Pyla Mutyalamma @ Satyavathi vs Pyla Suri Demudu & Anr on 9 August, 2011

Equivalent citations: 2011 AIR SCW 6749, 2011 (12) SCC 189, 2012 CRI. L. J. 660, AIR 2012 SC (CRIMINAL) 19, 2012 CRILR(SC&MP) 64, 2012 (1) SCC(CRI) 371, 2012 ALL MR(CRI) 712, (2011) 106 ALLINDCAS 84 (SC), 2011 (9) SCALE 403, 2011 (3) CALCRILR 490, 2011 (106) ALLINDCAS 84, 2011 (3) KER LJ 18 NOC, (2011) 4 MAD LJ(CRI) 1015, (2012) MATLR 115, (2011) 2 ORISSA LR 721, (2011) 9 SCALE 403, 2012 CRILR(SC MAH GUJ) 64, (2011) 3 DMC 795, (2011) 4 CIVILCOURTC 469, (2011) 3 KER LT 815, (2011) 50 OCR 442, (2012) 1 RAJ LW 885, (2011) 4 RECCRIR 446, (2011) 4 CURCRIR 315, (2011) 4 RECCIVR 551, (2011) 3 ALLCRIR 3538, (2011) 3 UC 1793, (2011) 75 ALLCRIC 210, (2011) 89 ALL LR 337, (2011) 4 CHANDCRIC 245, (2011) 4 ALLCRILR 333, 2012 (1) ALD(CRL) 471

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Bench: Harjit Singh Bedi, Gyan Sudha Misra

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 219 OF 2007

PYLA MUTYALAMMA @ SATYAVATHI .. Appellant

Versus

PYLA SURI DEMUDU & ANR. ..Respondents

J U D G M E N T

GYAN SUDHA MISRA, J.

Under the law, a second wife whose marriage is void on account of survival of the previous marriage of her husband with a living wife is not a legally wedded wife and she is, therefore, not entitled to maintenance under Section 125 Cr.P.C. for the sole reason that "law leans in favour of legitimacy and frowns upon bastardy1". But, the law also presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for 1 AIR 1929 P.C. 135 a long number of years and when the man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary is clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage. Several judicial pronouncements right from the Privy Council up to this stage, have considered the scope of the presumption that could be drawn as to the relationship of marriage between two persons living together. But, when an attempt is made by the husband to negative the claim of the neglected wife depicting her as a kept mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage and this is intended to protect women and children from living as destitutes and this is also clearly the object of incorporation of Section 125 of the Code of Criminal Procedure providing for grant of maintenance.

2. This appeal at the instance of an estranged wife, once again has beseeched this Court to delve and decide the question regarding grant of maintenance under Section 125 Cr. P.C. which arises after grant of special leave under Article 136 of the Constitution and is directed against the judgment and order dated 19.09.2005 passed by a learned single Judge of the High Court of Andhra Pradesh at Hyderabad in Criminal Revision No. 234/2004 whereby the learned single Judge had been pleased to set aside the order of the Family Court, Visakhapatnam awarding a sum of Rs.500/- per month to the appellant-wife by way of maintenance to her under Section 125 Cr.P.C. The respondent-husband assailed this order by way of a criminal revision before the High Court of Andhra Pradesh which was allowed and the order granting maintenance to the appellant-wife was set aside.

3. The appellant-Pyla Mutyalamma @ Satyavathi initially filed an application bearing M.C.No.145/2002 under Section 125, Cr.P.C. claiming Rs.500/- per month from her husband Pyla Suri Demudu-the respondent herein, on the ground that she married him in the year 1974 at Jagannadha Swamy Temple at Visakahapatnam as per the Hindu rites and customs after which they lived as a normal couple and out of the wedlock they were blessed with two daughters and a son of whom one daughter died.

