Badshah vs Sou. Urmila Badshah Godse & Anr on 18 October, 2013

Equivalent citations: AIR 2014 SUPREME COURT 869, 2014 (1) SCC 188, 2014 AIR SCW 256, AIR 2014 SC (CRIMINAL) 439, (2014) 1 MADLW(CRI) 646, (2014) 1 MARRILJ 297, (2014) 2 KCCR 70, (2014) 2 RAJ LW 1841, (2014) 2 MPHT 499, 2014 (1) JLJR 78, (2014) 2 MAD LW 936, 2014 (1) ABR (CRI) 497, 2013 (12) SCALE 681, (2013) 4 JCR 361 (SC), (2013) 132 ALLINDCAS 108 (SC), (2013) 12 SCALE 681, (2013) 3 ALLCRIR 3010, (2013) 101 ALL LR 704, (2013) 2 HINDULR 732, (2013) 3 DMC 518, (2014) 1 GUJ LH 273, (2013) 4 KER LT 367, (2013) 56 OCR 872, (2014) 1 PAT LJR 144, (2013) 4 RAJ LW 3670, (2013) 4 RECCRIR 764, (2013) 4 CURCRIR 541, (2013) 4 RECCIVR 830, (2013) 4 BOMCR(CRI) 616, (2014) 1 DLT(CRL) 486, (2013) 4 ALLCRILR 406

Author: A.K.Sikri

Bench: A.K.Sikri, Ranjana Prakash Desai

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL MISCELLANEOUS PETITION No.19530/2013

IN

SPECIAL LEAVE PETITION (CRL.) No.8596/2013

Badshah ….Petitioner

Versus

Sou.Urmila Badshah Godse & Anr. …Respondents

J U D G M E N T

A.K.SIKRI,J.

1. There is a delay of 63 days in filing the present Special Leave Petition and further delay of 11 days in refilling Special Leave Petition. For the reasons contained in the application for condonation of delay, the delay in filing and refilling of SLP is condoned.

2. The petitioner seeks leave to appeal against the judgment and order dated 28.2.2013 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in Criminal Writ Petition No.144/2012. By means of the impugned order, the High Court has upheld the award of maintenance to respondent No.1 at the rate of Rs.1000/- per month and to respondent No.2 (daughter) at the rate of Rs.500/- per month in the application filed by them under Section 125 of the Code of Criminal Procedure (Cr.P.C.) by the learned Trial Court and affirmed by the learned Additional Sessions Judge. Respondents herein had filed proceedings under Section 125, Cr.P.C. before Judicial Magistrate First Class (JMFC) alleging therein that respondent No.1 was the wife of the petitioner herein and respondent No.2 was their daughter, who was born out of the wedlock.

3. The respondents had stated in the petition that respondent No.1 was married with Popat Fapale. However, in the year 1997 she got divorce from her first husband. After getting divorce from her first husband in the year 1997 till the year 2005 she resided at the house of her parents. On demand of the petitioner for her marriage through mediators, she married him on 10.2.2005 at Devgad Temple situated at Hivargav-Pavsa. Her marriage was performed with the petitioner as per Hindu Rites and customs. After her marriage, she resided and cohabited with the petitioner. Initially for 3 months, the petitioner cohabited and maintained her nicely. After about three months of her marriage with petitioner, one lady Shobha came to the house of the petitioner and claimed herself to be his wife. On inquiring from the petitioner about the said lady Shobha, he replied that if she wanted to cohabit with him, she should reside quietly. Otherwise she was free to go back to her parents house. When Shobha came to the house of petitioner, respondent No.1 was already pregnant from the petitioner. Therefore, she tolerated the ill-treatment of the petitioner and stayed alongwith Shobha. However, the petitioner started giving mental and physical torture to her under the influence of liquor. The petitioner also used to doubt that her womb is begotten from somebody else and it should be aborted. However, when the ill-treatment of the petitioner became intolerable, she came back to the house of her parents. Respondent No.2, Shivanjali, was born on 28.11.2005. On the aforesaid averments, the respondents claimed maintenance for themselves.

4. The petitioner contested the petition by filing his written statement. He dined his relation with respondent Nos.1 and 2 as his wife and daughter respectively. He alleged that he never entered with any matrimonial alliance with respondent No.1 on 10.2.2005, as claimed by respondent No.1 and in fact respondent No.1, who was in the habit of leveling false allegation, was trying to blackmail him. He also denied co-habitation with respondent No.1 and claimed that he was not the father of respondent No.2 either. According to the petitioner, he had married Shobha on 17.2.1979 and from that marriage he had two children viz. one daughter aged 20 years and one son aged 17 years and Shobha had been residing with him ever since their marriage. Therefore, respondent No.1 was not and could not be his wife during the subsistence of his first marriage and she had filed a false petition claiming her relationship with him.

