Dwarika Prasad Satpathy vs Bidyut Prava Dixit And Another on 14 October, 1999

Bench: K.T.Thomas, M.B.Shah

PETITIONER:
DWARIKA PRASAD SATPATHY

Vs.

RESPONDENT:
BIDYUT PRAVA DIXIT AND ANOTHER

DATE OF JUDGMENT: 14/10/1999

BENCH:
K.T.Thomas, M.B.Shah

JUDGMENT:

Shah, J.

L.....I.....T.....T.....T.....T.....T.....T..J Leave granted.

Respondent No.1 wife filed application Crl. Misc. Case No. 26 of 1989 on 15.3.1989 under Section 125 Cr.P.C before the Judicial Magistrate, Nayagarh for her maintenance. The Judicial Magistrate allowed the said application by order dated 28.6.1993 and granted monthly maintenance of Rs.400/- to her and Rs.200/- to her daughter w.e.f. 15.3.1989. That order was challenged by the husband (appellant herein) before the Sessions Court in Crl. Revision No.114/93. The Revision Application was heard by the Ist Addl. Sessions Judge, Puri, who by his judgment and order dated 19.4.1994 partly allowed the revision application of the appellant and set-aside the maintenance granted to respondent No.1. However, the order granting maintenance of Rs.200/- per month to the minor daughter, till she attains the majority subject to future enhancement, was maintained.

Against that judgment and order, appellant filed Crl. Misc. Case No.1338 of 1994 before the High Court of Orissa at Cuttack. Respondent no.1 wife had also filed Crl. Revision No.389 of 1994. The High Court heard both the revision applications together, dismissed the revision application filed by the appellant and allowed the revision application filed by respondent no.1 wife. The High Court held that it is not disputed that the parties are residents of village Kantilo and at the relevant time, the appellant was bachelor and working as Junior Employment Officer at Nayagarh. It was also accepted that he was friend of elder brother of respondent no.1 and was frequently visiting their house in connection with a social and cultural organization of the village. He fell in love with respondent no.1 and developed an intimacy with her. It has also come on record that the appellant

was proposing a pre-marital sexual relationship with respondent no.1, which was persistently refused by her. Thereafter, the appellant took a vow in the name of Lord Nilamadhab Bije to marry her and thereby won the faith of respondent no.1. Thereafter, because of the co- habitation respondent no.1 conceived and hence respondent no.1 insisted for arranging the marriage, which the appellant refused on one pretext or the other. Respondent no.1 took various actions of writing to the various authorities including the Chief Minister of the State and ultimately, she launched hunger strike in front of the office of the appellant. Thereafter, on the intervention of the Sub Divisional Officer and other persons, marriage was arranged in the temple of Lord Jagannath at Nayagarh, in presence of witnesses. After marriage respondent no.1 was being taken to the house of appellant. On the way, she was persuaded to stay at the paternal house on the ground that his father may not accept her as a bride. At that stage, she was in advanced stage of pregnancy. She stayed at her parental house and within 3-4 days she gave birth to a female child, respondent no.2. The parties continued to live separately as before.

In the proceedings under Section 125 of Criminal Procedure Code, the appellant denied pre-marital sexual relations with respondent no.1. He asserted that he was forced to undergo some sort of marriage with respondent no.1 at the point of knife; that he had not given consent to the marriage and that he was forced to exchange garlands with respondent no.1. The learned Magistrate believed the case of respondent no.1 in toto and arrived at the conclusion that there had been a marriage between the appellant and respondent no.1 in the temple of Lord Jagannath and the said marriage was valid and legal one. It was further held that child was born out of this wedlock. In the revision, the Addl. Sessions Judge did not accept the factum of marriage between the parties by holding that the appellant was forced to exchange garlands at the point of knife and, therefore, there was no valid marriage in the eyes of law. So, the claim of respondent no.1 for maintenance was negatived. He, however, accepted the plea of respondent no.1 that child was born because of pre-marital relations and confirmed the order granting maintenance to the child. The High Court observed that considering standard of proof in a proceeding under Section 125 Cr.P.C. it cannot be held that respondent no.1 had not succeeded in establishing marriage. The court relied upon the evidence led by respondent no.1 for holding that in fact a marriage was solemnized in the temple of Lord Jagannath and she was corroborated by the photographer who was present at the time of marriage. The evidence of the brother of respondent no.1 was also referred to for arriving at the said conclusion. The High Court negatived the contention of the appellant that the said ceremony was forcibly held at the point of knife and also held that there was no reason for disbelieving respondent no.1 that the appellant and respondent no.1 were having pre-marital sexual relations and that the child was born out of this relationship. That order is challenged by filing these appeals by special leave.

Before issuing notice, this Court by order dated 12.10.1998 directed the appellant to deposit rest of the total arrears of maintenance payable to respondent no.1 within six weeks. Thereafter, notice was issued to respondent no.1 and subsequently the matter was directed to be listed for final disposal. On 16.7.1999, when the matter came up for hearing, the appellant contended that he is not the father of the child. On behalf of respondent no.1, it was pointed out that respondent no.1 was prepared to have a DNA test for finding out fatherhood of the child. At that stage, the learned counsel for the appellant sought time of four weeks to get instructions from the appellant.

Thereafter, when the matter was placed for hearing on 20.8.1999, the learned counsel for the appellant stated that he was not willing to undergo DNA test and, therefore, this Court ordered that this means appellant is disentitled to dispute the paternity of the child. This is recorded.. On the next date of hearing, learned counsel for the parties were heard at length and it was contended by the learned counsel for the appellant that there was no valid marriage between the appellant and respondent no.1 and, therefore, the order passed by the High Court awarding maintenance to respondent no.1 is illegal and requires to be set-aside.

