

GAHC010169012021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.Pet./589/2021

TARUN CHANDRA DAS

VERSUS

BHANJANA KALITA

Advocate for the petitioner : Mr. S. Biswas

Advocate for the respondent : Mr. M. Hussain

-BEFORE-

HON'BLE MR. JUSTICE ROBIN PHUKAN

Date of hearing : **07.02.2022**

Date of judgment : **22.02.2022**

VERDICT (CAV)

Correctness or otherwise of the judgment and order dated 06.09.2021, passed in Criminal Revision No. 17/2019, by the learned Additional District Judge, Bilasipara by which the learned Additional District Judge, Bilasipara has affirmed the judgment and order dated 04.10.2019 passed in Misc. Case No. 244/2017 by the learned Sub-Divisional Judicial Magistrate(M), Bilasipara under Section 125 of the Code of Criminal Procedure, 1973 granting maintenance to the respondent, namely, *Smti Bhanjana Kalita*, is put to challenge in this petition under Section 482 of the Cr.P.C. by the petitioner, namely, *Shri Tarun Chandra Das*.

2. It is to be noted here that vide impugned judgment and order dated 04.10.2019 in Misc. Case No. 244/2017, the learned Sub-Divisional Judicial Magistrate(M), Bilasipara has directed the petitioner to pay a sum of Rs. 5000/- (Rupees five thousand) per month to the respondent under Section 125 of the Cr.P.C.

3. The factual background leading to filing of the present petition is briefly stated as under:

“The respondent, namely, *Smti Bhanjana Kalita* is the wife of the petitioner, namely, *Shri Tarun Chandra Das*. Their marriage was solemnised on 28.04.2017 as per Hindu rights and rituals. After the marriage, the petitioner took the respondent to the house of his sister, namely, *Smti Latika Das* and stayed there for a month and thereafter, they shifted to a rented house at Bilasipara and lived there as husband and wife. After two months of living together as husband and wife, the petitioner took the respondent to his own house at Arearjhar. After reaching the house of the petitioner, the respondent got surprised to see the first wife of the petitioner. Before marriage, the petitioner told the respondent that he has already divorced his first wife and shown her some fake documents. Then being left with no option, the respondent tried to adjust herself with the petitioner and started leading a conjugal life. Thereafter, the petitioner started picking up quarrel with the respondent without any rhyme or reason and started torturing her both physically and mentally and also demanded money on the advice of other persons. Then on 06.11.2017, at about 10.45 p.m., the petitioner tried to kill the respondent by wrapping her neck by means of one gamosa, but somehow she managed to escape and reported the matter to her family members. But at the intervention of her family members, she again started to live with the petitioner. Then on 11.11.2017, the petitioner became violent and assaulted her badly and drove her out

of the matrimonial house. Though the family members of the respondent tried to settle the matter amicably, yet the same failed to yield any result. The petitioner is a Government employee under the Agriculture Department and posted at Bilasipara Agriculture Office and he is a person of sound health and receives salary of Rs. 40,000/- and he has also landed property. And on the other hand respondent is unable to maintain herself and despite having sufficient means, the petitioner has not been maintaining the respondent. Then being left with no other option, she filed one petition before the learned Sub-Divisional Judicial Magistrate (M), Bilasipara under Section 125 Cr.P.C. Thereafter, hearing both the parties, the learned Sub-Divisional Judicial Magistrate(M), Bilasipara vide order dated 04.10.2019, directed the petitioner to pay maintenance @ Rs. 5000/- (five thousand). Then being aggrieved by the aforesaid judgment and order of the learned Sub-Divisional Judicial Magistrate (M), Bilasipara dated 04.10.2019; the petitioner preferred one revision petition before the learned Additional Sessions Judge, Bilasipara, being CrI. Rev. No. 17/2019. Thereafter, vide judgment and order dated 06.09.2021, the learned Additional Sessions Judge, Bilasipara has affirmed the judgment and order of the learned Sub-Divisional Judicial Magistrate(M), Bilasipara, dated 04.10.2019 passed in Misc. Case No. 244/2017.

