
(2016) 08 CHH CK 0047

In the Chhattisgarh High Court

Case No : Criminal Revision No.180 of 2005.

Mirabai alias Kachra Bai (Aged about 44 years, W/o Dongar Ram, D/o Lakhan Kalar - Petitioner @HASH Dongar Ram (Aged about 59 years, S/o Panch Ram Nayak, Occupation Service (Forest Department), R/o Khairbana, Thana and Tahsil Chhuikhadan, at present resi

Date of Decision : 12-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2017) 1 CGLJ 122 : (2016) CriLJ 4754 : (2017) 1 DMC 759 : (2017) 2 RCRCivil 457 : (2017) 1 RCRCriminal 686

Hon'ble Judges : Shri Deepak Gupta, CJ.

Bench : Single Bench

Advocate : None, for the Petitioners in both the cases; None, for the Respondents in both the cases

Final Decision : Partly Allowed

Judgement

Shri Deepak Gupta, C.J. - Both the above-mentioned petitions are being disposed of by the following common order as the issue involved therein is common. For the sake of convenience in deciding both the cases, Criminal Revision No.180 of 2005 is taken-up as a lead case.

2. Petitioner Mirabai alias Kachra Bai claiming herself to be the wife of Respondent Dongar Ram on the basis of custom of getting married by wearing churis (bangles) filed a petition, being Miscellaneous Criminal Case No.72 of 1998 before the Additional Chief Judicial Magistrate, Khairagarh claiming maintenance for herself and her daughter Purnima, who is Petitioner No.2 in the instant petition, i.e., Criminal Revision No.180 of 2005.

3. The Trial Court granted maintenance of Rs.500/- per month to Petitioner/wife Mirabai and that of Rs.300/- per month to Petitioner/daughter Purnima. But, as far as the daughter is concerned, it was clarified that she would be entitled for the maintenance only till she attains majority.

4. Aggrieved by the order of the Trial Court, husband and father Dongar Ram/

Respondent herein filed a revision, being Criminal Revision No.70 of 2004 before the Additional Sessions Judge, Khairagarh. The Additional Sessions Judge partly allowed the revision. In the revision, the Additional Sessions Judge upheld the order of the Additional Chief Judicial Magistrate relating to Petitioner/wife, but rejected her claim for higher maintenance. The Additional Sessions Judge rejected the claim of the Petitioner/daughter on the ground that she is a major.

5. Both the Petitioners, i.e., the wife and the major daughter have filed the instant revision petition claiming maintenance of Rs.2,500/- per month for the Petitioner/wife and Rs.1,500/- per month for the Petitioner/daughter.

6. Respondent Dongar Ram has also filed a petition, being Miscellaneous Criminal Case No.572 of 2005 challenging the order of the Additional Sessions Judge, Khairagarh passed in Criminal Revision No.70 of 2004. In Miscellaneous Criminal Case No.572 of 2005, Dongar Ram has contended that he and Mirabai are not legally married, but he does not deny that Purnima is his daughter. According to him, Purnima has attained majority and, therefore, she is not entitled to any maintenance.

7. It is well settled law that Courts frown on illegitimacy. Dongar Ram does not dispute that Mirabai lived with him for many long years. Purnima who was born out of this relationship has become a major. Long standing relationship itself leads to a presumption that the relationship is a valid relationship of marriage.

8. In *Dwarika Prasad Satpathy v. Bidyut Prava Dixit*, (1999) 7 SCC 675, the Apex Court held as follows:

"6. the validity of the marriage for the purpose of summary proceedings under Section 125 CrPC is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceedings is not as strict as is required in a trial of offence under Section 494 IPC. If the claimant in proceedings under Section 125 of the Code succeeds in showing that she and the respondent have lived together as husband and wife, the court can presume that they are legally wedded spouses, and in such a situation, the party who denies the marital status can rebut the presumption. Once it is admitted that the marriage procedure was followed then it is not necessary to further probe into whether the said procedure was complete as per the Hindu rites in the proceedings under Section 125 CrPC.

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13. from the evidence which is led if the Magistrate is prima facie satisfied with regard to the performance of marriage in proceedings under Section 125 CrPC which are of a summary nature, strict proof of performance of essential rites is not required.

It is further held in *Dwarika Prasad Satpathy* case (supra) as follows:

9. It is to be remembered that the order passed in an application under Section

125 CrPC does not finally determine the rights and obligations of the parties and the said section is enacted with a view to provide summary remedy for providing maintenance to a wife, children and parents. For the purpose of getting his rights determined, the appellant has also filed a civil suit, which is pending before the trial court. In such a situation, this Court in *S.Sethurathinam Pillai v. Barbara*, (1971) 3 SCC 923, observed that maintenance under Section 488 CrPC, 1898 (similar to Section 125 CrPC) cannot be denied where there was some evidence on which conclusion for grant of maintenance could be reached. It was held that order passed under Section 488 is a summary order which does not finally determine the rights and obligations of the parties; the decision of the criminal court that there was a valid marriage between the parties will not operate as decisive in any civil proceeding between the parties."

