Supreme Court of India
Chanmuniya vs Virendra Kumar Singh Kushwaha & ... on 7 October, 2010
Author: Ganguly
Bench: G.S. Singhvi, Asok Kumar Ganguly

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO._____ OF 2010

(Arising out of SLP (Civil) No.15071 of 2009)

Chanmuniya ..Appellant(s)

Versus

Virendra Kumar Singh Kushwaha & Anr. ..Respondent(s)

J U D G M E N T

GANGULY, J.

1. Leave granted.

2. One Sarju Singh Kushwaha had two sons, Ram Saran (elder son) and Virendra Kumar Singh Kushwaha (younger son and the first respondent). The appellant, Chanmuniya, was married to Ram Saran and had 2 daughters-Asha, the first one, was born in 1988 and Usha, the second daughter, was born in 1990. Ram Saran died on 7.03.1992.

3. Thereafter, the appellant contended that she was married off to the first respondent as per the customs and usages prevalent in the Kushwaha community in 1996. The custom allegedly was that after the death of the husband, the widow was married off to the younger brother of the husband.

The appellant was married off in accordance with the local custom of Katha and Sindur. The appellant contended that she and the first respondent were living together as husband and wife and had discharged all marital obligations towards each other. The appellant further contended that after some time the first respondent started harassing and torturing the appellant, stopped her maintenance and also refused to discharge his marital obligations towards her.

4. As a result, she initiated proceedings under Section 125 of the Cr.P.C. for maintenance (No.20/1997) before the 1st Additional Civil Judge, Mohamadabad, Ghazipur. This proceeding is pending.

5. She also filed a suit (No.42/1998) for the restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 in the Court of 1st Additional District Judge, Ghazipur.

6. The Trial Court decreed the suit for restitution of conjugal rights in favour of the appellant on 3.1.2004 as it was of the opinion that the appellant had remarried the first respondent after the death of Ram Saran, and the first respondent had deserted the appellant thereafter. Thus, it directed the first respondent to live with the appellant and perform his marital duties.

7. Hence, the first respondent preferred a first appeal (No.110/2004) under Section 28 of the Hindu Marriage Act. The main issue in appeal was whether there was any evidence on record to prove that the appellant was the legally wedded wife of the first respondent.

The High Court in its judgment dated 28.11.2007 was of the opinion that the essentials of a valid Hindu marriage, as required under Section 7 of the Hindu Marriage Act, had not been performed between the first respondent and the appellant and held that the first respondent was not the husband of the appellant and thus reversed the findings of the Trial Court.

8. Aggrieved by the aforesaid judgment of the High Court, the appellant sought a review of the order dated 28.11.2007. The review petition was dismissed on 23.01.2009 on the ground that there was no error apparent on the face of the record of the judgment dated 28.11.2007.

9. Hence, the appellant approached this Court by way of a special leave petition against the impugned orders dated 28.11.2007 and 23.01.2009.

10.One of the major issues which cropped up in the present case is whether or not presumption of a marriage arises when parties live together for a long time, thus giving rise to a claim of maintenance under Section 125 Cr.P.C. In other words, the question is what is meant by `wife' under Section 125 of Criminal Procedure Code especially having regard to explanation under clause (b) of the Section.

11.Thus, the question that arises is whether a man and woman living together for a long time, even without a valid marriage, would raise as in the present case, a presumption of a valid marriage entitling such a woman to maintenance.

12.On the question of presumption of marriage, we may usefully refer to a decision of the House of Lords rendered in the case of Lousia Adelaide Piers & Florence A.M. De Kerriguen v. Sir Henry Samuel Piers [(1849) II HLC 331], in which their Lordships observed that the question of validity of a marriage cannot be tried like any other issue of fact independent of presumption. The Court held that law will presume in favour of marriage and such presumption could only be rebutted by strong and satisfactory evidence.

13.In Lieutenant C.W. Campbell v. John A.G. Campbell [(1867) Law Rep. 2 HL 269], also known as the Breadalbane case, the House of Lords held that cohabitation, with the required repute, as husband and wife, was proof that the parties between themselves had mutually contracted the matrimonial relation. A relationship which may be adulterous at the beginning may become matrimonial by consent.

This may be evidenced by habit and repute. In the instant case both the appellant and the first respondent were related and lived in the same house and by a social custom were treated as husband and wife. Their marriage was solemnized with Katha and Sindur. Therefore, following the ratio of the decisions of the House of Lords, this Court thinks there is a very strong presumption in favour of marriage. The House of Lords again observed in Captain De Thoren v. The Attorney-General [(1876) 1 AC 686], that the presumption of marriage is much stronger than a presumption in regard to other facts.

