K.Vimal vs K.Veeraswamy on 20 March, 1991

Equivalent citations: 1991 SCR (1) 904, 1991 SCC (2) 375

Author: M. Fathima Beevi

Bench: M. Fathima Beevi, A.M. Ahmadi

PETITIONER:
K.VIMAL

Vs.

RESPONDENT:
K.VEERASWAMY

DATE OF JUDGMENT20/03/1991

BENCH:
FATHIMA BEEVI, M. (J)
BENCH:
FATHIMA BEEVI, M. (J)
AHMADI, A.M. (J)
RAMASWAMI, V. (J) II

CITATION:
1991 SCR (1) 904 1991 SCC (2) 375
JT 1991 (2) 182 1991 SCALE (1)495

ACT:
Code of Criminal Procedure, 1973: section 125-scope and object of- Wife's application for maintenance-Husband's plea of marriage being void on account of subsistence of his earliar marriage-HeldCourt should insist on strick proof of earliar marriage- Insurance nomination and entry in Indenty Card are not conclusive of substance of earliar marriage.

HEADNOTE:
The appellant-wife filed an application for maintenance against respondent-husband under section 125 of the Code of Criminal procedure, 1973. The respondent contested the application on the ground that appellant was not his legally wedded wife since their marriage was void on account of subsistence of respondent's earlier marriage. The Magistrate awarded a monthly maintenance of Rs. 400 to the wife by holding that the respondent has not proved his first marrige. The order of the magistrate was set aside by the High Court in revision accepting the respodent's plea that

his first marriage was subsisting when the respodent married the appellant.

In appeal to this court it was contented on behalf of the respodent that the High Court had no material before it for arriving at the finding that there was an earlier valid marriage on the date respondent married the appellant.

Allowing the appeal, this Court.

HELD:1 Section 125 of the code of Criminal Procedure is meant to achieve a social purpose.The object is to prevent vagrancy and destitution. it provides a speedy remedy for the supply of food,clothing and shelter to the deserted wife. The term "wife" includes a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried.The woman not having the legal status of a wife is thus brought within the inclusive definition of the term "Wife" consistent with the objective. However,under the law a second wife whose marriage is void on account of the survival of the first marriage is

905

not a legally wedded wife and is,therefore,not entitled to maintenance under this provision. 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 from 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 ameasure of social justice intended to protect women and children. Accordingly, 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 should insist on strict proof of the earlier marriage. [907D-H]

2. The respondent has not discharged the heavy burden by tendering strict proof of the fact in issue. He clearly admitted his marriage with the appellant acording to Hindu rites. But there is no clear admission of his earlier marriage to dispense with the proof of subsisting valid first marriage when the second marriage was solemnised. In the absence of such an admission, the statement that the respondent was living with another woman as husband and wife cannot persuade was court to hold that the marriage duly solemnised between the appellant and the respondent suffers from any legal infirmity. [906C-H]

3. The nomination in the Insurance Policy and Entry in the Identity Card, referred to by the High Court are not conclusive of the subsistence of a valid marriage between the respondent and his earlier wife. The High Court has failed to consider the standard of proof required and has proceeded on no evidence whatsoever in determining the question against the appeallant. Accordingly the order of the High Court is set aside and the order of the Magistrate is restored. [907B-C]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 664 of 1990.

From the Judgement and Order dated 13.3.1990 of the Andhra Pradesh High Court in Criminal Revision Case No. 532 of 1989.

K. Ramkumar for the Appellant.

B. Kanta Rao for the Respondent.

The Judgment of the Court was delivered by FATIMA BEEVI, J. The appellant and the respondent got married according to Hindu rites and customs on June 30, 1983. They lived together until the appellant started complaining of desertion and ill-treatment. She moved the court for maintenance by an application under Section 125 of the Code of Criminal Procedure. Though the claim was resisted on the ground that the appellant is not the legally wedded wife of the respondent who had earlier married one Veeramma, the learned magistrate awarded a monthly maintenance of Rs.400 holding that the first marriage has not been proved. The order was, however, set-aside by the High Court in revision accepting the plea that the first marriage was subsisting when the respondent married the appellant.

We have granted special leave to appeal against the order of the High Court. We have been taken through the pleadings and the evidence by the learned counsel for the appellant for the purpose of satisfying that the High Court had no material before it for arriving at the finding that there was a valid marriage between Veeramma and the respondent on the day the respondent married the appellant. It is pointed out that the appellant had nowhere admitted the subsistence of a valid marriage which would render her marriage illegal. The appellant stated in her petition that one year after her marriage, she came to know that respondent married Veeramma and lived with her in Hyderabad and soon thereafter Veeramma started living along with the appellant and the respondent and, thus extra-marital relationship of the respondent with Veeramma has disrupted her family life. In fact, the respondent had in his counter flatly denied all the averments made by the appellant in the petition and maintained that a marriage ceremony was performed between Veeramma and the respondent when both were children and the appellant is only his kept-mistress. The respondent has, however, clearly admitted that he married the appellant according to Hindu rites. When that marriage is repudiated as void on account of the subsistence of an earlier marriage, the respondent was bound to prove that he married Veeramma in the customary form and the marriage was subsisting in the year 1983 when the appellant was married to him. As rightly pointed out by the learned counsel for the appellant, there is no clear admission of an earlier marriage between the respondent and Veeramma to dispense with the proof of subsisting valid first marriage when the second marriage was solemnised. In the absence of such an admission, the statement that the respondent is living with another woman as husband and wife cannot persuade the court to hold that the marriage duly solemnised between the appellant and the respondent suffers from any legal infirmity. The High Court has referred to Ex. R-12 and R- 13 relied on by the respondent to prove

that he was already married. Ex. R- 12 is the insurance policy issued On 5. 12. 1975 where the name of the nominee is shown as Veeramma indicating that she is the wife of the respondent. Ex. R- 13 is the family identity card issued by the Road Transport Corporation where the respondent was working in 1977. These documents are issued on the basis of what the respondent himself had stated. The entries are not conclusive of the subsistence a valid marriage between the respondent and Veeramma. If they had been living together as husband and wife even without performing a ceremonial marriage, and the respondent represented that Veeramma was his wife, it is possible that such entries would come into existence. Therefore, these documents by themselves cannot prove any marriage or the subsistence of a valid marriage when the admitted marriage with the appellant was solemnised.

Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy 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. The term wife' in Section 15 of the Code of Criminal Procedure includes a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. The woman not having the legal status of a wife is thus brought within the inclusive definition of the term 'wife' consistent with the objective. However, under the law a second wife whose marriage is void an account of the survival of the first marriage is not a legally wedded wife and is, therefore, not entitled to maintenance under this provision. Therefore, the law which disentitles the 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 the provision in the Code is a measure of social justice intended to protect women and children. We are unable to find that the respondent herein has discharged the heavy burden by tendering strict proof of the fact in issue. The High Court failed to consider the standard of proof required and has proceeded on no evidence whatsoever in determining the question against the appellant. We are, therefore, unable to agree that the appellant is not entitled to maintenance.

We find that there is no dispute that the appellant was married to the respondent in the customary form. They lived together as husband and wife and of late the respondent had neglected to maintain her. The respondent has no case that the appellant has means to maintain herself or that the amount she has claimed is not commensurate with the means of the respondent. The learned magistrate was, therefore, justified in awarding an amount of Rs.400 per mensem towards the maintenance of the appellant. That order of the magistrate has to be restored.

In the result, we allow the appeal, set-aside the order of the High Court and restore that of the trial court.

T. N. A. Appeal allowed.