

(1991) 02 MP CK 0013

Madhya Pradesh High Court**Case No:** Criminal Revision No. 678 of 1984

Phoola Bai Joge

APPELLANT

Vs

Beero

RESPONDENT

Date of Decision: Feb. 11, 1991**Acts Referred:**

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

Citation: (1991) CriLJ 3270 : (1991) 2 DMC 316 : (1991) JIJ 541 : (1993) 38 MPLJ 257 : (1993) MPLJ 257 : (1993) 2 RCR(Criminal) 412**Hon'ble Judges:** S.K. Chawla, J**Bench:** Single Bench**Advocate:** Indira Nair, for the Appellant; Rama Gupta, for the Respondent**Final Decision:** Allowed

Judgement

S.K. Chawla, J.

A woman claiming to be wife has brought this revision from an order dismissing her application u/Sec. 125 Cr.P.C. for maintenance.

It is not in controversy that applicant Phool Bai lived with non-applicant Beero in the latter's house in Nandini, Bhilai at least for 12 years or so. Some years back, Beero has brought another woman named Kamlawati alias Tulabai from whom he has also got a child. Applicant Phool Bai is childless.

The case of the applicant was that she was legally married wife of son applicant Beero. She was beaten and forcibly turned out of the house by the non applicant in the year 1979, where after the applicant is living with her brother Chhabilal. She is unable to maintain herself.

The defence of the non-applicant was that applicant Phool Bai was married to one Parthiba of village Kharpadar. She ran away from her husband and came to Bhilai in the year 1961. The applicant merely worked as a maid servant to scrub utensils at

the house of the non-applicant. Kamlawati is the non applicant's legally married wife and not a keep, as wrongly by described by the applicant in her petition.

Smt. Maitreyj Shrivastava, Judicial Magistrate First Class Dure who heard the case held that applicant Phool Bai had failed to establish that she was legally married wife of the non applicant. On that finding she dismissed the applicant's petition for maintenance, by order dated 1-2-84. Aggrieved by that order, the present revision has been filed.

It appeals that the finding of the learned Magistrate was based on the evidence of Lambudhar (NAW 2) who is done other than the father of the applicant. It is strange that the father of the applicant should have appeared as a witness for the non-applicant. The finding was further based on the failure of the applicant to produce any witnesses in these presence the alleged married between the applicant and non applicant was celebrated or the priest who had celebrated that marriage. In the opinion of this Court, the finding of the learned Magistrate is perverse and is based on misreading of evident and non-consideration of material evidence.

No doubt, the applicant's father Lambudhar (NAW 2) did state in his examination-in-chief that marriage of the applicant did not take place with the non applicant. But that was not his entire evidence. He also deposed that the applicant's first husband was Parsibo with whom the applicant lived just for 15 days. The applicant then ran away and came back to her Darental house. This witness further stated that the applicant was then married to the non-applicant and both lived together as husband and wife for 15 to 20 years Through-out that long period of 15 to 20 years, he treated the non applicant as his son-in-law and the applicant Phool Bai also treated the non-applicant as her husband. It was further stated by this witness that the first husband named Parsibo was married again and has also children from another wife. This witness also stated that in their society after a woman deserts her husband, she no longer is treated as wife of the man deserted. What the witness meant to say was that since the applicant had run away from her first husband Parsibo just 15 days after her marriage, she no longer remained Parsibo's wife. It was for that reason that the applicant was married to the non-applicant, as the witness himself admitted, many years back. As already noticed, this witness also admitted that after their marriage, the applicant and the non-applicant lived together for a long period of 15 to 20 years as husband and wife. Considering the entire evidence of this witness it was absolutely wrong on the part of the learned Magistrate relying only on one, sentence in his examination-in-chief to hold that the applicant was not married to the non applicant.

Non applicant Beero (NAW 1) himself admitted in his evidence that he had made nomination in favour of applicant Phool Bai for Contributory Provident Fund and also for Gratuity, declaring Phool Bai as his wife as back as in the year 1977. Beero admitted that nomination is made under the rules only in favour of a wife and not a keep. Beero further stated in his evidence that since Phool Bai ran away from his

house, he married Kamlawati. No one marries merely because a maid servant runs away from the house. This would itself show that applicant Phool Bai was not merely a maid servant but the wife of the non-applicant. Moreover a maid servant allegedly engaged for scrubbing utensils never lives in her master's house, much less for 12 to 13 years, as was admitted by Beero.

There was also the evidence of Dastura Bai (AW 2), who is niece of the non applicant and Phool Bai CAW 3) who is the sister-in-law of the non-applicant, that applicant and non-applicant lived together as husband and wife for 15 to 20 years and that they were also treating them as husband and wife. The reason why the non applicant chose to bring another wife or a woman is not far to seek. The applicant could not bear him any child. She is a childless woman. The non-applicant has now a child from the other woman.

To recapitulate, the evidence of Lambudhar (NAW 2) shows that after the first marriage of applicant with one Parsibo ceased to exist, the applicant was married many years back with the non-applicant and both lived as husband and wife, for at least 15 to 20 years. Non-applicant Beero also acknowledged applicant Phool Bai as his wife by nominating her for CPF and Gratuity. The relatives of the non-applicant, namely, Dasturabai (AW2) and Phulmati (AW 3) also treated applicant and non-applicant living together as husband and wife. It was false that applicant was a maid servant to scrub utensils at the house of the non-applicant. It would be proper to hold that applicant is wife of the non-applicant.

Unlike matrimonial proceedings where strict proof of marriage is essential, in a proceedings u/Sec. 125 Cr.P.C. such standard of proof is not necessary, as it is summary in nature meant to prevent vagrancy. See Mohit Kumar v. Hira Mukerji in 1981 Cr.L.J. NOC 48 (Calcutta). The law further is that where man and woman were living together as husband and wife and the husband also acknowledged the woman to be his wife and relatives also treated them as husband and wife, presumption arises that the woman is legally married wife. See : Satish Chand Sen Gupta v. Smt. Charu Bala in AIR 1962 Tripura 61 as also Bogis Managati v. Apalama in AIR 1932 WB 866.

The non applicant is a Yard Porter in Rail Transport Department of B.S.P. On his own evidence, his gross salary is Rs. 1136/- per month. Applicant Phulobai is some how managing to keep her body and soul together by doing the work of scrubbing utensils. She is clearly unable to maintain herself.

For the foregoing reasons, this revision is allowed. The impugned order of the learned Magistrate dismissing the applicant's petition is set aside. Instead, the applicant's petition for maintenance u/Sec. 125 Cr.P.C. is allowed. It is directed that the non-applicant shall pay monthly allowance @ Rs. 150/-per month to the applicant. The allowance shall be paid from the date of the impugned order of the learned Magistrate i.e. 1.2.1984.