Savitaben Somabhai Bhatiya vs State Of Gujarat And Ors on 10 March, 2005

Equivalent citations: AIR 2005 SUPREME COURT 1809, 2005 (3) SCC 636, 2005 AIR SCW 1601, 205 (2) JLJR 120, (2005) 28 ALLINDCAS 30 (SC), 2005 (4) SRJ 193, 2005 (3) SLT 59, 2005 (1) BLJR 827, 2005 (2) RECCIVR 151.2, 2005 (1) UJ (SC) 698, 2005 (1) CALCRILR 609, 2005 (3) SCALE 80, 2005 BLJR 1 827, 2005 ALL MR(CRI) 1309, (2005) 3 JT 164 (SC), 2005 CALCRILR 1 609, (2005) 2 CGLJ 360, (2005) 2 CTC 141 (SC), 2005 (28) ALLINDCAS 30, (2005) 2 KER LT 65, (2005) 2 PUN LR 276, (2005) 2 RAJ CRI C 391, (2005) 2 RECCRIR 190, (2005) 2 SUPREME 503, (2005) 2 RECCIVR 151(2), (2005) 2 JLJR 120, (2005) 2 MPHT 382, (2005) 2 BOMCR(CRI) 263, (2005) 1 RECCRIR 733, (2005) 2 CURCRIR 427, (2005) 2 CIVILCOURTC 133, (2005) 2 GCD 1327 (SC), (2005) 2 ALLCRILR 524, (2005) 1 CHANDCRIC 239, (2005) 2 CRIMES 1, (2005) 1 DMC 503, (2005) 1 ALLCRIR 1094, (2005) 2 EASTCRIC 281, (2005) 2 GUJ LR 1378, (2005) 2 GUJ LH 662, (2005) 1 HINDULR 513, (2005) 2 MARRILJ 363, (2005) MATLR 221, (2005) 30 OCR 813, (2005) 2 PAT LJR 160, (2005) 5 SCJ 22, (2005) 2 CURCRIR 10, (2005) 3 SCALE 80, (2005) 51 ALLCRIC 923, 2005 (1) ALD(CRL) 691, 2005 (3) ANDHLT(CRI) 79 SC, (2005) 3 ANDHLT(CRI) 79

Author: Arijit Pasayat

Bench: Arijit Pasayat, S.H. Kapadia

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           CASE NO.:
Appeal (crl.)  399 of 2005

PETITIONER:
Savitaben Somabhai Bhatiya

RESPONDENT:
State of Gujarat and Ors.

DATE OF JUDGMENT: 10/03/2005

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
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J U D G M E N T (Arising out of SLP (Crl.) No. 4688 of 2004) ARIJIT PASAYAT, J.

Leave granted.

A brief reference to the factual position would suffice because essentially the dispute has to be adjudicated with reference to scope and ambit of Section 125 of the Code of Criminal Procedure, 1973 (in short the 'Code').

The case at hand according to appellant is a classic example of the inadequacies of law in protecting a woman who unwittingly entered into relationships with a married man.

Factual position as projected by the appellant is as follows:-

> Appellant claims that she was married to respondent No.2 some time in 1994 according to the customary rites and rituals of their caste. Though initially, the respondent No.2 treated her nicely, thereafter he started ill-treating her and she was subjected to mental and physical torture. On enquiry about the reason for such a sudden change in his behaviour, the appellant came to know that respondent No.2 had developed illicit relationship with a lady named Veenaben. During the period the appellant stayed with the respondent, she became pregnant and subsequently, a child was born. As respondent No.2 neglected the appellant and the child born, an application in terms of Section 125 of the Code was filed claiming maintenance. The application was filed before the learned Judicial Magistrate, First Class (hereinafter referred to as the 'JMFC') Himmatnagar. Respondent No.2 opposed the application by filing written statements taking the stand that the appellant was not his legally married wife and the child (respondent No.3) was not his son. He also denied having developed illicit relationship with Veenaben. He claimed that actually she was married to him more than 22 years back and two children were born. Their son Hament had died in the road accident in July 1990. In the Claim Petition name of Veenaben was mentioned as the legal heir and in the Voters List, Ration Card and Provident Fund records, Veenaben was shown as the wife of respondent No.2. On 23.6.1998 learned JMFC allowed the Claim Petition and granted maintenance. A criminal revision was filed by respondent No.2 before learned Additional Sessions Judge, Sabaakatha, Dist. Himmatnagar, who by his order dated 26.11.1998 set aside the judgment dated 23.6.1998 as passed by the learned JMFC and remanded the matter to the trial Court for adjudication afresh after affording an opportunity to respondent No.2 to cross examine the witnesses of the appellant. By order dated 31.7.1999, learned JMFC after considering the matter afresh awarded maintenance to both the appellant and the child.
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> A Criminal Revision Application No.65/95 was filed by respondent No.2 against the order dated 31.7.1999. By order dated 12.7.2001, learned Additional District Judge, Sabarkatha dismissed the application. The respondent No.2 filed a Special Criminal Application No.568/2001 before the Gujarat High Court which by the impugned order held that the appellant was not legally wedded wife of respondent No.2. Reliance was placed on documents filed by respondent No.2 to conclude that before

