Kamala vs M.R.Mohan Kumar on 24 October, 2018

Equivalent citations: AIR 2018 SUPREME COURT 5128, 2019 (11) SCC 491, AIRONLINE 2018 SC 292, (2018) 192 ALLINDCAS 263 (SC), (2018) 14 SCALE 257, (2018) 192 ALLINDCAS 263, (2018) 2 ORISSA LR 994, (2018) 3 ALLCRIR 3145, (2018) 3 DMC 694, (2018) 3 UC 2044, (2018) 4 CRILR(RAJ) 1150, (2018) 4 CRIMES 382, (2018) 4 CURCRIR 355, (2018) 4 JLJR 357, (2018) 4 KER LT 864, (2018) 4 PAT LJR 362, (2018) 4 RECCRIR 894, 2018 CRILR(SC MAH GUJ) 1150, 2018 CRILR(SC&MP) 1150, (2019) 106 ALLCRIC 651, (2019) 132 ALL LR 200, (2019) 1 ALD(CRL) 262, (2019) 1 ALLCRILR 9, (2019) 1 CIVILCOURTC 562, (2019) 1 HINDULR 62, (2019) 1 ICC 1, (2019) 1 MADLW(CRI) 434, (2019) 2 CIVLJ 162, (2019) 2 MAD LW 277, (2019) 73 OCR 421, AIR 2019 SC(CRI) 61

Author: R. Banumathi

Bench: Indira Banerjee, R. Banumathi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS. 2368-2369 OF 2009

KAMALA AND OTHERS …. Appellant

VERSUS

M.R. MOHAN KUMAR …. Respondent

JUDGMENT

R. BANUMATHI, J.

These appeals arise out of the judgment dated 16.06.2009 passed by the High Court of Karnataka at Bangalore in R.P.F.C. Nos. 103 of 2008 and 21 of 2009 in and by which the High Court has set aside the judgment of the family court which has directed the respondent to pay maintenance to the appellants – wife and children.

2. Case of the appellants is that marriage between appellant No.1 and respondent was solemnized on 18.07.1998 against the wishes of their parents at Karrighatta temple near Sri Rangapattana and appellant No.2-daughter and appellant No.3-son were born out of the wedlock on 09.05.2001 and 18.07.2003 respectively and they lived in a house on rent in Saraswasthipuram, Mysore. Further case of the appellants is that while the marriage between appellant No.1 and respondent was subsisting, the respondent married one Archana, who was his colleague on 01.04.2005, after which

the appellants were neglected by the respondent and he was harassing appellant No.1. Being aggrieved of such treatment from respondent, appellant No.1 filed a police complaint and upon the direction of police, the respondent was paying Rs.3,000/- per month to the appellants towards their maintenance. It is further averred that when they shifted from Saraswathipuram to Chamundipuram, the respondent continued to neglect them. Since appellant No.1 could not maintain herself and her children, she filed a Criminal Miscellaneous No.297/2006 under Section 125 Cr.P.C. claiming maintenance for herself and the children from the respondent.

3. The respondent resisted the maintenance claim contending that he has never married appellant No.1 and denied her contention that appellants No.2 and 3 were born out to him and appellant No.1. The respondent contended that when there is no valid marriage between the parties, petition for maintenance under Section 125 Cr.P.C. cannot be maintained.

4. Upon consideration of evidence, the family court held that appellant No.1 has proved that there is husband-wife relationship between appellant No.1 and respondent and that appellants No.2 and 3 are the children born out of the said wedlock and that the respondent was giving her a monthly maintenance of Rs.3,000/- per month. The family court further held that the case of the appellants is supported by the evidence of PW-2 and PW-3 which clearly establish that they lived under the same roof and the society also accepted them as husband and wife. On those findings, the family court vide its order dated 12.08.2008 allowed the appellant's claim and ordered maintenance of Rs.3,000/- per month to appellant No.1 and Rs.2,500/- per month to each of the appellants No.2 and 3 from the date of petition till the date of judgment i.e. 12.08.2008. From the date of judgment i.e. 12.08.2008, the respondent was directed to pay maintenance of Rs.2,500/- per month each to appellants No.1 to 3.

