

(2012) 07 CAL CK 0163
In the Calcutta High Court
Case No : W.P.C.T. No. 156 of 2012
In Re: Smt. Niru Devi

Date of Decision : 19-07-2012

Acts Referred:

Hindu Marriage Act, 1955 — Section 11, 12, 13(2), 13(2)(iv), 18
Penal Code, 1860 (IPC) — Section 494

Citation : (2012) 5 CHN 565

Hon'ble Judges : Nishita Mhatre, J; Anindita Roy Saraswati, J

Bench : Division Bench

Advocate : Tapabrata Chakraborty and Barun Chatterjee, for the Appellant; Malay Kumar Das and Dibyajyoti Raha, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner is aggrieved by the decision of the Administrative Tribunal in O.A. No. 1505 of 2010. The Tribunal has dismissed the Original Application filed by her in which she had sought the relief of compassionate appointment. The petitioner claims that she was married to one Angrej Mondal, who was employed with the Eastern Railways as a gatekeeper. Angrej Mondal expired on 29th March, 2005. One year later, the petitioner submitted a representation to the authorities seeking appointment on compassionate grounds.

2. As there was no response from the authorities, the petitioner approached the Central Administrative Tribunal. On 9th July, 2010 the Tribunal disposed of the Original Application directing the authorities to decide whether the petitioner fulfilled all the conditions for being appointed on compassionate grounds. The Senior Divisional Personnel Officer of the Eastern Railways passed an order on 21st September, 2010 rejecting the application of the petitioner. The main reason was that the petitioner had got married to the deceased employee, although his first marriage was subsisting.

3. Being aggrieved by the decision of the Railways, the petitioner approached the Tribunal yet again by preferring O.A. 525 of 2011. The Tribunal has dismissed the Original Application as the marriage between the petitioner and the deceased

Angrej Mondal did not have any legal sanction.

4. Mr. Chakraborty, learned advocate appearing for the petitioner, submits before us that although the petitioner, may be, as he describes her, "the second wife", "the first wife" has no objection to the petitioner being appointed on compassionate grounds. He submits that the marriage of Angrej Mondal with Dhaneshwari Devi had taken place when both of them were minors. Therefore, that marriage was not valid in the eyes of law.

5. According to the learned Counsel, in such circumstances the deceased was free to marry, even while his spouse was living, as the earlier marriage had no valid sanction. He submits that it was not necessary for either of the spouses to obtain a declaration from a competent Court that their marriage was invalid or null or void or voidable before Angrej Mondal married the petitioner.

6. The learned Counsel for the petitioner submits that in view of the judgment of the Full Bench of the Andhra Pradesh High Court in the case of Pinninti Venkataramana and Another Vs. State, the only consequence of marriage affirmed between two minors is that they would be liable to prosecution u/s 18 of the Hindu Marriage Act, 1955 (for short, the Act) and that the bride could obtain a decree of divorce u/s 13(2)(iv) of the Act, provided she was under the age of fifteen at the time of the marriage.

7. Mr. Chakraborty also submits that the order passed by the Officer concerned who was responsible for considering the petitioner's representation did not afford her a personal hearing. As a result, submits the learned Counsel, the Railways have breached the provisions of natural justice. He urges that when the Tribunal had specifically directed in the earlier round of litigation that the representation of the petitioner should be heard, it was expected that the petitioner ought to have been afforded a personal hearing, rather than deciding the matter only on the basis of documents. He submits that the matter should be remanded to the Railway Authorities to consider the representation of the petitioner again, especially when there is material on record to indicate that Dhaneshwari Devi is not interested in the compassionate appointment on the death of Angrej Mondal, as she has married some other person and has nothing to do with the family of Angrej Mondal.

8. Mr. Chakraborty, therefore, urges that the impugned order passed by the Senior Divisional Personnel Officer of the Eastern Railways is required to be set aside and the petitioner ought to be given an opportunity of being heard by the Authorities.