5. Evidence was led by both the parties and after hearing the arguments the learned JMFC negatived the defence of the petitioner. In his judgment, the JMFC formulated four points and gave his answer thereto as under:

> |1. |Does applicant no.1 Urmila proves that she is |Yes | | |a wife and applicant No.2 Shivanjali is | | | |daughter of non applicant? | | |2. |Does applicant No.1 Urmila proves that |Yes | | |non-applicant has deserted and neglected them| | | |to maintain them through having sufficient | | | |means? | | |3. |Whether applicant No.1 Urmila and Applicant |Yes | | |No.2 Shivanjali are entitled to get | | | |maintenance from non-applicant? | | |4. |If yes, at what rate? |Rs. 1,000/- | | | |p.m. to | | | |Applicant | | | |No. 1 and | | | |Rs. 500/- | | | |p.m. to | | | |Applicant | | | |No. 2. |

6. It is not necessary to discuss the reasons which prevailed with the learned JMFC in giving his findings on Point Nos.1 and 2 on the basis of evidence produced before the Court. We say so because of the reason that these findings are upheld by the learned Additional Sessions Judge in his judgment while dismissing the revision petition of the petitioner herein as well as the High Court. These are concurrent findings of facts with no blemish or perversity. It was not even argued before us as the argument raised was that in any case respondent No.1 could not be treated as “wife” of the petitioner as he was already married and therefore petition under Section 125 of the Cr.P.C. at her instance was not maintainable. Since, we are primarily concerned with this issue, which is the bone of contention, we proceed on the basis that the marriage between the petitioner and respondent No.1 was solemnized; respondent No.1 co-habited with the petitioner after the said marriage; and respondent No.2 is begotten as out of the said co-habitation, whose biological father is the petitioner. However, it would be pertinent to record that respondent No.1 had produced overwhelming evidence, which was believed by the learned JMFC that the marriage between the parties took place on 10.2.2005 at Devgad Temple. This evidence included photographs of marriage. Another finding of fact was arrived at, namely, respondent No.1 was a divorcee and divorce had taken place in the year 1997 between her and her first husband, which fact was in the clear knowledge of the petitioner, who had admitted the same even in his cross-examination.

7. The learned JMFC proceeded on the basis that the petitioner was married to Shobha and was having two children out of the wedlock. However, at the time of solemnizing the marriage with respondent No.1, the petitioner intentionally suppressed this fact from her and co-habited with respondent No.1 as his wife.

8. The aforesaid facts emerging on record would reveal that at the time when the petitioner married the respondent No.1, he had living wife and the said marriage was still subsisting. Therefore, under the provisions of Hindu Marriage Act, the petitioner could not have married second time. At the same time, it has also come on record that the petitioner duped respondent No.1 by not revealing the fact of his first marriage and pretending that he was single. After this marriage both lived together and respondent No.2 was also born from this wedlock. In such circumstances, whether respondents could filed application under Section 125 of the Cr.P.C., is the issue. We would like to pin point that in so far as respondent No.2 is concerned, who is proved to be the daughter of the petitioner, in no case he can shun the liability and obligation to pay maintenance to her. The learned

counsel ventured to dispute the legal obligation qua respondent No.1 only.

9. The learned counsel for the petitioner referred to the judgment of this Court in Yamunabai Anantrao Adhav vs. Anantrao Shivram Adhay & Anr.[1] In that case, it was held that a Hindu lady who married after coming into force Hindu Marriage Act, with a person who had a living lawfully wedded wife cannot be treated to be "legally wedded wife" and consequently her claim for maintenance under Section 125, Cr.P.C. is not maintainable. He also referred to later judgments in the case of Savitaben Somabai Bhatiya vs. State of Gujarat & Ors.[2] wherein the aforesaid judgment was followed. On the strength of these two judgments, the learned counsel argued that the expression "wife" in Section 125 cannot be stretched beyond the legislative intent, which means only a legally wedded-wife. He argued that Section 5(1) (i) of the Hindu Marriage Act, 1955 clearly prohibits 2nd marriage during the subsistence of the 1st marriage, and so respondent No.1 cannot claim any equity; that the explanation clause

(b) to Section 125 Cr.P.C. mentions the term "divorce" as a category of claimant, thus showing that only a legally wedded-wife can claim maintenance. He, thus, submitted that since the petitioner had proved that he was already married to Shobha and the said marriage was subsisting on the date of marriage with respondent No.1, this marriage was void and respondent No.1 was not legally wedded wife and therefore had no right to move application under Section 125 of the Cr.P.C.

