

Neutral Citation No. - 2024:AHC:80344

Reserved on: 04.04.2024

Delivered on: 06.05.2024

Court No. - 77

Case :- CRIMINAL REVISION No. - 237 of 2023

Revisionist :- Ram Adhare Paswan

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Anil Kumar Pandey

**Counsel for Opposite Party :- G.A.,Hirdesh Kumar Yadav,Sushma
Yadav**

Hon'ble Rajeev Misra,J.

1. Heard Mr. Anil Kumar Pandey, the learned counsel for revisionist, the learned A.G.A. for State and Mr. Brijesh Kumar, the learned counsel representing opposite party-2.

2. Perused the record.

3. Challenge in this criminal revision is to the order dated 13.10.2022 passed by Principal Judge, Family Court, Gorakhpur in Criminal Case No. 589 of 2014 (Kabutari Devi Vs. Ram Adhare Paswan), under Section 125 Cr.P.C., Police Station & District-Gorakhpur, whereby Court below has allowed the aforementioned criminal case and directed the revisionist to pay monthly maintenance to opposite party-2 @ Rs. 5,000/- per month from the date of application i.e. 15.12.2014.

4. Record shows that marriage of opposite party-2 Kabutari Devi was initially solemnized with Deenanath. However, subsequently, the

relationship between opposite party-2 and Deenanath became strained on account of marital discord. Unfortunately, they reached a point of no return. It is the case of opposite party-2 that in view of above, a compromise was entered into in between opposite party-2 and Deenanath. The terms of the compromise so entered into by the parties were reduced to writing and accordingly, a memorandum of compromise was drawn on 01.05.2005 signed by both the parties. In view of the nature of dispute involved in the present criminal revision, it will be worth noticing the terms of the compromise which are accordingly, reproduced hereinunder:-

"सुलहनामा

दीनानाथ पुत्र अभिराज ग्राम दुलहरा, पोस्ट डुमरौला, थाना झगहा, जिला गोरखपुर -----
प्रथम पक्ष

व

कबूतरी देवी पत्नी दीनानाथ पुत्री रमजान प्रजापति ग्राम आमघाट, थाना झगहा, तहसील चौरी चौरा जिला गोरखपुर -----द्वितीय पक्ष

हम कि उभयपक्ष निम्नलिखित कथन करते हैं :-

1. यह कि उभय पक्ष आपस में पति पत्नी हैं तथा उनका विवाह दिनांक 12-2-1998 को ग्राम आमघाट में द्वितीय पक्ष के पिता के घर सम्पन्न हुआ।
2. यह कि उभय पक्ष के बीच आपसी विवाद व मन मोटाव अब इतना बढ़ गया है कि उभयपक्ष को जान का भी खतरा पैदा हो गया है इसलिये अब एक साथ रहना सम्भव नहीं है।
3. यह कि उभयपक्ष ने अपने अपने माता पिता तथा रिश्तेदारों के समझाने बुझाने से अब अलग रहने तथा ठीक ढंग से नयी जिन्दगी जीने का फैसला कर लिया है।
4. यह कि उभय पक्ष की जाती व बिरादरी में शादी छुट्टी - छुट्टा का रीति रिवाज व प्रचलन ही है।
5. यह कि उभय पक्ष किसी उज्ज व दबाव के स्वेच्छा पूर्वक स्वस्थ मन मष्तिक से छुट्टी छुट्टा के कागज पर आज दिनांक 1-5-2005 को राबाहों के अपना अपना निशानी अंगूठा व दस्तखत बना दे रहे हैं जो वक्त जरूरत पर काम आवे।

6. यह कि आज से उभय पक्ष अपने अपने ढंग से जिन्दगी जीने व शादी करने के लिये स्वतन्त्र हैं।

7. यह कि उभय पक्ष के तीन बच्चे हैं जो अभी द्वितीय पक्ष के साथ रहेंगे।

हस्ताक्षर द्वितीय पक्ष

नि० अ० कबूतरी देवी

हस्ताक्षर गवाहान

1. नि०अ० दुलारी देवी माता मउसी दीनानाथ

2. विनोद कुमार प्रजापति भाई दीनानाथ

स्थान ग्राम दुलहरा, गोरखपुर

दिनांक 1-5-2005”

हस्ताक्षर प्रथम पक्ष

दीनानाथ

5. Opposite party-2 Kabutari Devi alleges that in view of the compromise so entered in between herself and Deenanath, the marital relationship between them came to an end. The parties were now left open to perform second marriage.

6. Accordingly, opposite party-2 solemnized marriage with the revisionist on 12.12.1998. Subsequently, it appears that differences arose between the parties on account of which, the revisionist is alleged to have abandoned the opposite party-2 on 07.04.2014. As a consequence of above, opposite party-2 having no independent source of income faced despair and destitution.

