
(1981) 01 GAU CK 0001
In the Gauhati High Court

Boli Narayan Pawye

APPELLANT

Vs

Smt. Shiddheswari Morang

RESPONDENT

Date of Decision : 27-01-1981

Acts Referred:

Constitution of India, 1950 — Article 15, 39, 51A
Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (1981) CriLJ 674

Hon'ble Judges : K. Lahiri, J

Bench : Single Bench

Judgement

K. Lahiri, J.—Shrimati Siddheswari was in her early 20s when she was allured and mesmerised by the petitioner Boli Narayan Pawye, a young man studying Law perhaps vibrant with noble ideas to uplift the cause of the poor and down trodden and to safeguard and protect the weaker section like woman, children infirm and old. Could he practice the noble ideals in his private life? The parties belong to the Mishing Tribe. The Tribe belongs to "the other Backward Classes" as the members are economically and socially backward. However, they have values for superior to the "Forward Classes"; they live with nature, thrive in hills and valleys, generous as mountains, simple as the morning dew and have colourful cultural background. They have their own life-style and though they seem to accept or profess Hinduism, they have their faith or religion distinct and different, simple and precise to meet their needs. Economic poverty does not permit solemnisation of marriages in a big way. For solemnisation of marriages no sacred fire, no Saptapadi or Mantras are needed, not is the requirement of a Brahmin to perform the intricate ceremonies. A small feast, a pig for gastronomy, bowing down by the couple before a few village-elders are enough to solemnise a valid marriage in "a large scale". However, most of them are poor who cannot afford the luxurious marriages and they follow the traditional solemnisation in the form akin to "Gandharva Vivaha" known in Hindu Law, which is a system styled by them as "Dugla-Lanam". The couple fell in love, eloped to return back as man and wife to live over happily. The love letters of Bali Narayan, proved in

the case, bear the testimony of passion, fondness and amour of the parties. They eloped is the common case of the parties. She bore a child, lived for a couple of weeks in the house of her father-in-law, and thrown out after barbaric torture are established by oral as well as documentary evidence. The village-elders pressed her "in-laws" and husband to take her back and to celebrate the ceremonies; they promised but honoured by rejecting it. She gave birth to a girl child. Neglected by the petitioner and the members of his family and thrown out as a derelict, she took the ultimate resort and demanded due, maintenance for herself and her child, in the Court of Law. She claimed that the petitioner had sufficient means to maintain them but had neglected to perform his moral, legal and constitutional duties. The love-lorn petitioner who could die for Siddheswari turned turtle and contested the proceedings tooth and nail and disowned everything. The parties adduced evidence, the learned Magistrate by an elaborate and reasoned judgment held that there was a valid marriage between the parties, the child was their offspring and awarded maintenance of Rs. 150/- p. m. to Siddeshwari and Rs. 150/- per month to the baby. The findings have the backing of law, logic, lucidity and legal testimony. The unbiased and neutral determination was unacceptable to the petitioner who asked for "gender justice" in this Court and in the process dragged the destitute herein. The derelict petitioned in desperation, voiced her pathos, expressed her hapless condition and apprised the Court her inability to defend her case by engaging a counsel. At the request of the Court Mr. K.K. Bezbarua, a Senior Advocate of this Court, agreed to argue the case as *amicus curiae*. Mr. Bezbarua has very ably argued the case, placed before the Court the nature and character of the system of marriage amongst the Mishings and the objects and reasons for introducing the provisions for maintenance in the Code of Criminal Procedure and referred a few decisions in point.

2. The main trust of the petitioner is that as there was no valid marriage between the parties. Shiddheswari is not the wife of the petitioner. At the highest, she may be termed as "a woman" who came in the life of the petitioner as a lightning and vanished into the clouds. Strict proof of marriage with all its attending ceremonies is "sine qua non" to acquire the status of wife as contemplated in Section 125(1)(a) of the Code is the submission. Mr. Bezbarua does not accept that the term should receive such a constricted meaning and urges that the point need not be gone into as a valid marriage was proved by Siddheswari. A short as well as a long Look at Section 125 of "the Code" makes it clear that it is a measure of social justice to ensure protection to wives, children and parents. It falls within the sweep of Articles 15(3) and 39 of the Constitution and is the core of the fundamental duties enshrined in Article 51A and the legislative inspiration is drawn from the Preamble to the Constitution which provides for securing social justice to all. The code words printed must be explicated to enable the provision to fulfill its social function which is the generating force for enacting the provision. The constitutional compassion for the weaker sections calls for an in-terpretation having social relevance. When