The surviving daughter is married and the son aged 22 years is also employed in the Dock Labour Board who was engaged as such by his father the respondent-husband himself. However, the relationship of the appellant-wife and the respondent-husband subsequently got strained when the

respondent got addicted to vices and started ignoring and neglecting the appellant-wife as he failed to provide her even the basic amenities like food and clothing and indulged in beating her frequently under the influence of liquor. He thus deserted her and also started living with another woman due to which the appellant was compelled to claim maintenance from the husband-the respondent herein.

4. The respondent-husband herein, however, flatly denied the allegations and went to the extent of stating that the appellant is not his wife as he was already married to one Kolupuru Mutyalamma in a native of Lankivanipalem in the year 1970 and had children through her first marriage and that he never married the present appellant.

He also alleged that the appellant is married to another man and as she owns a sum of Rs.2.50 lac to the respondent which he had given to her by way of a loan at the time of construction of her house in the year 1991- 1992, she started the litigation in order to evade making the repayment of loan amount.

5. The learned trial Magistrate on an appreciation and scrutiny of evidence held that the appellant in fact is the wife of respondent No.1 who was deserted by the respondent and, therefore, fixed a maintenance of Rs.500/-

per month to the appellant and the respondent-husband was directed to pay this amount to the appellant-wife. As already stated, this was resisted by the respondent-

husband who assailed the order of the trial court by filing a revision petition before the High Court. The learned single Judge of the High Court was pleased to hold that there was no valid marriage between the respondent-husband and the appellant-wife, as an earlier marriage between the appellant and one another lady-Kolupuru Mutyalamma was subsisting and as the marriage with the appellant was performed without repudiation of the earlier marriage of 1970, the subsequent marriage was not a valid one and hence no maintenance could be paid to the appellant-wife.

Feeling aggrieved with this view of the High Court, expressed in the impugned order, the appellant-wife has preferred this appeal.

6. Learned counsel for the appellant-wife in substance has contended that the learned single Judge of the High Court erred in reversing the finding of fact rendered by the trail court and interfered with a pure question of fact in spite of clinching evidence available on record to show that the appellant was the legally married wife of the respondent-husband who had been living together ever since their marriage in 1974 as any other usual couple and it is only in the year 2001, the respondent started deserting the appellant due to his vices which he picked up much after his marriage with the appellant. The High Court also ignored the evidence of the son and the daughter of the appellant but relied upon the evidence of Respondent-husband. The High Court further relied on the defence case of the respondent -husband that he was already married to another lady in the year 1970, although no other witness except the so-called first wife was produced as a witness before the courts below.

7. The counsel for the appellant further laid much emphasis on the fact that the order granting maintenance to the appellant by the trial court should not have been interfered with by the High Court as it was merely raised to circumvent the order granting maintenance by setting up a false story regarding the existence of previous marriage of the appellant in the year 1970 ignoring the clinching evidence led by the appellant regarding her marriage which was creditworthy. In support of his submission, the counsel also relied upon a decision delivered in the matter of Vimala (K) vs. Veeraswamy (K)2, wherein a Bench of three learned Judges of this Court had been pleased to hold that when a husband takes a plea that the marriage was void due to subsistence of an earlier marriage, the same requires clear and strict proof and the burden of strict proof of earlier marriage is on the husband to discharge. It may be relevant and worthwhile at this stage to quote the observations of their Lordships in the aforesaid matter which was to the following effect:

> "Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy

2 (1991) 2 SCC 375

and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. When an attempt is made by the husband to negative the claim of the neglected wife depicting her as a kept mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage. Under the Hindu Law, a second marriage is void on account of the survival of the first marriage and is not a legally wedded wife. She is, therefore, not entitled to maintenance under Section 125. Such a provision in law which disentitles a second wife from receiving maintenance from her husband under Section 125, Cr.P.C., for the sole reason that the marriage ceremony though performed in the customary form lacks legal sanctity can be applied only when the husband satisfactorily proves the subsistence of a legal and valid marriage particularly when Section 125 is a measure of social justice intended to protect women and children."

