
(2004) 05 AHC CK 0097
In the Allahabad High Court
Case No : First Appeal No. 2 of 1996

Zishan Ahmad, Advocate

APPELLANT

Vs

Firdaus Jahan

RESPONDENT

Date of Decision : 24-05-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2004) 05 AHC CK 0097

Hon'ble Judges : Jagdish Bhalla, J and M.A.Khan, J

Final Decision : Dismissed

Judgement

M.A. Khan, J.—This is an appeal arising out of the judgment and decree dated 12121995 passed by the learned Principal Judge, Family

Court, Lucknow, thereby dismissing the Suit of the plaintiffappellant husband who had prayed for a decree for declaration of nonperformance of

the marriage between him and Smt. Firdaus Jahan, the defendantrespondent.

2. The plaintiffappellant Zishan Ahmad, claiming himself to be an Advocate by profession had filed Suit No. 147 of 1986 against Smt. Firdaus

Jahan with the allegation that Smt. Firdaus Jahan is not at all his legally wedded wife. Such marriage between him and Firdaus Jahan never took

place and she had filed a petition under Section 125 Cr. P.C. against him with false allegations though there exists no relationship between him and

Smt. Firdaus Jahan like that of husband and wife. He has further pleaded that sister of the plaintiff used to teach the children of the defendant's

uncle and defendant, her brother and her mother used to visit the defendant's uncle house and they knew the plaintiff. The plaintiff is a practising

lawyer and brother of the defendant whose wife has ran away with some body else came to contact the plaintiff for getting a legal advice and this is

how these are only contacts if at all between him and Smt. Firdaus Jahan and when the petition under Section 125 Cr. P.C. has been filed with a false and frivolous allegation and there had been no relationship of husband and wife between him and Smt. Firdaus Jahan, hence the Suit for declaration.

3. The defendantwife filed written statement and denied the plaint allegations. She has pleaded that she is legally wedded wife of the plaintiff. The marriage took place at Lucknow on 14 7 1985 with a dower fixed. She always performed her marital obligations with the plaintiff who in fact developed some relations with another woman and the plaintiff turned out the defendant from his house on 29 9 1985 and the plaintiff also treated her with cruelty and also demanded money from her parents. She was forced to move a petition under Section 125 Cr. P.C. for maintenance. On these pleadings of the parties, the learned lower Court framed as many as four issues in the case. It recorded evidence of both the parties and after appraisal of the same and after hearing arguments of the learned counsel for the parties, came to the conclusion that the marriage between the plaintiff and defendant is proved and as such the relief of declaration for nonperformance of the marriage has been refused and the plaintiff's Suit has been dismissed. Aggrieved by the said judgment and decree the present appeal has been filed.

4. We have heard the learned Counsel for the parties at length and we have gone through the record.

5. Learned Counsel for the appellant has submitted that Nikahnama has been brought on record from the side of the defendantwife but the said

Nikahnama does not bear the signatures of the plaintiff and, therefore, there had been no contract for the marriage is at all proved. Had there been

any such marriage, the Nikahnama which has been brought on record must have been bearing the signatures of the plaintiff. On the other hand, it

has been submitted by the learned Counsel for the respondent that the witnesses of Nikah, i.e. the performance of marriage have been examined

and even the secondary evidence of the person who performed the Nikah has been adduced. It was raining on the date when the marriage was

performed. The signatures of wife Smt. Firdaus Jahan were obtained on the Nikahnama but most probably due to rain or otherwise the signatures

of the plaintiff husband could not be obtained but even in the absence of such signatures there was contract of marriage between the plaintiff and the defendant and the Suit has been filed with absolutely false allegations. Learned lower Court turned down the plea of the plaintiff and dismissed the suit. It has been submitted before us by the learned Counsel for the appellant that Nikahnama is not at all proved and there had been nonperformance of marriage and Nikahnama in question does not bear the signatures of the plaintiff and the defendant had been claiming herself to be the wife for certain other reasons.

6. We have considered arguments of the learned Counsel for the parties and we find that Mahomedan Law does not at all require the Nikahnama to be reduced into writing. Section 251 of Mulla's Mahomedan Law says that every Mahomedan of sound mind, who has attained puberty, may enter into a contract of marriage. Explanation to this Section further says that puberty is presumed, in the absence of evidence, on completion of the age of fifteen years. Thus the personal Mahomedan Law does not recognise any such age of 18 years or above for performance of the marriage and it simply requires that every Mahomedan of sound mind who has attained puberty may enter into a contract of marriage. Thus the marriage, according to Mahomedan Law is defined to be a contract which has for its object the procreation and the legalizing of children. Marriage according to Mahomedan Law is not a sacrament but a civil contract. All the rights and obligations it creates arise immediately and are not dependant on any condition precedent, such the payment of dower by husband to a wife.