alternative meanings may be advanced in interpreting a word and both are reasonable, the meaning which promotes or proffers the cause of the derelicts should be accepted. Wives as well as divorcees are entitled to maintenance. The entitlement is obtainable when the bonds of marriage are still there as well as when it is snapped by divorce where the marriage link is ruptured. Existence of a marriage knot is, therefore, not the condition precedent for such entitlement. A wife and an ex-wife are equally entitled to maintenance subject to the limitation contained in Section 125. To discern the question posed, it is necessary to ponder why the Legislature applied the term "wife" and not the expressions "legally married wife" or "a married wife. Counsel for the petitioner urges that the term "wife" invariably means a "legally married wife". The standard dictionaries define and describe the term to take within its sweep persons styled as "Mistress", "Care-taker", to "Married women". It is unnecessary to travel to decide whether the term wife means other than "married woman.". The term "marriage" is the state of mutual relationship, husband and wife, wedlock an institution whereby man and women are conjoined in a special kind of social and legal relationship for leading a family life. A concubine or mistress may come within the larger definition of the term "wife" as defined in the dictionaries, but in the context of the provision contained in the section the term "wife" cannot be applicable so far as they are concerned., Only a woman who takes a man as her husband, enters in the family fold, given recognition as such by her man as his wife comes within the term "wife". A woman who comes in the life of a man, gives herself to the man, takes the family-life of the man and the man uses her as such, recognises her as his wife, must come within the fold of the term "wife", absence of ceremonial marriage notwithstanding. Acceptance of a woman as a wife, declaration of the status directly or indirectly and acceptance of status by the woman are enough to bring her within the purview of Section 125. , The view serves "the social purpose" for which the Section has been enacted. To reject it would exclude woman living as wife, giving her life for the man but not validly married to be excluded from the scope of the section. In India there is no law to provide unemployment benefits but such benefits are granted in many countries having different "social orders". In India, where there is no such provision for unemployment benefits, a woman accepted as wife and used as such would be thrown to the street as destitute for want of non-observance of ceremonies or the dos of the personal law of marriages. In this context as well the meaning attributed to the term "wife", is fitting. Therefore, I find the contention of the petitioner to be unattractive, unappealing and unacceptable. At any rate, if a man lures a woman, elopes her with a promise to complete a formal marriage and if the woman surrenders herself at the pleasure of the man, taken home, kept as a wife even for a short span of time is also entitled to be termed as "wife". A marriage may be valid, void or voidable; nonetheless it is a marriage. Absence of "mandatory ceremonies may render the marriage void or voidable, A void marriage is one which required declaration by a competent Court to be so. A voidable marriage is regarded as valid until a decree of nullity has been obtained during the lifetime of the parties. It follows, therefore, that a void or voidable

marriage does not disentitle the wife to maintenance in the absence of a final declaration from a competent Court. Any proposition to the contrary would throw millions of Indian women to the street. It would amount to grant of licence to men to go through void or voidable marriages and throw poor girls out in the street, as derelicts. Even if the proposition is doubtful it must be given effect considering the fact that the law is meant to uphold the cause of the "derelicts". However, I have no doubt about the view taken by me. The inspiration to interpret the law in the fashion is drawn from Bai Tahira Vs. Ali Hussain Fidaalli Chothia and Another, , Fuzlunbi Vs. K. Khader Vali and Another,

3. In the instant case there is backing of evidence to show that the couple eloped and went through the formal marriage of "Dugla-Lanam", a Gan-dharva form of marriage, which is a valid form of marriage amongst the Mishing Tribe. The girl was brought and kept in the house of the petitioner as his wife for a few weeks; the village elders accepted her to be the wife of the petitioner and commanded the petitioner's family to go through the expensive form of marriage ceremonies, as they could afford to do. The recognition of the village elders that Shiddheswari was the wife of the petitioner was the sanction of the union and grant of socio-legal relationship to Siddheshwari for leading a family life with the petitioner. She got the recognition of the society as to her marital status.

4. In the instant case, it is unnecessary to determine as to whether the marriage was valid, void or voidable. The findings of the Court below is that the marriage was in accordance with the customary law of the Mishings and the marital status of the parties was recognised by the village elders. There cannot be any doubt that the petitioner married Siddheswari according to their customary law to which the parties belong. If the petitioner wanted to establish that it was invalid or void or voidable marriage, he could have adduced evidence to show that it was an invalid marriage. The endeavour of the petitioner proved unsuccessful. An order rendered u/s 125 of the Code is a summary one and does not finally determine the rights and obligations of the parties. It is a summary remedy for providing maintenance to prevent vagrancy. The findings of the Courts below as well as this Court in the proceedings will not operate as decisive factors in any civil proceedings between the parties for determining the questions raised herein. The Civil Court, if an action is taken, may arrive at its independent decision on the evidence which may be adduced before it, uninfluenced by the findings in the proceedings, in all matters including the factum of ceremonies of marriage and the validity of marriage between the parties.

5. A very feeble submission was made that the petitioner was not liable to pay maintenance for the child. It was urged that there was a very short gap between the elopement and the birth of the child. The elopement was in February, 1978 and the baby was born on 8-7-1978. Pre-elopement love-letters are on records, the factum of elopement duly established and there is no material that any other person had any access to the girl nor is there any allegation that anybody other than the petitioner was responsible for the birth of the child. Backed by the

findings of the Courts below and supported by the evidence, I have no hesitation to hold that the petition deserves rejection which I hereby do. The Rule issued is discharged and the stay order is vacated. Send down the records to the Court below forthwith.