7. In order to overcome the above, opposite party-2 filed a maintenance case under Section 125 Cr.P.C. seeking payment of monthly maintenance from revisionist. The same came to be registered as Case No. 589 of 2014 (Kabutari Devi Vs. Ram Adhare Paswan), under Section 125 Cr.P.C., Police Station & District-Gorakhpur.

8. Notice was issued to the revisionist, who put in appearance in aforementioned case and filed his written statement/objections to the application under Section 125 Cr.P.C. filed by opposite party-2. In view of the objections raised by the revisionist, the claim of opposite party-2

regarding claim of monthly maintenance from revisionist, became a triable issue. Accordingly, the parties went to trial.

9. Court below in order to effectively decide the dispute between the parties, framed the following points of determination;-

(i). Whether the opposite party-2 Kabutari Devi has been successful in establishing that her marriage with her previous husband has been dissolved in accordance with the custom and usage of the parties?

(ii). If issue no. 1 is proved by the wife Kabutari Devi in her favour then whether the opposite party-2 Kabutari Devi has been successful in establishing that her marriage was solemnized with the revisionist and accordingly, the parties lived together as husband and wife?

(iii). Whether the wife opposite party-2 is residing separately on sufficient grounds?

(iv). Whether the wife opposite party-2 has sufficient means to sustain herself?

(v). Whether the wife opposite party-2 is entitle to any other amount under the maintenance head from the revisionist i.e. husband and if, yes, then to what amount and from which date?

10. Opposite party-2 i.e. wife in support of her case, adduced herself as AW-1 and one Deba Nishad as AW-2. She also filed documentary evidence in support of her case, which has been detailed by Court below in paragraph 4 of the impugned judgment.

11. Revisionist in support of his defence, adduced himself as DW-1 Ram Chandra as DW-2 and Sarita Devi as DW-3. Revisionist also adduced documentary evidence, which has been detailed in the penultimate part of paragraph 4 of the impugned judgment.

12. Upon appraisal and evaluation of the pleadings of the parties in the light of the material evidence on record, Court below answered each of the points of determination in the following manner.

13. Point of determination no. 1 was answered in favour of the wife i.e. opposite party-2. Court below held that opposite party-2 has been successful in establishing that her marriage was solemnized with Deenanath previously but as per the custom and usage as prevalent to her caste, the relationship between herself and her first husband has now come to an end. Point of determination no. 2 was also decided in favour of opposite party-2 and it was held that opposite party-2 has been successful in establishing that her marriage was duly solemnized with the revisionist. Point of determination no. 3 was answered by Court below in favour of opposite party-2 but without assigning any reason as to how the condition precedent under Section 125(4) Cr.P.C. is satisfied in favour of the wife/opposite party-2. Point of determination no. 4 was also decided in favour of opposite party-2 and it was concluded by Court below that opposite party-2 i.e. wife is a lady of insufficient means and therefore, unable to maintain herself. Point of determination no. 5 was decided in favour of the wife i.e. opposite party-2 and it was held that opposite party-2 is entitled to maintenance @ Rs. 5,000/- per month from the revisionist on the ground that revisionist retired from the post of Patrol-man from the department of electricity and his pension is Rs. 18,000/- per month. Court further held that in view of the law laid down by Apex Court in **Rajnish Vs. Neha and Another (2021) 2 SCC 324**, the opposite party-2 is entitled to monthly maintenance from the date of application. Ultimately, Court below by means of the order dated 13.10.2022 accepted the claim of the wife i.e. opposite party-2 regarding payment of monthly maintenance. It, accordingly, awarded monthly maintenance in favour of the wife at the rate of Rs. 5,000/- from the date of application.

14. Learned counsel for revisionist contends that order impugned in present criminal revision is manifestly illegal and therefore, liable to be set aside by this Court. He contends that it is an undisputed fact that the first marriage of opposite party-2 Kabutari Devi was solemnized with Deenanath. However, the said marital relationship was not dissolved by a

decree of Court passed in terms of Section 13 of the Hindu Marriage Act but upon mutual agreement as per the custom and usage of the parties by means of a memorandum of compromise dated 01.05.2005. In the submission of the learned counsel for revisionist, once the parties claim themselves to be Hindus then their marriage can be dissolved only in accordance with the provisions of Section 13 of Hindu Marriage Act. Since no decree of divorce was obtained by the wife from her first husband and yet she solemnized marriage with the revisionist, therefore, the marriage of opposite party-2 with the revisionist is void and therefore, opposite party-2 can not claim herself to be the legally wedded wife of revisionist. In view of above, no liability can be fastened upon the revisionist to pay monthly maintenance to opposite party-2. Court below without considering the aforesaid has passed the order impugned. As such, the same is liable to be set aside by this Court.