5. In appeal, the High Court has set aside the order of the family court and held that appellant No.1 was unable to prove that she is the legally wedded wife of the respondent. The High Court further held that she has not produced any evidence to show that the marriage was solemnized as per custom and she, not being the legally wedded wife, is not entitled for any maintenance.

6. Mr. Girish Ananthamurthy, learned counsel for the appellants submitted that when the parties live as husband and wife under one roof, a presumption arises in favour of the person who asserts the existence of valid marriage. It was submitted that in the instant case, parties have entered into a wedlock in a temple and lived together and begot two children, hence, presumption arises in favour of appellant No.1 and the respondent failed to rebut the said presumption. The learned counsel for the appellants further submitted that the family court after analysing the evidence brought on record, has recorded a finding of fact that appellant No.1 is the legally wedded wife of respondent and that appellants No.2 and 3 are their children born out of the wedlock and the High Court in exercising revisional jurisdiction ought not to have interfered with the said findings of fact.

7. Per contra, Mr. M.N. Rao, learned senior counsel for the respondent submitted that under Section 125 (1)(a) Cr.P.C., an application for maintenance can be maintained only by a "wife" who is a legally wedded wife. It was submitted that no valid marriage had taken place between appellant No.1 and the respondent and hence, appellant No.1 is not entitled to claim any maintenance under Section

125 Cr.P.C. It was submitted that the evidence on record does not disclose any marriage having taken place between the parties and hence, claim of maintenance under Section 125 Cr.P.C. was not maintainable and the High Court rightly reversed the judgment of the family court ordering maintenance. In support of the contention, reliance was placed upon Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and another (1988) 1 SCC 530.

8. We have carefully considered the rival contentions and perused the impugned judgment and materials placed on record.

9. In her evidence, appellant No.1 (PW-1) has clearly deposed that before marriage she and the respondent were neighbours and they loved each other and their wedding took place in Karrighatta temple near Sri Rangapattana according to Hindu rituals on 18.07.1998 and that both the families were against their marriage. PW-1 further stated that out of the wedlock, two children a girl and a boy were born on 09.05.2001 and 18.07.2003 respectively. PW-1 further stated that the respondent was working as a Manager in Birla Sun Life Insurance Company and that he had developed illicit relationship with one Archana who was working with him and thereafter, the respondent gradually started harassing appellant No.1 and also neglected her children. PW-1 further stated that she had given a police complaint who had warned the respondent and asked him to pay Rs.3,000/- per month to the appellants and thereafter, they shifted from Saraswasthipuram to Chamundipuram and took a house on rent. PW-1 further stated that the respondent neglected to take care of the appellants and the appellant No.1 not being able to maintain herself and her children, filed a petition under Section 125 Cr.P.C. claiming maintenance.

10. To prove the marriage and her claim, appellant No.1 marked exhibits P1 to P20. Exts.P1 to P3 are the photos of the appellants and the respondent; Exts.P7-P8 are the birth certificates of the appellants No.2 and 3 namely the daughter and son and Exts.P9 and P11 are the copies of the complaint given to the police; other exhibits are the receipts acknowledging the maintenance amount given by the respondent; and other documents.

11. Exts.P7-P8 are the birth certificates of the appellants No.2 and 3 – the daughter and son showing that out of the wedlock, a girl and a boy were born on 09.05.2001 and 18.07.2003 respectively. In Exts.P7 and P8, father's name is stated as "Mohan Kumar M.R." and mother's name is stated as "Kamala". The birth certificates of the children clearly show that appellant No.1 and the respondent are the husband and wife and appellants No.2 and 3 are their children. The family court recorded a finding of fact that the respondent has admitted that Exts.P1 to P3 are their photos. As rightly observed by the family court, Exts.P1 to P3 does not look like brother-sister relationship or simple neighbours relationship and the said photos lead to an inference that respondent and appellant No.1 were living as husband and wife. As pointed out earlier, appellant No.1 gave Ext.-P9-complaint and the police settled the matter between the parties and asked the respondent to pay maintenance of Rs.3,000/- per month to appellant No.1. Exts. P13 to P17 are the receipts showing that the respondent has been paying money regularly to appellant No.1. Unless the respondent was the husband of appellant No.1, why should he pay the amount to appellant No.1 every month. As rightly observed by the family court, there is no merit in the explanation of the respondent that appellant No.1 was his neighbour and therefore, he used to help her. The evidence of PW-1 coupled with the

documents raise a strong presumption of a valid marriage.