10. Before we deal with the aforesaid submission, we would like to refer two more judgments of this Court. First case is known as Dwarika Prasad Satpathy vs. Bidyut Prava Dixit & Anr.[3] In this case it was held:

> "The validity of the marriage for the purpose of summary proceeding under s.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 IPC. If the claimant in proceedings under s.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 spouse, and in such a situation, the party who denies the marital status can rebut the presumption. 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 S.125,Cr.P.C. From the evidence which is led if the Magistrate is prima facie satisfied with regard to the performance of marriage in proceedings under S.125, Cr.P.C. which are of summary nature strict proof of performance of essential rites is not required.
>
> It is further held:
>
> 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 Civil Suit which is spending before the trial court. In such a situation, this Court in S.Sethurathinam Pillai vs. Barbara alias Dolly Sethurathinam, (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."

11. No doubt, it is not a case of second marriage but deals with standard of proof under Section 125, Cr.P.C. by the applicant to prove her marriage with the respondent and was not a case of second marriage. However, at the same time, this reflects the approach which is to be adopted while considering the cases of maintenance under Section 125,Cr.P.C. which proceedings are in the nature of summary proceedings.

12. Second case which we would like to refer is Chanmuniya vs. Virendra Kumar Singh Kushwaha & Anr.[4] The Court has held that the term "wife" occurring in Section 125, Cr.P.C. is to be given very wide interpretation. This is so stated in the following manner:

> "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 reasonably long period of time, and strict proof of marriage should not be a pre- condition for maintenance under Section 125 of the Cr.P.C. so as to fulfill the true spirit and essence of the beneficial provision of maintenance under Section 125."

13. No doubt, in Chanmuniya (supra), the Division Bench of this Court took the view that the matter needs to be considered with respect to Section 125,Cr.P.C., by larger bench and in para 41, three questions are formulated for determination by a larger bench which are as follows:

> "1. Whether the living together of a man and woman as husband and wife for a considerable period of time would raise the presumption of a valid marriage between them and whether such a presumption would entitle the woman to maintenance under Section 125,Cr.P.C.?
>
> 2. Whether strict proof of marriage is essential for a claim of maintenance under Section 125,Cr.P.C. having regard to the provisions of the Domestic Violence Act, 2005?
>
> 3. Whether a marriage performed according to the customary rites and ceremonies, without strictly fulfilling the requisites of Section 7(1) of the Hindu Marriage Act, 1955, or any other personal law would entitle the woman to maintenance under Section 125,Cr.P.C.?"

14. On this basis, it was pleaded before us that this matter be also tagged along with the aforesaid case. However, in the facts of the present case, we do not deem it proper to do so as we find that the view taken by the courts below is perfectly justified. We are dealing with a situation where the marriage between the parties has been proved. However, the petitioner was already married. But he duped the respondent by suppressing the factum of alleged first marriage. On these facts, in our opinion, he cannot be permitted to deny the benefit of maintenance to the respondent, taking advantage of his own wrong. Our reasons for this course of action are stated hereinafter.

15. Firstly, in Chanmuniya case, the parties had been living together for a long time and on that basis question arose as to whether there would be a presumption of marriage between the two because of the said reason, thus, giving rise to claim of maintenance under Section 125,Cr.P.C. by interpreting the term “wife” widely. The Court has impressed that if man and woman have been living together for a long time even without a valid marriage, as in that case, term of valid marriage entitling such a woman to maintenance should be drawn and a woman in such a case should be entitled to maintain application under Section 125,Cr.P.C. On the other hand, in the present case, respondent No.1 has been able to prove, by cogent and strong evidence, that the petitioner and respondent No.1 had been married each other.

16. Secondly, as already discussed above, when the marriage between respondent No.1 and petitioner was solemnized, the petitioner had kept the respondent No.1 in dark about her first marriage. A false representation was given to respondent No.1 that he was single and was competent to enter into martial tie with respondent No.1. In such circumstances, can the petitioner be allowed to take advantage of his own wrong and turn around to say that respondents are not entitled to maintenance by filing the petition under Section 125,Cr.P.C. as respondent No.1 is not “legally wedded wife” of the petitioner? Our answer is in the negative. We are of the view that at least for the purpose of Section 125 Cr.P.C., respondent No.1 would be treated as the wife of the petitioner, going by the spirit of the two judgments we have reproduced above. For this reason, we are of the opinion that the judgments of this Court in Adhav and Savitaben cases would apply only in those circumstances where a woman married a man with full knowledge of the first subsisting marriage. In such cases, she should know that second marriage with such a person is impermissible and there is an embargo under the Hindu Marriage Act and therefore she has to suffer the consequences thereof. The said judgment would not apply to those cases where a man marriages second time by keeping that lady in dark about the first surviving marriage. That is the only way two sets of judgments can be reconciled and harmonized.

17. Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125,Cr.P.C. While dealing with the application of destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalized sections of the society. The purpose is to achieve “social justice” which is the Constitutional vision, enshrined in the Preamble of the Constitution of India. Preamble to the Constitution of India clearly signals that we have chosen the democratic path under rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the Courts to advance the cause of the social justice. While giving interpretation to a particular provision, the Court is supposed to bridge the gap between the law and society.

18. Of late, in this very direction, it is emphasized that the Courts have to adopt different approaches in "social justice adjudication", which is also known as "social context adjudication" as mere "adversarial approach" may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:

> "It is, therefore, respectfully submitted that "social context judging" is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social- economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication."[5]

19. Provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from "adversarial" litigation to social context adjudication is the need of the hour.

20. The law regulates relationships between people. It prescribes patterns of behavior. It reflects the values of society. The role of the Court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both Constitutional and statutory interpretation, the Court is supposed to exercise direction in determining the proper relationship between the subjective and objective purpose of the law.

21. Cardozo acknowledges in his classic[6] "....no system of jus scriptum has been able to escape the need of it", and he elaborates: "It is true that Codes and Statutes do not render the Judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however, obscure and latent, had none the less a real and ascertainable pre- existence in the legislator's mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a judge's troubles in ascribing meaning to a stature." Says Gray in his lecture[7] "The fact is that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to determine that the legislature did mean on a point which was present to its mind, but to guess

what is would have intended on a point not present to its mind, if the point had been present."

22. The Court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonize results with justice through a method of free decision—"libre recherché sceintifique" i.e. "free Scientific research". We are of the opinion that there is a non-rebuttable presumption that the Legislature while making a provision like Section 125 Cr.P.C., to fulfill its Constitutional duty in good faith, had always intended to give relief to the woman becoming "wife" under such circumstances.

23. This approach is particularly needed while deciding the issues relating to gender justice. We already have examples of exemplary efforts in this regard. Journey from Shah Bano[8] to Shabana Bano[9] guaranteeing maintenance rights to Muslim women is a classical example.

24. In Rameshchandra Daga v. Rameshwari Daga[10], the right of another woman in a similar situation was upheld. Here the Court had accepted that Hindu marriages have continued to be bigamous despite the enactment of the Hindu Marriage Act in 1955. The Court had commented that though such marriages are illegal as per the provisions of the Act, they are not 'immoral' and hence a financially dependent woman cannot be denied maintenance on this ground.

25. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydon's Case[11] which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction ut res magis valeat guam pereat, in such cases i.e. where alternative constructions are possible the Court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125, Cr.P.C., such a woman is to be treated as the legally wedded wife.

26. The principles of Hindu Personal Law have developed in an evolutionary way out of concern for all those subject to it so as to make fair provision against destitution. The manifest purpose is to achieve the social objectives for making bare minimum provision to sustain the members of relatively smaller social groups. Its foundation spring is humanistic. In its operation field all though, it lays down the permissible categories under its benefaction, which are so entitled either because of the tenets supported by clear public policy or because of the need to subserve the social and individual morality measured for maintenance.

27. In taking the aforesaid view, we are also encouraged by the following observations of this Court in Capt.Ramesh Chander Kaushal vs. Veena Kaushal [12]:

> "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 cause – the cause of the derelicts."

28. For the aforesaid reasons, we are not inclined to grant leave and dismiss this petition.

.....J. [Ranjana Prakash Desai] .....J. [A.K.Sikri] New Delhi, October 18, 2013

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[1] (1988) 1 SCC 530
[2] (2005) 3 SCC 636
[3] (1999) 7 SCC 675
[4] (2011) 1 SCC 141
[5] Delivered a key note address on "Legal Education in Social Context"
[6] The Nature of Judicial Process
[7] From the Book "The Nature and Sources of the Law" by John Chipman Gray
[8] AIR 1985 SC 945
[9] AIR 2010 SC 305
[10] AIR 2005 SC 422
[11] (1854) 3 Co.Rep.7a,7b
[12] (1978) 4 SCC 70