15. It was next contended by the learned counsel for revisionist that Court below while deciding point of determination no. 1 has not adverted to the aforesaid aspect of the matter but has returned a finding that the opposite party-2 i.e. wife has been successful in establishing that her marital relationship with her previous husband came to an end as per the custom and usage of the parties. According to the learned counsel for revisionist the finding so returned by Court below cannot be sustained as the same is not only illegal, perverse but also erroneous. Once the finding recorded by Court below on point of determination no. 1 stands dislodged the conclusion drawn by Court below is also liable to be altered. Consequently, the revision is liable to be allowed and the impugned judgment and order passed by Court below is also liable to be set aside.

16. In support of his aforesaid submission, he has relied upon the following judgments;-

(i). Kewal Singh Vs. Durgabai and Others, 2024 SCC OnLine MP 1215,

- (ii). Rajni Rani V. State of U.P. and Others, 2024 SCC OnLine All 647,**
- (iii). Smriti Singh alias Mausami Singh and Others VS. State of U.P. and Another, 2023 SCC OnLine All 990,**
- (iv). WRIT-C No. 18743 of 2020 (Asha Devi and Another Vs. State of U.P. and Others) decided on 01.12.2020,**

17. Per contra, the learned A.G.A. for State and the learned counsel representing opposite party-2 have opposed the present criminal revision. They submit that order impugned is perfectly just and legal and therefore, not liable to be interfered with. It is an admitted case of revisionist that his marriage was solemnized with opposite party-2 on 12.12.1998. After having been in co-habitation with opposite party-2 since then, revisionist deserted her on 07.07.2014 i.e. after expiry of a period of 15 years and 6 months. No suit was filed by revisionist himself seeking declaration of his marriage with opposite party-2 as void in terms of Sections 11/12 of the Hindu Marriage Act. In view of the admitted fact that the revisionist and opposite party-2 were in cohabitation as husband and wife for more than 15 and ½ years, therefore, the revisionist now cannot turn around and absolve himself of his liability to maintain opposite party-2 on the ground that since the marriage of opposite party-2 with the revisionist is itself void, therefore, she cannot claim maintenance from the revisionist under Section 125 Cr.P.C. In support of above, reliance is placed upon the following judgments by the learned counsel representing opposite party-2;-

- (i). Chanmuniya Vs. Virendra Kumar Singh Kushwaha and Another, 2011 (1) SCC 141,**
- (ii). D. Velusamy Vs.f D Patchaiammal, 2010 (10) SCC 469,**
- (iii). Badshah Vs. Sou. Urmila Badshah Godse and Another, 2014 (1) SCC 188.**

18. When confronted with above, the learned counsel for revisionist could

not overcome the same.

19. Having heard, the learned counsel for revisionists, the learned A.G.A. for State, the learned counsel representing opposite party-2 and upon perusal of record, this Court finds that the only legal question involved in this criminal revision whether even if the marriage of the parties is void but they have continued in cohabitation as husband and wife for a long period can the husband absolve himself from the liability to pay monthly maintenance to his wife in a case of desertion or where the husband fails to maintain his wife.

20. The issue involved in present criminal revision is no longer res-integra and stands concluded by the judgment of the Supreme Court in **Chanmuniya Vs. Virendra Kumar Singh Kushwaha and Another, 2011 (1) SCC 141**. Paragraphs 24 to 26 of the aforesaid report are relevant for the issue in hand. Accordingly, the same are reproduced hereinunder:-

"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."

21. In view of the aforesaid categorical pronouncement made by the Supreme Court, there is no room for examining the veracity of the submissions urged by the learned counsel for revisionist in the light of the facts and circumstances of the present case. In view of the proved fact that marriage of opposite party-2 was solemnized with the revisionist on 12.12.1998 and the parties were in cohabitation as husband and wife for a period of 15 and ½ years and thereafter, the wife opposite party-2 has been deserted by her husband i.e. revisionist, therefore, in view of the observations made by the Supreme Court as noted herein above, the husband now cannot turn around and absolve himself from his liability to pay maintenance to the wife on account of a legal loophole. As such, Court below while passing the order impugned has neither committed a jurisdictional error nor has it exercised it's jurisdiction with material irregularity, which may vitiate the order impugned warranting interference by this Court.

22. In view of the discussion made hereinabove, the revisions fails and is liable to be dismissed.

23. It is, accordingly, **dismissed**.

Order Date :- 06.05.2024

Vinay