4. Being highly aggrieved, the petitioner preferred this petition on the grounds that:

(i). The learned Courts below failed to appreciate the fact that

expression 'wife' under Section 125 of the Cr.P.C. should be interpreted to mean only a legally wedded wife. The word 'wife' is not defined in the Code except indicating in the explanation to the Section 125 Cr.P.C., its inclusive character so as to cover a divorcee. A woman cannot be a divorcee unless there was a marriage solemnized between any two Hindus after following the conditions mentioned in Section 5 of the Hindu Marriage Act, 1955. But the learned Courts below failed to take into consideration the fact and arrive at a conclusion that the respondent herein is a legally wedded wife of the petitioner for her entitlement to maintenance as per Section 125 of the Cr.P.C.

- (ii). That, the marriage of a woman in accordance with Hindu rights with a man having a living spouse is a complete nullity in the eye of law and therefore, she is not entitled to the benefit of Section 125 Cr.P.C.
- (iii). That, as per Section 5 of the Hindu Marriage Act, 1955, a marriage with a person having a living spouse is not permissible and the same is void and not voidable.
- (iv). That, Section 11 of the Hindu Marriage Act, 1955, wherefrom it is clear as to when a marriage can be declared as null and void. As per Section 11 a marriage can be declared as nullity if it contravenes any of the conditions specified in Clause –(i), (iv), (v) of Section 5 of the Hindu Marriage Act, 1955.
- (v). That, to be entitled for maintenance under Section 125 of the

Cr.P.C., the burden is always on the person who claims herself to be the legally married wife of the person from whom she claims maintenance. And in the case in hand, the respondent has miserably failed to prove that she is legally married with the petitioner and the same fulfil the condition for a Hindu marriage as laid down in Section 5 of the Hindu Marriage Act, 1955.

- (vi). That cross-examination of the respondent (PW-1) shows that she knows the petitioner since the childhood as they belong to the same village and she also knew about the first marriage of the petitioner. Even then, the learned Courts below have arrived at a conclusion that the respondent is the legally married wife of the petitioner.
- (vii). That, the petitioner and the respondent entered into a marriage by way of registration under Notary Public and the same has not been considered by the learned Courts below.
- (viii). That there is no scope for artificial definition of 'wife' to include a woman not lawfully married. Therefore, it is contended to allow the petition by setting aside the impugned judgments and orders.

5. It is to be noted here that the respondent here in this case has not submitted her affidavit-in-opposition.

6. I have heard Mr. S. Biswas, learned counsel for the petitioner. Also

heard Mr. M. Hussain, learned counsel for the respondent.

7. Mr. Biswas, learned counsel for the petitioner submits that the learned Courts below have committed grave error in interpreting the word 'wife' in Section 125 of the Cr.P.C, and wrongly granted maintenance in favour of the respondent without there being any valid marriage between the parties. It is further submitted that the respondent and the petitioner belongs to the same village and they knows each other since childhood and as such she married with the petitioner knowing well about subsistence of his first marriage, and as such, the impugned judgments and orders suffer from gross illegality and impropriety and therefore, it is contended to set them aside by allowing the petition. Mr. Biswas has referred one Case Law **Savitaben Somanhai Bhatiya vs. State of Gujarat and Ors.** reported in **(2005) 3 SCC 636**, to make good of his submission.

9. On the other hand, Mr. M. Hussain, learned counsel for the respondent submits that no irregularity or illegality is committed by the learned Courts below in granting maintenance to the respondent. It is submitted that the petitioner got married with the respondent by suppressing his first marriage and now he cannot take the benefit of subsistence of his first marriage with his former wife. It is further submitted that the petitioner misrepresented the respondent that he has divorced his first wife and shown some documents and as such, the question of non-fulfilment of Section 5(1) of the Hindu Marriage Act does not arise. Mr. Hussain, learned counsel also referred one case law, **Badshah vs Urmila Badshah Godse & Anr.** reported in **(2014) 1**

SCC 188, to submit that the petition has been filed under Section 125 of the Cr.P.C. and that the respondent should be treated as legally wedded wife and that he duped the respondent by suppressing her earlier marriage and therefore, the petitioner cannot deny maintenance to the respondent and therefore, it is contended to dismiss the petition by affirming the judgments of the learned Court below.

10. Having heard the submission of learned counsels of both sides, I have gone through the petition and the documents placed on record and the impugned judgments of the learned Courts below and also, the case law referred hereinabove by the learned counsels of both sides. Also I have perused the evidence recorded by the learned Court below, so as to satisfy myself as to the correctness, legality and propriety of the finding of the learned Court below, in view of the observation of Hon'ble Supreme Court in **State Of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand** reported in **AIR 2004 SC 4412**, where it has been held that Section 401 Cr.P.C. has enabled the revisional court to exercise all powers to appellate Court (Section 386), if necessary, in aid of power of superintendence or supervision for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, passed as to the regularity of any proceeding.