12. Appellant No.1 has also examined K.R. Narayan Iyengar (PW-2) who has stated that he was working as Manager in Samruddhi Finance where appellant No.1 was also working with him. In his evidence, PW-2 further stated that the respondent used to drop and pick up appellant No.1 and that he used to talk to respondent whenever he had time and have coffee with him. PW-2 further stated that the respondent and appellant No.1 were living happily as husband and wife and were leading a happy married life.

13. House owner (PW-3) has also stated that appellant No.1 and the respondent were living in his house on rent during 2005 and they took the house on rent by informing him that they were husband and wife. PW-3 further stated that appellant No.1 and the respondent stayed till April, 2006 and that when they came to his house, they had two children and appellant No.1 and respondent were leading a happy married life.

14. Based on the evidence of PW-1 and the number of documents in particular, the birth certificates of the children (Exts.P7-P8) and the photos (Exts.P1 to P3), the family court rightly held that appellant No.1 has proved valid marriage between her and the respondent. From the evidence of PW-2 and PW-3, it is established that appellant No.1 and the respondent were cohabitated as husband and wife and that the people around them treated them as husband and wife and the family court rightly held that appellant No.1 being a wife and appellants No.2 and 3 being their children are entitled to claim maintenance under Section 125 Cr.P.C.

15. Unlike matrimonial proceedings where strict proof of marriage is essential, in the proceedings under Section 125 Cr.P.C., such strict standard of proof is not necessary as it is summary in nature meant to prevent vagrancy. In Dwarika Prasad Satpathy v. Bidyut Prava Dixit (1999) 7 SCC 675, this Court held that “the standard of proof of marriage in a Section 125 proceeding is not as strict as is required in a trial for an offence under Section 494 IPC. The learned Judges explained the reason for the aforesaid finding by holding that an order passed in an application under Section 125 does not really determine the rights and obligations of the parties as the section is enacted with a view to provide a summary remedy to neglected wives to obtain maintenance. The learned Judges held that maintenance cannot be denied where there was some evidence on which conclusions of living together could be reached.” When the parties live together as husband and wife, there is a presumption that they are legally married couple for claim of maintenance of wife under Section 125 Cr.P.C. Applying the well-settled principles, in the case in hand, appellant No.1 and the respondent were living together as husband and wife and also begotten two children. Appellant No.1 being the wife of the respondent, she and the children appellants No.2 and 3 would be entitled to maintenance under Section 125 Cr.P.C.

16. It is fairly well settled that the law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for a number of years. After referring to various judgments, in Chanmuniya v. Virendra Kumar Singh Kushwaha (2011) 1 SCC 141, this Court held as under:-

> "11. Again, in Sastry Velaider Aronegary v. Sembecutty Vaigalie (1881) 6 AC 364, it was held that where a 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.

12. In India, the same principles have been followed in Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy AIR 1927 PC 185, in which the Privy Council laid down the general proposition that where a 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.

13. In Mohabbat Ali Khan v. Mohd. Ibrahim Khan AIR 1929 PC 135 the Privy Council has laid down that the law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for number of years.

14. In Gokal Chand v. Parvin Kumari AIR 1952 SC 231, this Court held that continuous cohabitation of man and woman as husband and wife may raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them.

15. Further, in Badri Prasad v. Director of Consolidation (1978) 3 SCC 527, the Supreme Court held that a strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin.