14.Again in Sastry Velaider Aronegary & his wife v.

Sembecutty Viagalie & Ors. [(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.

15.In India, the same principles have been followed in the case of A. Dinohamy v. W.L. Balahamy [AIR 1927 P.C. 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.

16.In Mohabbat Ali Khan v. Muhammad Ibrahim Khan and Ors. [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.

17.In the case of Gokal Chand v. Parvin Kumari [AIR 1952 SC 231], this Court held that continuous co-

habitation of man and woman as husband and wife may raise the presumption of marriage, but the presumption which may be drawn from long co-

habitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them.

18.Further, in the case of Badri Prasad v. Dy. Director of Consolidation & Ors. [(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.

19.Again, in Tulsa and Ors. v. Durghatiya & Ors. [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.

20.Sir James Fitz Stephen, who piloted the Criminal Procedure Code of 1872, a legal member of Viceroy's Council, described the object of Section 125 of the Code (it was Section 536 in 1872 Code) as a mode of preventing vagrancy or at least preventing its consequences.

21.Then came the 1898 Code in which the same provision was in Chapter XXXVI Section 488 of the Code. The exact provision of Section 488(1) of the 1898 Code runs as follows:

"488. (1) If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate or 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, 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 from time to time directs."

22.In Jagir Kaur & Anr. v. Jaswant Singh [AIR 1963 SC 1521], the Supreme Court observed with respect to Chapter XXXVI of Cr.P.C. of 1898 that provisions for maintenance of wives and children intend to serve a social purpose. Section 488 prescribes forums for a proceeding to enable a deserted wife or a helpless child, legitimate or illegitimate, to get urgent relief.

23.In Nanak Chand v. Chandra Kishore Aggarwal & Ors.

[1969 (3) SCC 802], the Supreme Court, discussing Section 488 of the older Cr.P.C, virtually came to the same conclusion that Section 488 provides a summary remedy and is applicable to all persons belonging to any religion and has no relationship with the personal law of the parties.

24.In Captain Ramesh Chander Kaushal v. Veena Kaushal and Ors. [AIR 1978 SC 1807], this Court held that Section 125 is a reincarnation of Section 488 of the Cr.P.C. of 1898 except for the fact that parents have also been brought into the category of persons entitled for maintenance. It observed that this provision is a measure of social justice specially enacted to protect, and inhibit neglect of women, children, old and infirm and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. Speaking for the Bench Justice Krishna Iyer observed that- "We have no doubt that 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 is to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advance the cause- the cause of the derelicts." (Para 9 on pages 1809-10)

25.Again in Vimala (K) v. Veeraswamy (K) [(1991) 2 SCC 375], a three-Judge Bench of this Court held that Section 125 of the Code of 1973 is meant to achieve a social purpose and the object is to prevent vagrancy and destitution. Explaining the meaning of the word `wife' the Court held:

"...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 125 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... "

26.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.

27.The Committee on Reforms of Criminal Justice System, headed by Dr. Justice V.S. Malimath, in its report of 2003 opined that evidence regarding a man and woman living together for a reasonably long period should be sufficient to draw the presumption that the marriage was performed according to the customary rites of the parties. Thus, it recommended that the word `wife' in Section 125 Cr.P.C. should be amended to include a woman who was living with the man like his wife for a reasonably long period.

28.The Constitution Bench of this Court in Mohammad Ahmed Khan v. Shah Bano Begum & Ors. reported in [(1985) 2 SCC 556], considering the provision of Section 125 of the 1973 Code, opined that the said provision is truly secular in character and is different from the personal law of the parties. The Court further held that such provisions are essentially of a prophylactic character and cut across the barriers of religion. The Court further held that the liability imposed by Section 125 to maintain close relatives, who are indigent, is founded upon the individual's obligation to the society to prevent vagrancy and destitution.

29.In a subsequent decision, in Dwarika Prasad Satpathy v. Bidyut Prava Dixit & Anr. [(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 of 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 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. (See para 9)

30.However, striking a different note, in Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and another, reported in AIR 1988 SC 644, 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 & 8) that the expression `wife' in Section 125 of the Code should be interpreted to mean only a legally wedded wife.

31.Again in a subsequent decision of this Court in Savitaben Somabhat Bhatiya v. State of Gujarat and others, reported in AIR 2005 SC 1809, this Court held 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 the Yamunabai case (supra).