11. In the case in hand, the petitioner, in his written statement has admitted having married the respondent in no uncertain terms and also admitted living with her as husband and wife. At first in the house of his sister and thereafter, at the rented house in Bilasipara for about 4 (four) months and upon the aforesaid admission and also the evidence adduced

by the respondent, the learned Court below held that the respondent is the married wife of the petitioner and they lived together as husband and wife and thereby, fulfilled the requirement of Section 125 of the Cr.P.C. Though the learned counsel for the petitioner submits that as per Section 11 of the Hindu Marriage Act, the marriage between the petitioner and the respondent is a nullity as it contravenes the provision of Clause –(i), (iv), (v) of Section 5 of the Hindu Marriage Act, 1955 yet, the said submission left this Court unimpressed and the ratio laid down by the Hon'ble Supreme Court in the case of **Savitaben Somanhai Bhatiya** (supra) would not come into his aid. The ratio in **Savitaben Somanhai Bhatiya's** (supra) case would apply only in those circumstances where a woman married a man with full knowledge of the first subsisting marriage. In such cases, she should know that second marriage with such a person is impermissible and there is an embargo under the Hindu Marriage Act and therefore she has to suffer the consequences thereof. Though the learned counsel for the petitioner has submitted that the respondent and the petitioner belongs to the same village and they knows each other since childhood and as such she married with the petitioner knowing well about subsistence of his first marriage, yet, such submission left this court unimpressed as there is material on record to show that the petitioner had married the respondent by saying and showing fake documents that he had divorced his 1st wife.

12. In the case of **Veerappa vs. Michael** reported in **AIR 1963 SC 933**, Hon'ble Supreme Court has held that once a marriage in fact is proved to have taken place, the presumption arising there from in favour

of a marriage in law would operate with all its amplitude and plenitude to entitle the wife of such a marriage to entertain an application under Section 125 of the Cr.P.C., unless, on the materials on record, the marriage in question appears to be stamped on its face with indisputable illegality and the invalidity thereof stares at the face, as it did in the case of **Yamunabai v. Anantrao (1983 CrI. LJ 259)**.

13. In Dwarika Prasad Satpathy v. Bidyut Prava Dixit and Anr. reported in AIR 1999 SC 1348 and in Chanmunia Vs. Virendra Kumar Singh Kushwaha & Another, : (2011) 1 SCC 141, it has been held by the Hon'ble Supreme Court that:-

“the parties had been living together for a long time and on that basis question arose as to whether there would be a presumption of marriage between the two because of the said reason, thus, giving rise to claim of maintenance under Section 125, Cr.P.C. by interpreting the term “wife” widely. The Court has impressed that if man and woman have been living together for a long time even without a valid marriage, as in that case, term of valid marriage entitling such a woman to maintenance should be drawn and a woman in such a case should be entitled to maintain application under [Section 125, Cr.P.C.](#)”

14. In the case of Suo Malan vs. Balasahed Bhimrao Guwade and Ors., reported in 1989 Cri.L.J. 675:

“..proceedings under [S. 125](#) of the Cr.P.C. are in the nature of the summary proceedings. By providing a simple and speedy remedy the legislature has provided for a limited relief for the neglected wives, children and parents. S. 125 of the [Cr.P.C.](#) is not intended to provide for a full and final determination of the status and personal rights of the

parties. It is true that a woman whose marriage is void cannot get the status of a legally wedded wife and is not entitled to maintenance under this Section. But it is important to bear in mind that in such proceedings all that the wife has to prove is the performance of certain marriage ceremonies and it is immaterial whether the same satisfy all the requirements of a valid marriage. The party who challenges the validity of the marriage has to establish it in a competent civil court. Therefore, it was for the first respondent here to have gone to a competent civil court and get his marriage annulled. Not having done that, it is not for the courts below to go to his rescue and declare that the marriage between him and the petitioner was not legal. That was not the function of the courts dealing with an application under [S. 125](#) of the Cr.P.C. In the absence of a declaration by competent civil court about the legality or otherwise of the marriage between the petitioner and the first respondent, the lower courts should have presumed that the said marriage was legal..”