16. Again, in Tulsa v. Durghatiya (2008) 4 SCC 520, this Court held that where the partners lived together for a long spell as husband and wife, a presumption would arise in favour of a valid wedlock." This Court in Chanmuniya case further held as under:-

> "24. Thus, in those cases where a man, who lived with a woman for a long time and even though they may not have undergone legal necessities of a valid marriage, should be made liable to pay the woman maintenance if he deserts her. The man should not be allowed to benefit from the legal loopholes by enjoying the advantages of a de facto marriage without undertaking the duties and obligations. Any other interpretation would lead the woman to vagrancy and destitution, which the provision of maintenance in Section 125 is meant to prevent." [underlining added]

17. Chanmuniya case referred to divergence of judicial opinion on the interpretation of the word "wife" in Section 125 Cr.P.C. In paras (28) and (29) of Chanmuniya case, this Court referred to other judgments which struck a difficult note as under:-

> "28. However, striking a different note, in Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav (1988) 1 SCC 530, a two-Judge Bench of this Court held that an attempt to exclude altogether personal law of the parties in proceedings under

> Section 125 is improper (see para 6). The learned Judges also held (paras 4 and
>
> 8) that the expression "wife" in Section 125 of the Code should be interpreted to mean only a legally wedded wife.

29. Again, in a subsequent decision of this Court in Savitaben Somabhai Bhatiya v. State of Gujarat (2005) 3 SCC 636, this Court held that however desirable it may be to take note of plight of an unfortunate woman, who unwittingly enters into wedlock with a married man, there is no scope to include a woman not lawfully married within the expression of "wife". The Bench held that this inadequacy in law can be amended only by the legislature. While coming to the aforesaid finding, the learned Judges relied on the decision in Yamunabai case (1988) 1 SCC 530."

18. After referring to the divergence of judicial opinion on the interpretation of the word "wife" in Section 125 Cr.P.C., speaking for the Bench A.K. Ganguly J. held that the Bench is inclined to take a broad view of the definition of "wife", having regard to the social object of Section 125 Cr.P.C.

19. In Chanmuniya case, this Court formulated three questions and referred the matter to the larger Bench. However, after discussing various provisions of the Criminal Procedure Code, this Court held that a broad and extensive interpretation should be given to the term "wife" under Section 125 Cr.P.C. and held as under:-

> "42. We are of the opinion that 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. We also believe that such an interpretation would be a just application of the principles enshrined in the Preamble to our Constitution, namely, social justice and upholding the dignity of the individual."

20. On the basis of the evidence of appellant No.1 (PW-1), birth certificates of appellant Nos.2 and 3 (Exts. P7-P8 dated 25.05.2001 and 06.08.2003), other documentary evidence, oral evidence of PW-2 who was co-worker of appellant No.1 and PW-3-landlord, the family court held that appellant No.1 and the respondent were living together as husband and wife and there is sufficient proof of marriage. The family court rightly drew the presumption of valid marriage between appellant No.1 and the respondent and that they are legally married couple for claiming maintenance by the wife under Section 125 Cr.P.C. which is summary in nature. The evidence of PW-1 coupled with the birth certificates of appellants No.2 and 3 and other evidences clearly establish the factum of marriage.

21. Based upon oral and documentary evidence, when the family court held that there was a valid marriage, the High Court being the revisional court has no power reassessing the evidence and substitute its views on findings of fact. The High Court did not keep in view that in the proceedings under Section 125 Cr.P.C., strict proof of marriage is not necessary. The findings recorded by the family court as to the existence of a valid marriage ought not to have been interfered with by the

High Court.

22. In the result, the impugned judgment of the High Court in R.P.F.C. No.103 of 2008 and R.P.F.C. No.21 of 2009 dated 16.06.2009 is set aside and these appeals are allowed. The respondent shall pay arrears of maintenance as directed by the family court, Mysore to the appellants within a period of two months. Additionally, the respondent shall also continue to pay the maintenance to the appellants as directed by the family court on or before 10th of every English calendar month. The appellants are also at liberty to move the family court for enhancement of the maintenance.

.....J. [R. BANUMATHI] .....J. [INDIRA BANERJEE] New Delhi;

October 24, 2018