32.It is, therefore, clear from what has been discussed above that there is a divergence of judicial opinion on the interpretation of the word `wife' in Section

125.

33.We are inclined to take a broad view of the definition of `wife' having regard to the social object of Section 125 in the Code of 1973. However, sitting in a two-Judge Bench, we cannot, we are afraid, take a view contrary to the views expressed in the abovementioned two cases.

34.However, law in America has proceeded on a slightly different basis. The social obligation of a man entering into a live-in relationship with another woman, without the formalities of a marriage, came up for consideration in the American courts in the leading case of Marvin v. Marvin [(1976) 18

Cal.3d 660]. In that context, a new expression of `palimony' has been coined, which is a combination of `pal' and `alimony', by the famous divorce lawyer in the said case, Mr. Marvin Mitchelson.

35.In the Marvin case (supra), the plaintiff, Michelle Marvin, alleged that she and Lee Marvin entered into an oral agreement which provided that while "the parties lived together they would combine their efforts and earnings and would share equally any and all property accumulated as a result of their efforts whether individual or combined." The parties allegedly further agreed that Michelle would "render her services as a companion, homemaker, housekeeper and cook." Michelle sought a judicial declaration of her contract and property rights, and sought to impose a constructive trust upon one half of the property acquired during the course of the relationship. The Supreme Court of California held as follows:

(1) The provisions of the Family Law Act do not govern the distribution of property acquired during a non-marital relationship; such a relationship remains subject solely to judicial decision.

(2) The courts should enforce express contracts between non-marital partners except to the extent that the contract is explicitly founded on the consideration of meretricious sexual services.

(3) In the absence of an express contract, the courts should inquire into the conduct of the parties to determine whether that conduct demonstrates an implied contract, agreement of partnership or joint venture, or some other tacit understanding between the parties. The courts may also employ the doctrine of quantum meruit, or equitable remedies such as constructive or resulting trusts, when warranted by the facts of the case.

36.Though in our country, law has not developed on the lines of the Marvin case (supra), but our social context also is fast changing, of which cognizance has to be taken by Courts in interpreting a statutory provision which has a pronounced social content like Section 125 of the Code of 1973.

37.We think the larger Bench may consider also the provisions of the Protection of Women from Domestic Violence Act, 2005. This Act assigns a very broad and expansive definition to the term `domestic abuse' to include within its purview even economic abuse. `Economic abuse' has been defined very broadly in sub-explanation (iv) to explanation I of Section 3 of the said Act to include deprivation of financial and economic resources.

38.Further, Section 20 of the Act allows the Magistrate to direct the respondent to pay monetary relief to the aggrieved person, who is the harassed woman, for expenses incurred and losses suffered by her, which may include, but is not limited to, maintenance under Section 125 Cr.P.C. [Section 20(1)(d)].

39.Section 22 of the Act confers upon the Magistrate, the power to award compensation to the aggrieved person, in addition to other reliefs granted under the Act.

40.In terms of Section 26 of the Act, these reliefs mentioned above can be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent.

41.Most significantly, the Act gives a very wide interpretation to the term `domestic relationship' as to take it outside the confines of a marital relationship, and even includes live-in relationships in the nature of marriage within the definition of `domestic relationship' under Section 2(f) of the Act.

42.Therefore, women in live-in relationships are also entitled to all the reliefs given in the said Act.

43.We are thus of the opinion that if the abovementioned monetary relief and compensation can be awarded in cases of live-in relationships under the Act of 2005, they should also be allowed in a proceedings under Section 125 of Cr.P.C. It seems to us that the same view is confirmed by Section 26 of the said Act of 2005.

44.We believe that in light of the constant change in social attitudes and values, which have been incorporated into the forward-looking Act of 2005, the same needs to be considered with respect to Section 125 of Cr.P.C. and accordingly, a broad interpretation of the same should be taken.

45.We, therefore, request the Hon'ble Chief Justice to refer the following, amongst other, questions to be decided by a larger Bench. According to us, the questions are:

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 Domestic Violence Act, 2005?

3. Whether a marriage performed according to 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.?

46.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 pre-condition for maintenance under Section 125 of the Cr.P.C, so as to fulfil the true spirit and essence of the beneficial provision of maintenance under Section

125.

47.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.

.....J.

(G.S. SINGHVI) .....J.

(ASOK KUMAR GANGULY) New Delhi October 07, 2010