Learned counsel for the appellant at the time of hearing had not disputed the paternity of the child. Hence, the question is whether the marriage between the appellant and respondent no.1 was valid or invalid? In our view, validity of the marriage for the purpose of summary proceeding under Section 125 Cr.P.C. is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceeding is not as strict as is required in a trial of offence under section 494 of the I.P.C. 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. Undisputedly, marriage procedure was followed in the temple, that too, in the presence of idol of Lord Jagannath, which is worshipped by both the parties. Appellant contended before the learned Magistrate that the said marriage was performed under duress and at the point of knife, he was required to exchange garlands. That contention is not proved by leading necessary evidence. 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 Cr.P.C.

Learned counsel for the appellant relied upon the decision of this Court in Smt. Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and another, {(1988) 2 S.C.R. 809} and submitted that even in a summary proceeding under Section 125 Cr.P.C., the Court is required to find out whether applicant wife was lawfully wedded wife or not. In the said case, the Court considered the point whether a Hindu Woman who has married after coming into force of the Hindu Marriage Act, 1955, with a man having a lawfully wedded wife, can maintain an application for maintenance under Section 125 Cr.P.C. In that case, the Court confirmed the judgment of the High Court and arrived at the conclusion that the Legislature decided to bestow the benefit of Section 125 Cr.P.C. even on an illegitimate child by expressed words but none are found to apply to a de facto wife where the marriage is void ab initio. The marriage was null and void because Section 5 inter alia provides that a marriage may be solemnised between any two Hindus if the conditions mentioned therein are fulfilled. One of the conditions is - neither party has a spouse living at the time of marriage. Under Section 11, such marriage is null and void. The Court held that marriage of a woman in accordance with Hindu rites with the man having a living spouse is complete nullity in the eye of law and she is not entitled to the benefit of Section 125 of the Code. In our view the said judgment has no bearing on the facts of the present case as it is not a case of de facto marriage nor can it be held that the marriage between the appellant and respondent no.1 was void ab initio. It is a case where it is contended that at the time of marriage essential ceremonies were not performed. Hence in the present case, we are not required to discuss the issue that unless declaratory decree of nullity of marriage on the ground of contravention of any one of the conditions specified in clauses (i), (iv)

and (v) of Section 5 is obtained, it cannot be held in collateral proceedings that marriage was null and void. Nor it is required to be discussed that Legislature has not provided that if, some marriage ceremonies are not performed, marriage is a nullity under Section 11 or is voidable under Section 12 of the Hindu Marriage Act.

The learned counsel for the appellant next relied upon the case of B.S. Lokhande & another Vs. State of Maharashtra & another, {(1965) 2 S.C.R. 837} and contended that two ceremonies are essential to the validity of a Hindu marriage, i.e. invocation before the sacred fire and sapatapadi and are required to be established before holding that the marriage performed in the temple was valid one. In that case, the Court arrived at the conclusion that the prosecution for the alleged offence under Section 494 I.P.C., had failed to establish that the marriage was performed in accordance with the customary rites as required under Section 7 of the Hindu Marriage Act; it was certainly not performed in accordance with the essential requirements for a valid marriage under Hindu law and, therefore, accused cannot be convicted under Section 494, IPC. In our view, in the said case the Court was considering the evidence which was led before the trial court in a criminal trial for the offence punishable under Section 494 IPC. In a prosecution for bigamy, the second marriage has to be proved as a fact. The said decision would have no bearing in the proceeding under Section 125 Cr.P.C., which is of summary nature.

It is to be remembered that the order passed in an application under Section 125 Cr.P.C. 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 alias Dolly Sethurthinam, {1971 (3) SCC 923} observed that maintenance under Section 488 Cr.P.C., 1898 (Similar to Section 125 Cr.P.C.) 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.

After not disputing the paternity of the child and after accepting the fact that marriage ceremony was performed, though not legally perfect as contended, it would hardly lie in the mouth of the appellant to contend in proceeding under Section 125 Cr.P.C. that there was no valid marriage as essential rites were not performed at the time of said marriage. The provision under Section 125 is not to be utilized for defeating the rights conferred by the Legislature to the destitute women, children or parents who are victims of social environment. In Ramesh Chander Kaushal v. Mrs. Veena Kaushal and others, (AIR 1978 SC 1807) Krishna Iyer, J dealing with interpretation of Section 125 Cr.P.C. observed (at Para 9) thus:-

> This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15 (3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The

brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the causethe cause of the derelicts.

In Vimala (K.) Vs. Veeraswamy (K.), (1991) 2 SCC 375, dealing with the contention of husband that the second marriage with the applicant wife was void on the ground that her first marriage was subsisting, this Court held that Section 125 Cr.P.C. is meant to achieve a social purpose and, therefore, the law which disentitles the second wife from receiving maintenance from her husband 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 the provision in the Code is a measure of social justice intended to protect women and children; the object to prevent vagrancy and destitution; it provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife and observed thus:-

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.

Similarly, in Santosh (Smt.) v. Naresh Pal [(1998) 8 SCC 447] dealing with the contention that wife had not proved that she was legally married wife because her first husband was living and there was no dissolution of her marriage, this Court held thus: -

In a proceeding for maintenance under Section 125 Cr.P.C. the learned Magistrate was expected to pass appropriate orders after being prima facie satisfied about the marital status of parties. It is obvious that the said decision will be tentative decision subject to final order in any civil proceedings, if the parties are so advised to adopt.

Hence, in our view 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 Cr.P.C. which are of summary nature, strict proof of performance of essential rites is not required. Either of the parties aggrieved by the order of maintenance under Section 125, Cr.P.C. can approach the civil court for declaration of status as the order passed under Section 125 does not finally determine the rights and obligations of the parties.

In the result, the appeals are dismissed with costs quantified at Rs.5,000/-.