15. Again in the case of **Badshah vs. Urmila Badshah Godse & Anr.** reported in **(2014) 1 SCC 188**, Hon’ble Supreme Court in paragraph-14, has held that as under:

“We are dealing with a situation where the marriage between the parties has been proved. However, the petitioner was already married. But he duped the respondent by suppressing the factum of alleged first marriage. On these facts, in our opinion, he cannot be permitted to deny the benefit of maintenance to the respondent, taking advantage of his own wrong.”

16. Thus, in view of the above case laws of Hon’ble Supreme Court in **Virappa vs. Michael (supra) Dwarika Prasad Satpathy v. Bidyut Prava Dixit and Anr.(supra), Chanmunia Vs. Virendra Kumar Singh Kushwaha & Another(supra) Badshah vs. Urmila Badshah**

Godse & Anr. (supra), there is no escape from the proposition that once marriage in fact proved to have been taken place, the presumption arising there from in favour of marriage in law would operate with all its amplitude and plenitude to entitle the wife to such a marriage to entertain an application under section 125 Cr.P.C., unless on the materials on record the marriage in question appears to be stamped on its face with indisputable illegality and the invalidity thereof stares at the face. Once such presumption of a lawful marriage commenced to operate in favour of a marriage which has taken place in fact, such a presumption alone would be good enough to entitle the wife to maintain an application for maintenance under section 125 Cr.P.C. unless on the material on record, the presumption stands dislodged and overthrown.

17. Here in this case, solemnisation of marriage between both the parties and subsequent living together as husband and wife for about six months stands established and the said facts are admitted by the petitioner also. And as such presumption arising there from in favour of the marriage in law will operate with all its amplitude and plenitude to entitle the wife to such a marriage to entertain an application under section 125 Cr.P.C. There is nothing on the record to dislodge or overthrow such a presumption. And as such the learned courts below has rightly arrived at a conclusion that the respondent/1st party is the wife of the petitioner/2nd party. In the given facts and circumstances, this court is of the considered opinion that at least for the purpose of claiming maintenance under section 125 Cr.P.C. the respondent/1st party is entitled to claim to be the wife of the petitioner. Mention to be made here that the petitioner has not

challenged the validity of his marriage with the respondent/1st party in any court of law.

18. The learned court below has determined the quantum of maintenance @Rs. 5000/(Rupees five thousand) per month. Admittedly, the petitioner is serving in Agriculture Department, at Bilashipara. His monthly salary is about Rs. 40000/, the factum of which is not seriously disputed by producing any documents like salary certificate etc. The respondent is a house wife having no source of income of her own. Though the learned counsel for the petitioner has submitted that she has been serving in a school, yet no evidence to that effect is lead by him before the learned court below. Nor such a fact is brought on record by filing any affidavit before this court. In view of above the quantum of maintenance so decided by the learned court below appears to be justified and it requires no interference of this court.

19. In **Bhagwan Vs. Kamala Devi, AIR 1975 SC 83**, Hon'ble Supreme Court has held that :-

“The obligation to maintain wife and minor children, who are unable to maintain themselves, flows from the right of the man to marry and to setup a family as recognised in Article-16 of the Universal Declaration of Human Right, which also provides that ä family as fundamental group unit of the society, is entitled to protection by the society and the state. This is fulfilled by section 125 Cr.P.C. considering that wife and children are not left beggared and destitute by providing them with a speedy and effective remedy.”

20. Section 125 Cr.P.C. is a measure of social justice, enacted to protect the vulnerable section of the society like women, children and infirm

parents and it within the scope of Article -15(3) and 39 of the Constitution of India. The object of this section is not to punish for the past, but to prevent the vulnerable section of the society, who are unable to maintain themselves, so that they are left beggared and destitute on the scrap heap of the society, and thereby driven to a life of vagrancy, immorality and crime for their sustenance, by compelling those who are capable to support to perform their moral obligation.

21. While the impugned judgments of the learned courts below are examined in the light of the propositions of law, discussed herein above, I find that the conclusion so arrived at by the learned courts below are not suffering from any illegality or impropriety requiring this court to interfere with the same in exercising its inherent jurisdiction under section 482 Cr.P.C. In the result I find no merit in this petition and accordingly the same stands dismissed. The parties have to bear their own cost.

JUDGE

Comparing Assistant