9. Thereafter, in *Chanmuniya v. Virendra Kumar Singh Kushwaha*, (2011) 1 SCC 141, the Apex Court held that the term "wife" occurring in Section 125 Cr.P.C. is to be given very wide interpretation. The Apex Court held as follows:

"42. a broad and expansive interpretation should be given to the term "wife" to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a precondition for maintenance under Section 125 CrPC, so as to fulfil the true spirit and essence of the beneficial provision of maintenance under Section 125."

10. The entire law on the subject was considered by the Supreme Court in *Badshah v. Urmila Badshah Godse*, (2014) 1 SCC 188, wherein, after discussion, the Apex Court held as follows:

"16. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law.

18. The court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision ? libre re-cherche scientifique i.e. "free scientific research". We are of the opinion that there is a non-rebuttable presumption that the legislature while making a provision like Section 125 CrPC, to fulfil its constitutional duty in good

faith, had always intended to give relief to the woman becoming "wife" under such circumstances. This approach is particularly needed while deciding the issues relating to gender justice. We already have examples of exemplary efforts in this regard. *Journey from Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556 to *Shabana Bano v. Imran Khan*, (2010) 1 SCC 666 guaranteeing maintenance rights to Muslim women is a classical example.

20. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in *Heydon case*, 76 ER 637 which became the historical source of purposive interpretation. The court would also invoke the legal maxim of construction *ut res magis valeat quam pereat* in such cases i.e. where alternative constructions are possible the court must give effect to that which will be responsible for the smooth working of the system for which the statute had been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125 CrPC, such a woman is to be treated as the legally wedded wife.

21. The principles of Hindu Personal Law have developed in an evolutionary way out of concern for all those subject to it so as to make fair provision against destitution. The manifest purpose is to achieve the social objectives for making bare minimum provision to sustain the members of relatively smaller social groups. Its foundation spring is humanistic. In its operation field all though, it lays down the permissible categories under its benefaction, which are so entitled either because of the tenets supported by clear public policy or because of the need to subserve the social and individual morality measured for maintenance."

11. The Apex Court has very clearly held that Section 125 Cr.P.C. is meant to provide relief to a poor woman and unless it is shown that the woman is at fault, maintenance cannot be denied to her. Even if the marriage is not strictly legal, the woman would be treated to be the wife for the purpose of Section 125 Cr.P.C. unless it is shown that she is at fault. Therefore, if a woman marries a person when she herself was married earlier and her first spouse is alive, she may not be able to claim maintenance from her second husband.

12. In the present case, Respondent Dongar Ram led no evidence to the contrary. In fact, the custom of a woman getting married by wearing churis (bangles), though not legal, is common in Chhattisgarh. These women are treated as wives in society and there is no reason why they should not be treated as wives while dealing with petitions under Section 125 Cr.P.C.

13. Furthermore, both the Courts below have arrived at a finding that the Petitioner/wife was the legally wedded wife of Respondent Dongar Ram. This finding is a pure finding of fact, which cannot be set aside in revisional jurisdiction. As far as the claim of the Petitioner/daughter is concerned, under Section 125 of the Code of Criminal Procedure, she was entitled to maintenance for the period till she attained majority. Merely because she had attained majority when the Additional Sessions Judge decided the case, was not a ground to hold that she was not entitled to maintenance earlier.

14. In view of the above discussion, I partly allow Criminal Revision No.180 of 2005 and dismiss Miscellaneous Criminal Case No.572 of 2005. I set aside the order of the Additional Sessions Judge passed in Criminal Revision No.70 of 2004 and affirm the order of the Additional Chief Judicial Magistrate passed in Miscellaneous Criminal Case No.72 of 1998.

15. Furthermore, keeping in view the fact that Criminal Revision No.180 of 2005 remained pending in this Court for more than 11 years, the maintenance is raised in favour of the Petitioner/wife to Rs.1,000/- per month with effect from the date of filing Criminal Revision No.180 of 2005, i.e., 19.4.2005 till 18.4.2010 and to Rs.1,500/- per month thereafter. The Petitioner/wife, if so advised, may file a petition under Section 127 of the Code of Criminal Procedure for enhancement of the maintenance if she can prove that the husband/Respondent is earning more.

16. The amount of maintenance is to be paid on or before 15th day of every month. The arrears of maintenance is to be paid in 12 equal monthly instalments on or before 15th day of every month. The orders under challenge are modified to the extent indicated above.