9. The learned Counsel appearing for the respondents has submitted that no useful purpose would be served by remanding the matter to the Railway Authorities when admittedly the marriage between the petitioner and Angrej Mondal is not valid. He submits that compassionate appointments are to be given only to the members of the family, including the spouse of a deceased employee. According to him, when the marriage between the petitioner and Angrej Mondal

was not valid, the question of giving her appointment on compassionate grounds does not arise. He further points out the judgments in the case *Gajara Naran Bhura Vs. Kanbi Kunverbai Parbat*, ; *Krishna Prasad Paul Vs. State of West Bengal*, and also of the Supreme Court in the case of *A. Subash Babu Vs. State of A.P. and Another*, According to him, these judgments clearly lay down that a second marriage, which is contracted by one of the spouses while the earlier marriage is subsisting, would not be valid.

10. We are not inclined to remand the matter to the Railway Authorities, as requested by Mr. Chakraborty. We have afforded him a hearing before us and we do not think it necessary to remand the matter.

11. Section 5 of the Hindu Marriage Act stipulates the conditions which are to be fulfilled for solemnising a marriage between two Hindus. Sub-section (i) of section 5 provides that neither party should have a spouse living at the time of the marriage. Sub-section (iii) stipulates that the bridegroom should be twenty-one years of age and the bride should be eighteen at the time of marriage. We are not concerned with the other conditions in the present case and, therefore, we are not referring to those conditions.

12. u/s 11 of the Act any marriage can be declared to be null and void on a petition being presented by either of the party to the marriage on the ground that the conditions specified in clauses (i), (iv) and (v) of section 5 of the Act have been violated. Similarly, section 12 of the Act, which speaks of a voidable marriage, provides that a marriage may be annulled by a decree on several grounds amongst which is that the marriage was in contravention of the conditions specified in clause (ii) of section 5 of the Act. It is true that neither section 11 nor section 12 of the Act provides that a marriage can be declared void or voidable when it has taken place between two minors. However, section 13(2) of the Act provides that the wife may present a petition for dissolution of the marriage by a decree of divorce on the ground that the marriage was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age, but before attaining the age of eighteen years.

13. In the present case there is no material to show that Dhaneshwari Devi had repudiated the marriage after she attained the age of fifteen years but before she attained the age of eighteen years. It is not possible for us to accept the contention of Mr. Chakraborty that the marriage between Angrej Mondal and the petitioner is valid only because Angrej Mondal and Dhaneshwari Devi were minors when they got married. Unless there is a decree from a competent Court, in our opinion, the subsequent marriage cannot be considered to be valid.

14. The rationale of the legislature is obvious when it has not mentioned clause (iii) of section 5 of the Act as one of the reasons for void or voidable marriage. It is because if the parties have married at an age below majority, unless the wife repudiates the marriage, there is no question of such a marriage being void or

voidable. At worst, the parties would suffer the penal consequences on account of solemnizing a marriage in contravention with the conditions specified in clauses (iii), (iv) and (v) of section 5 of the Act. The marriage itself does not become void.

15. We have considered the aforesaid judgments, all of which are with regard to the prosecution u/s 494 of the Indian Penal Code. In the decision of *A. Subhash Babu vs. State of A.P. & Anr.* (supra), the Supreme Court has considered the provisions of law and has held thus:

Though section 11 of the Hindu Marriage Act provides that any marriage solemnized, if it contravenes the conditions specified in clause (i) of section 5 of the said Act, shall be null and void, it also provides that such marriage may on a petition presented by either party thereto, be so declared. Though the law specifically does not cast obligation on either party to seek declaration of nullity of marriage and it may be open to the parties even without recourse to the Court to treat the marriage as a nullity, such a course is neither prudent nor intended and a declaration in terms of section 11 of the Hindu Marriage Act will have to be asked for, for the purpose of precaution and/or record. Therefore, until the declaration contemplated by section 11 of the Hindu Marriage Act is made by a competent Court, the woman with whom second marriage is solemnized continues to be the wife within the meaning of section 494, IPC and would be entitled to maintain a complaint against her husband.

16. The Full Bench of the Andhra Pradesh High Court in the case of *Pinninti Venkataramana and another vs. State* (supra) has taken a similar view.

17. In our opinion, therefore, the submissions of Mr. Chakraborty are untenable and the petitioner cannot be considered for being appointed on compassionate grounds as such appointments are to be made only with respect to the members of the family of a deceased employee.

18. However, it is now well-settled that the children of such a marriage would be entitled to be considered for compassionate appointment. In the event the petitioner's children, begotten by the petitioner through Angrej Mondal, do apply for compassionate appointment, their case will be considered in accordance with law as and when they apply.

19. Petition is, thus dismissed. No order as to costs.