

(2007) 07 CAL CK 0009

Calcutta High Court

Case No: CRR No. 3416 of 2006

Sushil Mondal

APPELLANT

Vs

State of W.B. and Others

RESPONDENT

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**Date of Decision:** July 31, 2007**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 125(1)
- Penal Code, 1860 (IPC) - Section 494

**Citation:** (2008) 1 CHN 856**Hon'ble Judges:** Partha Sakha Datta, J**Bench:** Single Bench**Advocate:** Usuf Ali Dewan, for the Appellant; R.K. Ghosal, for the Respondent

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**Judgement**

Partha Sakha Datta, J.

By this application dated 27.09.2006, the petitioner against whom an order of maintenance was passed by the learned Judicial Magistrate, Baruipur in Case No. M-579 of 2003 (T.R. No. 38 of 2006) in the sum of Rs. 1,000/- per month for the O.P. No. 2 and Rs. 500/- for the child has challenged the said impugned judgment and order on the grounds inter alia that no marriage under the Hindu law or under the Special Marriages Act was ever solemnized between the parties to the case and signature of the petitioner was obtained in the Marriage Registration Form by force and coercion and prior to the said alleged registration of marriage a child was born to the opposite party No. 2, that the learned Magistrate committed illegality in finding the petitioner to be legally married husband of the O.P. No. 2 when, in fact, there was no solemnization of marriage and the petitioner was not the cause of child and that the learned Magistrate granted the maintenance without considering the means of the petitioners.

2. The only question that calls for consideration is whether the learned Judicial Magistrate, Baruipur was legally justified in holding that the parties had gone into a

form of marriage as solemnization of marriage would be the sine qua non of making an order of maintenance. The law is well settled, as the provision of Section 125(1) of the Cr.PC enjoins, the wife claiming maintenance under the said statute has to be a legally married wife but the standard of proof of marriage undoubtedly must not be as high and as rigorous as that of in any other proceeding like a proceeding for declaration of marriage or in any criminal proceeding u/s 494 of the IPC. But then some amount of proof of legal character has to be adduced by a wife claiming maintenance with respect to solemnization of marriage when the marriage is in dispute or a fact in issue. The petitioner before the learned Magistrate told on oath that on 23.04.2002 her marriage was solemnized according to Hindu law and it was registered and a certificate has been marked as Exhibit- 1. In the marriage, presentations like ornaments, utensils and a cash of Rs. 3,000/- were given and also cohabited with the petitioner in his house, as a result of which a child was born who was on the date of her evidence (her evidence was recorded on 20.7.2005) was 1 year 2 months old. She was subjected to ill treatment and torture, denied food on the ground that he could not be able to fetch Rs. 10,000/- from her father's house and she was driven out of the matrimonial home whereafter she lodged a GDE with Bhangore P.S. and informed the incident to Panchayat member. Her husband is possessed of means while she was unable to maintain herself. Against this piece of evidence in examination-in-chief she has stated in her cross-examination that she could not tell the date of registration of marriage. Her child was according to her evidence born on 31st of the month of Chaitra but her memory betrayed as to the year of the birth of the child who was on the date of her cross-examination 2 years 4 months old. She could not tell the name of the barbar who was present in the marriage. She does not know what was called "Saptapadi". She claims that her marriage was solemnized at "Godhulilagna" which is a twilight of evening and night and at the same time according to her the said hour was 11 p.m. in the night. According to her, her father Sanatan Mondal, one Gopal Mondal, Sanjib Mondal were present. But these persons did not include the priest of barbar. Marriage was completed at 02-03 a.m. in the night. It was suggested to her which she denied that out of pressure of the Panchayat people she was claiming the petitioner to be her husband and that her husband was forced to sign in marriage registration application form for registration of marriage by the member of the village Panchayat and that the child was not fathered by the petitioner. According to P.W. 2 Sanatan Mondal her daughter was given in marriage on 23.04.2002 and a child was born to them. Her daughter was driven out from the matrimonial home as she failed to fetch money from him. In cross-examination, this witness fails to say that date of registration of the marriage but says that in the marriage certificate the date of solemnization has been mentioned as 23.04.2002. He fails to say the date of birth of the child. According to him one Arun Chatterjee was the priest of the marriage and one Kalo officiated as barbar. In her cross-examination he said that one year after the solemnization of marriage, the child was born. He further said that there was a gap of one year between the date of solemnization of marriage under the Hindu

religious rites and ceremonies and the date of registration of marriage. According to him, he pressed for maintenance for her daughter on the basis of the registration of her marriage.