8. In the case under consideration herein, the respondent-husband has sought to repudiate the marriage of the appellant as void on account of subsistence of an earlier marriage. But while doing so he has also set up another cooked up story that the appellant is already married to another woman and as she is owing an amount of Rs.2.50 lakhs to the appellant which he had advanced to her by way of a loan, the appellant has raised a false plea of claim of maintenance. Thus, the respondent-husband in one breath states that the second marriage with the appellant is void in view of the subsistence of his earlier marriage and in the next one he states that the appellant-

wife has set up a false plea as she wants to get away from the liability of repayment of the amount which she was owing to the respondent.

9. In fact, we also find sufficient substance in the plea that the High Court in its revisional jurisdiction ought not to have entered into a scrutiny of the finding recorded by the Magistrate that the appellant was a married wife of the respondent, before allowing an application determining maintenance as it is well-settled that the revisional court can interfere only if there is any illegality in the order or there is any material irregularity in the procedure or there is an error of jurisdiction. The High Court under its revisional jurisdiction is not required to enter into re-

appreciation of evidence recorded in the order granting maintenance; at the most it could correct a patent error of jurisdiction. It has been laid down in a series of decisions including Suresh Mondal vs. State of Jharkhand3 that in a case where the learned Magistrate has granted maintenance holding that the wife had been neglected and the wife was entitled to maintenance, the scope of interference by the revisional court is very limited. The revisional court would not substitute its own finding and upset the maintenance order recorded by the Magistrate.

10. In revision against the maintenance order passed in proceedings under Section 125, Cr.P.C., the revisional court has no power to re-assess evidence and substitute its own findings. Under revisional jurisdiction, the questions whether the applicant is a married wife, the children are legitimate/illegitimate, being pre-eminently questions of fact, cannot be reopened and the revisional court cannot substitute its own views. The High Court, therefore, is not required in revision to interfere with the positive finding in favour of the marriage and patronage of a child. But where finding is a negative one, the High Court would entertain the revision, re-evaluate the evidence and come to a conclusion whether the findings or conclusions reached by 3 2006 (1) AIR Jhar. R. 153 the Magistrate are legally sustainable or not as negative finding has evil consequences on the life of both child and the woman. This was the view expressed by the Supreme Court in the matter of Santosh (Smt.) vs. Naresh Pal4 , as also in the case of Parvathy Rani Sahu vs. Bishnu Sahu5.

Thus, the ratio decidendi which emerges out of a catena of authorities on the efficacy and value of the order passed by the Magistrate while determining maintenance under Section 125, Cr.P.C. is that it should not be disturbed while exercising revisional jurisdiction.

11. However, learned counsel for the respondent-

husband on his part has also cited the case of Savitaben Somabhai Bhatiya vs. State of Gujarat & Ors.6, in support of his plea that claim of maintenance by the second wife cannot be sustained unless the previous marriage of the husband performed in accordance with the Hindu rites having a living spouse is proved to be a nullity and the second wife, therefore, is not entitled to the benefit of Section of 125 Cr.P.C. or the Hindu Marriage Act, 1955.

4 (1998) 8 SCC 447 5 (2002) 10 SCC 510 6 (2005) 3 SCC 636

12. It is no doubt true that the learned Judges in this cited case had been pleased to hold that scope of Section 125 cannot be enlarged by introducing any artificial definition to include a second woman not legally married, in the expression `wife'. But it has also been held therein that evidence showing that the respondent-husband was having a living spouse at the time of alleged marriage with the second wife, will have to be discharged by the husband.

Hence, this authority is of no assistance to the counsel for the respondent-husband herein as it is nobody's case that the appellant-wife should be held entitled to maintenance even though the first marriage of her husband was subsisting and the respondent-husband was having a living wife as there is no quarrel with the legal position that during the subsistence of the first marriage and existence of a living wife (first wife), the claim of maintenance by the second wife cannot be entertained.

