage and denied to have ever lived with the first party as husband and wife. He alleged that the first party instituted the false case against him out of grudge.

The first party examined 5 witnesses including herself. The second party examined himself and 3 other witnesses.

4. After considering the evidence on record and hearing the parties, learned Magistrate held that there was marriage between the parties as alleged by the first party and parsed the order dated 27.9.93 allowing the maintenance allowance to the first party as stated above. Being aggrieved, the second party filed revision, but none appeared for him at the time of hearing. The learned Sessions" Judge heard the learned Counsel appearing for the first party and on reappreciation of evidence held that the marriage between the parties was not proved and set aside the order of the learned Magistrate by his judgment and order dated 16.1.95 impugned in the instant revision before this Court.

5. I have considered records of the case and have heard Mr. A.S. Choudhury, learned Counsel for the first party/Petitioner and Mr. S. Mukter learned Counsel for the second party/opp. Party.

Mr. Choudhiuy appearing for the first party/Petitioner has strenuously argued that the revisional jurisdiction u/s 397 Code of Criminal Procedure is limited and is only for the satisfaction as to the correctness, legality or propriety of any finding and as to the regularity of any proceeding of an inferior court, that the learned Sessions Judge in utter disregard to such legal position set aside the order of the learned Magistrate causing grave injustice to the first party. Mr. Choudhury has further argued that it was not open to the learned Sessions Judge exercising revisional jurisdiction to take contrary view as to the finding of facts on reappreciation of evidence. Mr Choudhury has referred to die decision in SETHU-RATHINAM PILLAI"S case reported in 1971 (3) SCC 923 where in it has been held that the order passed in an application for maintenance is a summary order which does not finally determine the rights and obligation of the parties thereto and that such a provision for maintenance in the Code of Criminal Procedure is enacted with a view to provide a summary remedy for providing maintenance and for preventing vagrancy. On the other hand, Mr Mukter appearing for the second party/opp. party submits that the learned Sessions Judge arrived at the right conclusion that no marriage was a Hemnised and hence, the impugned judgment and order does not call for any interference.

6. On perusal of the impugned judgment and order, I have found that the learned Sessions Judge recorded several reasons for arriving at the conclusion that no marriage was solemnised. Learned Sessions Judge disbelieved the evidence of the first party P.W. 1 and found her evidence self contradictory". It is true that she said that the second party" left for his own house one week after the marriage that was solemnised on 30.3.91. Learned Sessions Judge observed but at later stage the witness herself stated that on

23rd March, the second party" left on the pretext of (appearing) examination." Learned Sessions Judge misread her evidence. She did not state that the second party left on 23rd March. She stated the second party left our house to appear in his college examination commencing on 23rd March." In fact, his college examination was to commence on 23rd April as is evident from the evidence of the second party D.W. 1. Obviously, it was just a slip of tongue on the part of the first party when she gave the date to be the 23rd March instead of 23rd April. When the question is credibility of a witness, the revisional court should not interfere unless, there is clear proof of mistake in appraisal of evidence. In the instant case there is no such clear proof. Learned Sessions Judge also found that the evidence of first party P.W. 1 was not corroborated by other witnesses and observed "as per P.W. 1 it was a social marriage" but the Vakil P.W. 3 was called on the night and her relative P.W. 4 at midnight and that" no witness has said that villagers were invited in the marriage." Muslim Marriage Law, however, does not say that the Vakil cannot be called at night and relatives at midnight, nor does it say that the villagers must be invited to the marriage. Learned Sessions Judge found fault with the first party for non-production of the written document stated to have been prepared at the time of the marriage and non registration of the marriage. Neither, written document nor registration is essential for a Muslim marriage. I am unable to appreciate the reasoning of the learned Sessions Judge and his conclusion that "since the Moulavi has admitted that the marriage was not according to the Sariat, the court below was not justified to hold that the first party was the legally married wife of the second party." It was to be borne in mind that this Maulavi (P.W. 5), though cited as a witness by the first party", did not come to give evidence even after receipt of summons and had to be brought to the court by issuing warrant of arrest. In examination-in-chief, he categorically stated that on 30.3.91 he conducted the marriage between the first party P.W. 1 and the second party D.W. 1 in presence of the guardians of both the parties and witnesses Jobber (P.W. 2) Hussain Ali (P.W. 3) and Isab Ali (P.W. 4). It was only in cross-examination that this witness P.W. 5 stated that the marriage was not according to the Sariat without saying anything whatsoever as to what requirements of the Sariat were not followed in that marriage. Mr. Choudhury for the first party/Petitioner draws my attention to page 256 of MULLA'S PRINCIPLES OF MAHOMEDAN LAW (Seventeenth Edition) regarding essentials of a Muslim marriage and also to page 91 of ASAF A.A. FYZEE'S MUHAMMADAN LAW (Fourth Edition) which reads as under:

The Legal incidents of marriage in Islam are remarkable for their extreme simplicity. Marriage may be constituted without any ceremonial; there are no special rites, no proper officiants, no irksome formalities. The essential requirements are offer (Ijab) and acceptance (qabul) before sufficient witnesses i.e. in Hanafi law two; in Shiite law witness are not necessary.

7. In the instant case, the evidence of first party has made out atleast a prima facie case that the essential requirements of offer and acceptance were performed in presence of two male witnesses. In a summary proceeding for maintenance u/s 125 Code of Criminal

Procedure, it is not necessary that the marriage is established beyond reasonable doubt, it is enough for the Magistrate that a prima facie case is made out in order to afford die immediate and speedy relief to the suffering party while leaving open to the aggrieved party to agitate his plea before an appropriate Civil Court. In the instant case it cannot be said that there is no evidence to support the finding of the learned Magistrate as to the solemnisation of the marriage and that such finding is perverse on the face of record. That being so, it was not open to the learned Sessions Judge to reappraise the evidence regarding such finding of fact, the learned Sessions Judge out not to have set aside die judgment and order of the learned Magistrate allowing maintenance to the first party simply because he took a different view on reappraisal of evidence.

8. In the result, the revision succeeds and is allowed.

The judgment and order dated 16.1.95 passed by the learned Sessions Judge is set aside. Interim order, if any, shall stand vacated.