3. As against the above testimonies the petitioner told the learned Magistrate that he was forced to put his signature on the marriage application form for registration of marriage and that no marriage was at all solemnized.

4. On the evidence just discussed it has to be examined whether the O.P. No. 1 was the legally married wife or not. Having considered the evidence of P.W. 1 and P.W. 2 it comes to this that their evidence fails to inspire the confidence of this Court as to the solemnization of marriage on 23.04.2002 according to Hindu religious rites and ceremonies. If according to the O.P. No. 2 and her father (P.W. 2), marriage was solemnized according to Hindu rites and ceremonies then registration of marriage becomes an aid to the proof of marriage. It is not the case of the O.P. No. 2 that there was no solemnization of marriage according to Hindu rites and ceremonies or that there was only solemnization of marriage under the Special Marriages Act, 1954. Both the girl and her father have in their examination-in-chief went on saying that marriage was solemnized on 23.04.2002 according to Hindu rites and customs in presence of many people and that in such marriage presentations were also offered, but in his cross-examination P.W. 2 reversed his position to say that the prayer for maintenance is based upon the registration of marriage. According to P.W. 1 one Tarun Banerjee was the priest in the marriage while according to the P.W. 2 one Arun Chatterjee officiated as the priest. Tarun and Arun must not be one and the same person but neither of them nor the alleged barbar has been examined. Not a single person who was present in the alleged marriage has been examined so as to corroborate the evidence of P.W. 1 and P.W. 2.

5. According to P.W. 1 the marriage was solemnized in the twilight of evening and night which cannot be at 11 p.m. in the night and this is a contradiction in terms. Neither P.W. 1, nor P.W. 2 is able to say the date of registration of marriage. Neither P.W. 1 nor P.W. 2 is able to say the date of birth of the child and this is really mysterious. P.W. 1 says that on 27.01.2005 which was the date of her cross-examination her child was 2 years 4 months. According to P.W. 2 the child was born a year after the alleged marriage which is 23.04.2002. If evidence of P.W. 1 and P.W. 2 is taken together it comes to this that on 27.01.2005 the child was 1 year 9 months & 4 days old and could not be 2 years 4 months old as said by P.W. 1 in her cross-examination. At the cost of repetition it has to be said that the birth of the child is unrelated to the alleged date of marriage. Neither P.W. 1, nor P.W. 2 is able to say the date of registration of marriage or the date of the birth of the child. It is commonly known that Hindu marriage is solemnized in observance of certain Hindu rites and ceremonies which include Homa and Saptapadi. P.W. 1 says that she does not know what is called Saptapadi. And it is very curious that a mother who gave birth to her child does not know the date of the birth although she read upto Class-

## VIII.

6. In the circumstances it is difficult to hold that the parties went through a minimum form of marriage under the Hindu rites and ceremonies.

7. The question is whether the child was fathered by the petitioner or not. It is submitted by the learned Advocate appearing for the State that having gone through evidences of the witnesses, it comes to this that the petitioner was a tutor in the house of P.W. 2 and came to be acquainted with her and the child was fathered by the petitioner because of intimate mixing with the petitioner. It appears from cross-examination of P.W. 2 that the petitioner used to coach the opposite party No. 2 in her house. That the petitioner signed his name in the application form for registration of marriage is a pointer to the fact that he cohabited with the opposite party No. 2, as a result of which she conceived. The O.P. No. 2 claimed in her evidence that she cohabited with the petitioner. It is preposterous to believe that the members of the village would without and just cause pick up the petitioner and force him to go to Registration Office for registration of marriage unless physical intimacy developed between the parties resulting in the conception of the O.P. No. 2 and subsequent birth of the child. In the written objection it was stated by the petitioner that the O.P. No. 2 had affairs with many young people but in his cross-examination he says that he has no proof to say about any bad antecedents of the O.P. No. 2. The learned Magistrate has correctly observed that in Indian society every woman attaining maturity is aware of the social stigma and she would be subjected to criticism and would face social humiliation if she base her claim of marriage falsely. It is impossible to believe that the O.P. No. 2 had single doubt to claim the petitioner to be the cause of the child falsely. Thus so far as the child is concerned her maintenance cannot be rejected until at least any declaration to the contrary is passed by any appropriate Civil Court which the petitioner has never approached so far.

8. Accordingly, I allow the revisional application in part and the judgment and order of the learned Magistrate is affirmed to the extent of the order of maintenance for the child but with respect to the O.P. No. 2 the prayer for maintenance would stand rejected and the magisterial order to that effect is set aside.

9. Urgent xerox certified copies, if applied for, be given to the parties as expeditiously as possible.