But proof and evidence of subsistence of an earlier marriage at the time of solemnizing the second marriage, has to be adduced by the husband taking the plea of subsistence of an earlier marriage and when a plea of subsisting marriage is raised by the respondent-husband, it has to be satisfactorily proved by tendering evidence. This was the view taken by the learned Judges in Savitaben's case (supra) also which has been relied upon by the respondent-husband. Hence, even if the ratio of this case relied upon by the respondent-husband is applied, the respondent-husband herein has failed to establish his plea that his earlier marriage was at all in subsistence which he claims to have performed in the year 1970 as he has not led even an iota of evidence in support of his earlier marriage including the fact that he has not produced a single witness except the so-called first wife as a witness of proof of his earlier marriage. This strong circumstance apart from the facts recorded herein above, goes heavily against the respondent-husband.

13. We may further take note of an important legal aspect as laid down by the Supreme Court in the matter of Jamuna Bai vs. Anant Rai7, that the nature of the proof of marriage required for a proceeding under Section 125, Cr.P.C. need not be so strong or conclusive as in a criminal 7 AIR 1988 SC 793 (paras 4, 5 and 8) proceeding for an offence under Section 494 IPC since, the jurisdiction of the Magistrate under Section 125 Cr.P.C.

being preventive in nature, the Magistrate cannot usurp the jurisdiction in matrimonial dispute possessed by the civil court. The object of the section being to afford a swift remedy, and the determination by the Magistrate as to the status of the parties being subject to a final determination of the civil court, when the husband denies that the applicant is not his wife, all that the Magistrate has to find, in a proceeding under Section 125 Cr.P.C., is whether there was some marriage ceremony between the parties, whether they have lived as husband and wife in the eyes of their neighbours, whether children were borne out of the union.

14. It was still further laid down in the case of Sethu Rathinam vs. Barbara8 that if there was affirmative evidence on the aforesaid points, the Magistrate would not enter into complicated questions of law as to the validity of the marriage according to the sacrament element or personal law and the like, which are questions for determination by 8 (1970) 1 SCWR 589 the civil court. If the evidence led in a proceeding under Section 125 Cr.P.C. raises a presumption that the applicant

was the wife of the respondent, it would be sufficient for the Magistrate to pass an order granting maintenance under the proceeding. But if the husband wishes to impeach the validity of the marriage, he will have to bring a declaratory suit in the civil court where the whole questions may be gone into wherein he can contend that the marriage was not a valid marriage or was a fraud or coercion practiced upon him. Fortifying this view, it was further laid down by the Supreme Court in the matter of Rajathi vs. C. Ganesan9 also, that in a case under Section 125 Cr.P.C., the Magistrate has to take prima facie view of the matter and it is not necessary for the Magistrate to go into matrimonial disparity between the parties in detail in order to deny maintenance to the claimant wife. Section 125, Cr.P.C.

proceeds on de facto marriage and not marriage de jure.

Thus, validity of the marriage will not be a ground for refusal of maintenance if other requirements of Section 125 Cr.P.C. are fulfilled.

9 AIR 1999 SC 2374

15. When the appellant's case is tested on the anvil of the aforesaid legal position, it is sufficiently clear that the appellant has succeeded in proving that she was the legally married wife of the respondent with three children out of which one had expired while the other two who are major and well-settled. It has further been proved that the respondent-husband started deserting the appellant-wife after almost 25 years of marriage and in order to avert the claim of maintenance, a story of previous marriage was set up for which he failed to furnish any proof much less clear proof. Thus, it was not open for the High Court under its revisional jurisdiction to set aside the finding of the trial court and absolve the respondent from paying the maintenance of Rs.500/- per month to the appellant-wife.

16. Having thus considered the contradictory versions of the contesting parties and deliberating over the arguments advanced by them in the light of the evidence and circumstances, we are clearly led to the irresistible conclusion that the High Court wrongly exercised its jurisdiction while entertaining the revision petition against an order granting maintenance to the appellant-wife under Section 125 Cr.P.C. We, therefore, set aside the judgment and order of the High Court and restore the order passed by the Magistrate in favour of the appellant granting her maintenance. The appeal accordingly is allowed.

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J (Harjit Singh Bedi) .....J (Gyan Sudha Misra New Delhi, August 9, 2011