7. Section 252 of Mahomedan Law defines essentials of a marriage which reads as follows:

252. Essentials of marriage. It is essential to the validity of a marriage that there should be a proposal made by or on behalf of one of the parties to the marriage, and an acceptance of the proposal by or on behalf of the other, in the presence and hearing of two male or one male and two female witnesses, who must be same and adult Mahomedan. The proposal and acceptance must both be expressed at one meeting; a proposal made at once meeting and an acceptance made at another meeting do not constitute a valid marriage. Neither writing nor any religious

ceremony is essential.½

8. A bare reading of this Section says that under Mahomedan Law there is no particular ceremony of ritual to take place for the purposes of

marriage. There must be consent of the two sides and said consent should be attested in the presence and hearing of two male or one male and

two female witnesses, who must be sane and adult Mahomedan. The proposal and acceptance must be expressed at one meeting. Section 254 of

Mahomedan Law says that a marriage contracted without witnesses as required by Section 252 is irregular, but not void. A bare reading of the

relevant provisions of Mahomedan Law on marriage clearly show that Nikahnama is not necessarily be reduced into writing. There can be a valid

oral contract between the husband and wife but it has simply to be witnessed in presence of certain witnesses.

9. Learned Counsel for the appellant has submitted that once Nikahnama has been produced, it must be proved as such and relied on such and

since the present Nikahnama in question does not bear the signatures of the plaintiff, it can not be said that any such Nikah or marriage was ever

performed.

10. We have considered this argument of the learned Counsel for the appellant and we find no force in it. Even if we do not accept the Nikahnama

which has been relied upon from the side of the defendant, there is ample evidence adduced from the side of the defendantwife that the marriage

was contracted between the plaintiff and the defendant. What the husband claimed that no such marriage ever took place is absolutely false. There

are statements of Shafiq Ahmad, Mohd. Usman and also Muzibuddin showing that such marriage took place between the plaintiff and the

defendant. There are other witnesses who were present at the time when Nikahnama was reduced into writing. In the presence of these witnesses

the Nikah took place. It has been argued by the learned counsel for the plaintiffappellant that out of three witnesses examined two are close

relations of the defendant and, therefore, no reliance should be placed on their testimony. It may be mentioned here that the witnesses who are

required to attest such marriage are required to be close relations or close friends alone and not outsiders or foreigners to the family. Such marriage

is always witnessed and attested by the close relations and friends and not by

others. Therefore, the argument that the witnesses are close relations of the defendant and, therefore, their testimony should be thrown out is not correct. There are statements of witnesses on oath showing that such marriage took place and there is no reason as to why such witnesses should be disbelieved.

11. Apart from what the learned lower Court had discussed at length the evidence showing that such a marriage took place, there is also an

admission before this Court as well that wife Smt. Firdaus Jahan had filed a petition under Section 125 Cr. P.C. against the plaintiff being Criminal

Case No. 3 of 1996 and in the aforesaid case a compromise was arrived at between the plaintiff and the defendant. No doubt the husband has

disowned the marriage even in that compromise in petition under Section 125 Cr. P.C. yet he agreed to give maintenance to the tune of Rs. 250

per month to the defendant. It does not appeal to reason that a person who does not claim another lady to be the wife has agreed to pay

maintenance to her. In no circumstance, such a conduct of the plaintiff can be said to be reasonable one. He himself agreed to pay maintenance

and to get the proceedings under Section 125 Cr. P.C. terminated. This may not be a conclusive proof of the marriage, yet it is a circumstance

pointing out towards the conduct of the plaintiff and also a circumstance that such a relationship between the plaintiff and defendant exists. The oral

evidence and also the Nikahnama on record clearly establish that there had been a valid contracted marriage between the plaintiff and the

defendant and, therefore, the Suit of plaintiff for declaration for non performance of the marriage has been rightly dismissed by the learned lower

Court. We find no illegality or impropriety in the impugned judgment and order passed by the learned Court below.

In the result the appeal fails and is dismissed.