the alleged date of marriage between the appellant and respondent No.2, the latter was already married to Veenaben with reference to the documents produced. However, maintenance granted to the child (respondent No.3) was maintained and amount as awarded to him i.e. Rs.350/- was enhanced to Rs.500/-. A direction was also given to pay the enhanced amount from the date of order of the learned JMFC i.e. 31.7.1999.

In support of the appeal, learned counsel for the appellant submitted that the High Court has taken a too technical view in the matter. Strict proof about a valid marriage is not the sine qua non for getting maintenance under Section 125 of the Code. The documents produced by respondent No.2 to substantiate the plea of earlier marriage with Veenaben should not have been given primacy over the clinching evidence adduced by the appellant to show that she was unaware of the alleged marriage. Since respondent No.2 is guilty of fraud and mis-representation, the equity should not weigh in his favour. Law is intended to protect destitute and harassed woman and rigid interpretation given to the word 'wife' goes against the legislative intent. In any event, nothing has been shown by respondent No.2 to show that there is any customary bar for a second marriage. Customs outweigh enacted law. That being the position, the order passed by the learned JMFC should be restored. It was residually submitted that when the amount was claimed as maintenance there was statutory limitation prescribed at Rs.500/- which has been done away with by omitting the words of limitation so far as the amount is concerned by amendment in 2001 to the Cr.P.C. Therefore, taking into account the high cost of living the quantum of maintenance should be enhanced for the child.

In response, learned counsel for respondent No.2 submitted that law is fairly well settled regarding the definition of the expression 'wife' and there is no scope for giving an extended meaning to include a woman who is not legally married.

There may be substance in the plea of learned counsel for the appellant that law operates harshly against the woman who unwittingly gets into relationship with a married man and Section 125 of the Code does not give protection to such woman. This may be an inadequacy in law, which only the legislature can undo. But as the position in law stands presently there is no escape from the conclusion that the expression 'wife' as per Section 125 of the Code refers to only legally married wife.

The provision is enacted for social justice and specially to protect women and children as also old and infirm poor parents and falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India, 1950 (in short the 'Constitution'). The provision gives effect to the natural and fundamental duty of a man to maintain his wife, children and parents so long as they are unable to maintain themselves. Its provisions are applicable and enforceable whatever may be personal law by which the persons concerned are governed. (See Nanak Chand v. Chandra Kishore (AIR 1970 SC 446). But the personal law of the parties is relevant for deciding the validity of the marriage and therefore cannot be altogether excluded from consideration. (See Smt. Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and Anr.(AIR 1988 SC 644) There is no inconsistency between Section 125 of the Code and the provisions in the Hindu Adoption and Maintenance Act,

1956 (in short the 'Adoption Act'). The scope of the two laws is different.

Section 125 of the Code at the point of time when the petition for maintenance was filed reads as follows:

> "125(1)- If any person having sufficient means neglects or refuses to maintain-
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> (a) his wife, unable to maintain herself, or
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> (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
>
> (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
>
> (d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from to time direct:
>
> Provided that the Magistrate may order the father of a minor female child referred to in clause
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> (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Explanation:- For the purposes of this Chapter-

(a) 'minor' means a person who, under the provisions of the Indian Majority Act, 1875 is deemed not to have attained his majority;

(b) 'wife' includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried."

By the Code of Criminal Procedure (Amendment) Act, 2001 (Central Act 50 of 2001) the words 'not exceeding five hundred rupees in the whole' have been omitted w.e.f. 24.9.2001.

In Dwarika Prasad Satpathy v. Bidyut Prava Dixit and Anr. (AIR 1999 SC 3348) it was held that the validity of the marriage for the purpose of summary proceedings under Section 125 of the Code is to be determined on the basis of the evidence brought on record by the parties. The standard of proof

of marriage in such proceedings is not as strict as is required in a trial of offence under Section 494 of Indian Penal Code, 1860 (in short the 'IPC'). If the claimant in proceedings under Section 125 succeeds in showing that she and the respondent have lived together as husband and wife, the Court has to presume that they are legally wedded spouses, and in such a situation one 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 as to whether the said procedure was complete as per the Hindu rites, in the proceedings under Section 125 of the Code. It is to be noted that when the respondent does not dispute the paternity of the child and accepts the fact that marriage ceremony was performed though not legally perfect, it would hardly lie in his mouth to contend in proceedings under Section 125 of the Code that there was no valid marriage as essential rites were not performed at the time of said marriage. The provision under Section 125 cannot be utilized for defeating the rights conferred by the legislature on the destitute women, children or parents who are victims of social environment. The provision is a measure of social justice and as noted above specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution.

The sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfill. 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. (See Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors. (AIR 1978 SC 1807).

In Smt. Yamunabai's case (supra), it was held that expression 'wife' used in Section 125 of the Code should be interpreted to mean only a legally wedded wife. The word 'wife' is not defined in the Code except indicating in the Explanation to Section 125 its inclusive character so as to cover a divorcee. A woman cannot be a divorcee unless there was a marriage in the eye of law preceding that status. The expression must therefore be given the meaning in which it is understood in law applicable to the parties. The marriage of a woman in accordance with the Hindu rites with a man having a living spouse is a complete nullity in the eye of law and she is therefore not entitled to the benefit of Section 125 of the Code or the Hindu Marriage Act, 1955 (in short the 'Marriage Act'). Marriage with person having living spouse is null and void and not voidable. However, the attempt to exclude altogether the personal law applicable to the parties from consideration is improper. Section 125 of the Code has been enacted in the interest of a wife and one who intends to take benefit under sub-section (1)(a) has to establish the necessary condition, namely, that she is the wife of the person concerned. The issue can be decided only by a reference to the law applicable to the parties. It is only where an applicant establishes such status or relationship with reference to the personal law that an application for maintenance can be maintained. Once the right under the provision in Section 125 of the Code is established by proof of necessary conditions mentioned therein, it cannot be defeated by further reference to the personal law. The issue whether the Section is attracted or not cannot be answered except by reference to the appropriate law governing the parties.

But it does not further the case of the appellant in the instant case. Even if it is accepted as stated by learned counsel for the appellant that husband was treating her as his wife it is really

inconsequential. It is the intention of the legislature which is relevant and not the attitude of the party.

In Smt. Yamunabai's case (supra) plea similar to the one advanced in the present case that the appellant was not informed about the respondent's earlier marriage when she married him was held to be of no avail. The principle of estoppel cannot be pressed into service to defeat the provision of Section 125 of the Code.

It may be noted at this juncture that the legislature considered it necessary to include within the scope of the provision an illegitimate child but it has not done so with respect to woman not lawfully married. However, desirable it may be, as contended by learned counsel for the appellant to take note of the plight of the unfortunate woman, the legislative intent being clearly reflected in Section 125 of the Code, there is no scope for enlarging its scope by introducing any artificial definition to include woman not lawfully married in the expression 'wife'.

As noted by this Court in Vimala (K.) v. Veeraswamy (K.) (1991 (2) SCC 375) when a plea of subsisting marriage is raised by the respondent-husband it has to be satisfactorily proved by tendering evidence to substantiate that he was already married.

In the instant case the evidence on record has been found sufficient by the Courts below by recording findings of fact that earlier marriage of respondent was established.

In that view of the matter, the application so far as claim of maintenance of the wife is concerned stands dismissed.

That brings us to the other question relating to adequacy of the quantum of maintenance awarded to the child. It is not in dispute that when the Claim Petition was filed, Rs.500/- was claimed as maintenance as that was the maximum amount which could have been granted because of the un-amended Section 125. But presently, there is no such limitation in view of the amendment as referred to above.

Learned counsel for respondent No.2 submitted that there was no amendment made to the Claim Petition seeking enhancement. We find that this is a too technical plea. As a matter of fact, Section 127 of the Code permits increase in the quantum. The application for maintenance was filed on 1.9.1995. The order granting maintenance was passed by the learned JMFC on 31.7.1999. The High Court enhanced the quantum awarded to the child from Rs.350/- to Rs.500/- with effect from the order passed by learned JMFC. No dispute has been raised regarding enhancement and in fact there was a concession to the prayer for enhancement before the High Court as recorded in the impugned judgment. Considering the peculiar facts of the case, we feel that the amount of maintenance to the child can be enhanced to Rs.850/- with effect from today.

Learned counsel for the respondent No.2 has submitted that as a humanitarian gesture, the respondent No.2 agrees to pay a lump-sum amount to settle the dispute. In case the respondent No.2 pays a sum of rupees two lakhs only within a period of four months to the appellant, the same

shall be in full and final settlement of the claim of respondent No.3 for maintenance. While fixing the quantum we have taken note of the likely return as interest in case it is invested in fixed deposit in a Nationalised Bank, and the likely increase in the quantum of maintenance till respondent No.3 attains majority. Till deposit is made, the quantum fixed by this order shall be paid. If the respondent No.2 wants to make lump-sum payment in terms of this order, the amount shall be paid by the Bank draft in the name of respondent No.3 with appellant as mother guardian. The amount shall be kept in a fixed deposit with monthly interest payment facility till respondent No.3 attains majority.

The appeal is accordingly disposed of.