
(1981) 06 SHI CK 0003
In the High Court Of Himachal Pradesh

Smt. Rattan Devi

APPELLANT

Vs

Padam Singh Kapoor

RESPONDENT

Date of Decision : 05-06-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Marriage Act, 1955 — Section 2(2)

Citation : (1981) CriLJ 1422 : (1981) ShimLC 340

Hon'ble Judges : V.D. Misra, C.J

Bench : Single Bench

Judgement

Vyas Dev Misra, C.J.—This judgment will dispose of Criminal Revisions Nos, 23 and 34 of 1981 since they arise out of the same judgment.

2. These revisions are directed against the judgment of Sessions Judge, Simla, holding that the marriage being void the wife could not claim maintenance u/s 125 of the Criminal P.C.

3. Rattan Devi (referred to as the wife) filed an application u/s 125 of the Criminal P.C. against Padam Singh Kapoor (referred to as the husband) claiming maintenance for herself and her son, named Bishan Kapoor, aged about 6 years. It was averred that the husband was working as a teacher in 1968 in village Meber, Tehsil Kalpa, District Kinnaur. The parties came to know each other. The husband married the wife according to the customs of Kinnaur. The custom consists of a male dragging away successfully a female in a dance which results into a marriage. The wife further averred that she had lived with the husband as his wife for a number of years, that is, between 1968 to 1977. When the husband was transferred out of Kinnaur, he left the wife and refused to maintain her and their son Bishan Kapoor.

4. The husband denied the marriage. He averred that he was already married to one Leela from whom he had four children. It was alleged that the wife had in fact married the husband's brother Shadi Ram who was for sometime living with the husband.

5. The trial court came to the conclusion that marriage stood proved. Rs. 100/- per month as maintenance for the wife and Rs. 50/- per month as maintenance for the minor son Bishan Kapoor were awarded. The husband appealed. The Sessions Judge came to the conclusion that the marriage in question was illegal and void since the husband was already married. He, therefore, set aside the order of the trial court directing maintenance to the wife. The Sessions Judge, however, maintained the trial court's order directing the husband to pay Rs. 50/- per month as maintenance to the minor son.

6. Mr. Chitkara, learned Counsel for the husband, contends that the wife has failed to prove the marriage. He also submits that the minor son was not born out of the loins of the husband. Mr. Chhabil Dass, learned Counsel for the wife, submits that Hindu Marriage Act (referred to as the Act) does not apply to people of Kinnaur in view of Section 2(2) of the Act, and so the marriage was legal.

7. There is sufficient evidence on record to prove that in fact the husband had married the wife. All the witnesses produced by the wife as well as the witnesses produced by the husband have deposed that the husband had dragged the wife and according to the custom the marriage was complete. Even the husband deposed that it was correct that he had dragged the wife. He also accepts the presence of the persons who have been produced as witnesses by the wife. He, however, goes on to say that he had dragged the wife so that she could marry his brother Shadi Ram. This indeed is a lie. According to his own showing his brother Shadi Ram remained with him for 4 or 5 days and thereafter did not come back. And Shadi Ram was never produced as a witness by the husband. In case he had taken the wife for his brother Shadi Ram, why did he keep the wife for all the years with him? And the son was born during this period. Even Jawala Dass, D.W. 3, in whose house the husband admittedly lived, came forward to depose that the husband lived in his house with the wife for years. Therefore, the trial court was correct in holding that the marriage stood proved.

8. I may at this stage mention another fact. The judgment of the learned Sessions Judge reveals that the husband admitted Bishan Kapoor to be his son. This fact also goes to support the conclusion that the husband had married the wife.

9. The question now to be decided is whether this marriage was legal, valid, and binding. At this stage Sub-section (2) of Section 2 of the Act may be read:

Notwithstanding anything contained in Sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of Clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

Clause (25) of Article 366 reads:

(25) "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342

to be Scheduled Tribes for the purposes of this Constitution.

Constitution (Scheduled Tribes) Order 1950 made by the President of India specifies in the schedule the Scheduled Tribes in respect of each State. Part XIII of this schedule relates to Himachal Pradesh. Item No. 4 of Clause (1) refers to "Kanaura" or "Kinnara". It is, therefore, no more in doubt that the Act does not apply to the members of this tribe.

10. That the wife belongs to this tribe is also not in doubt. She belongs to village Meber, Tehsil Kalpa, District Kinnaur. But then there is no evidence to show that the husband is a member of this tribe. He seems to belong to Tehsil Rampur Bushahr of District Simla. This Tehsil adjoins District Kinnaur but the persons residing there are not known as "Kanaura" or "Kinnara". In other words, the husband is governed by the Act.

11. Can a male governed by the Act and having a wife marry another female not governed by the Act? I have no doubt that he cannot. The exemption contained in Sub-section (2) of Section 2 of the Act will apply only if both the parties to a marriage are the members of the Scheduled Tribe. It is not enough that only one of them is its member. The reason is that only those persons can marry who have the capacity to marry. In other words, they should not be under any legal disability. Common examples of such disabilities are unsoundness of mind or minority. The disability may be created by law. Section 5 of the Act lays down such disabilities. In the instant case though the wife had no legal disability and had the capacity to marry but the husband was suffering from a legal disability. Being governed by the Act, he was prohibited from entering into any marriage as long as his previous marriage subsisted and the wife was alive. Any other interpretation would indeed lead to disastrous results. If this marriage is valid then it would follow that the Act can be easily circumvented by a male governed by the Act by marrying those Hindu females to whom this Act is not applicable. For example, this Act does not apply to the State of Jammu and Kashmir. In other words, a Hindu male of that State can have more than one wife at the same time. But it would not follow that a person of another State and governed by the Act would be at liberty to have more than one wife at the same time as long as these wives are from the State of Jammu and Kashmir. I would, therefore, uphold the decision of the learned Sessions Judge that the marriage was null and void, and so the wife cannot claim any maintenance u/s 125 of the Criminal P.C.

12. Mr. Chhabil Dass contends that the maintenance awarded to the son should be enhanced. I find that no appeal was filed against the order of the trial court awarding Rs. 50/- per month as maintenance to Bishan Kapoor and, therefore, that order having become final cannot be challenged in the present revision against the order of Sessions Judge. It needs no clarification that Bishan Kapoor would be at liberty to ask for enhanced amount of maintenance if the circumstances have since changed,

13. The result is that both the revisions are dismissed.