

Tripura High Court

Smt. Suparna Saha (Bardhan) vs Sri Subhendu Bardhan on 23 May, 2022

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HIGH COURT OF TRIPURA  
AGARTALA

CrI. Rev. P. No. 28 of 2021

Smt. Suparna Saha (Bardhan),  
Wife of Sri Subhendu Bardhan, resident of A.D. Nagar Road No.15, P.S.  
A.D. Nagar, District West Tripura, presently residing at C/O Monoranjan  
Debnath, Durjoynagar near Holy Cross School, P.O Durjoynagar, District  
West Tripura

-----Petitioner(s)

Versus

Sri Subhendu Bardhan,  
Son of Lt. Bimalendu Bardhan, resident of Jail Ashram Road, P.S. East  
Agartala, District West Tripura

----- Respondent(s)

For Petitioner(s)	:	Mr. C.S. Sinha, Adv.
For Respondent(s)	:	Mr. S. Kar Bhowmik, Sr. Adv. Mr. A. Bhattacharjee, Adv. Mr. J. Das, Adv.
Date of Hearing	:	9th February, 2022.
Date of Pronouncement	:	23rd May, 2022.
Whether fit for reporting	:	NO

B E F O R E  
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY  
JUDGMENT & ORDER

Petitioner Smt. Suparna Saha (Bardhan) has, hereby, challenged the judgment and order dated 26.02.2021 passed by the Additional Judge, Family Court, Agartala, West Tripura in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (Cr.P.C hereunder) denying maintenance allowance to the petitioner on the ground that she was not the legally married wife of the respondent CrI. Rev. P. 28 of 2021 Page - 2 of 13 since she married him during the subsistence of her past marriage with one Dulal Chandra Saha.

[2] The facts relevant for disposal of this criminal revision petition may be stated as under:

Petitioner Suparna Saha (Bardhan) married Dulal Chandra Saha in the year 1996 in accordance with the Hindu rites and customs. A daughter and a son were born to them within their wedlock. Said Dulal Chandra Saha, husband of the petitioner left home on 12.07.2012 deserting his petitioner wife and children. He did not even let his wife and children know about his whereabouts. At that time,

petitioner met respondent Subhendu Bardhan who assured help to the petitioner to get rid of her crises. Having reposed faith in the assurance of the respondent, petitioner Suparna Saha (Bardhan) agreed to marry him. Accordingly, they got married on 12.11.2014 which was registered on 01.12.2014. After marriage they started living together in conjugal relationship. After the said marriage of the petitioner with the respondent, her former husband Dulal Chandra Saha appeared. But they were separated by a decree of divorce granted by the Family Court on 28.05.2016 in T.S. (Divorce) 11 of 2015. Two years thereafter, elder daughter of the petitioner committed suicide. The respondent then deserted the petitioner. When the petitioner contacted him over telephone, he told her that he would not come back to her but he assured to provide her monthly maintenance @Rs.10,000/-. Having Crl. Rev. P. 28 of 2021 Page - 3 of 13 received no amount of maintenance allowance from the respondent, petitioner approached the Family Court by filing a petition under section 125 Cr.P.C.

[3] The respondent having received notice from the Family Court appeared and filed written objection denying the claim of the petitioner. He claimed that there was no marriage between them and the certificate of registration of marriage [Exbt.2] produced by the petitioner was a forged document. The respondent also claimed that petitioner was actually the legally married wife of Dulal Chandra Saha until their marriage was dissolved by a decree of divorce dated 28.05.2016. The respondent asserted that he actually married Smt. Ratna Bardhan Dey on 07.07.1995 and he had been living with said Ratna Bardhan Dey since the date of their marriage and his son named Sraddhendu Bardhan was born to them within their wedlock. According to him, the respondent lodged a false petition under section 125 Cr.P.C. with a view to grab money from him.

[4] On the basis of the assertions and denials appearing in the pleadings of the parties, the Family Court framed three issues for determination which are as under:

- (i) Whether the petitioner was the legally married wife of the respondent.
- (ii) Whether the respondent neglected the petitioner despite having sufficient means.

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- (iii) Whether the petitioner is entitled to any maintenance allowance.

[5] In the course of trial of the case, petitioner Suparna Saha (Bardhan) examined herself as PW-1, her former husband Dulal Chandra Saha as PW-2 and one Dilip Kr. Deb, her neighbour as PW-3. Respondent Subhendu Bardhan, on the other hand, examined himself as OPW-1.

Besides adducing oral evidence of three witnesses, petitioner produced the last pay certificate dated 20.12.2018 of the respondent issued from the office of the Tripura State Co-operative Union [Exbt.1] and the certificate of registration of marriage between the petitioner and the respondent issued by the Registrar, Hindu Marriage, West Tripura, Agartala [Exbt.2].

[6] On appreciation of evidence, the Family Court having relied on the decision of the Apex Court in the case of Yamunabai Anantrao Adhav vs. Anantrao Shivram Adhav & Anr. reported in (1988)1 SCC 530 and the decision in Badshah vs. Urmila Badshah Godse & Anr. reported in AIR 2014 SC 869 and also the decision of the Apex Court in Savitaben Somabhai Bhatiya vs. State of Gujarat & Ors. reported in (2005) 3 SCC 636 held that the petitioner having married the respondent during the subsistence of her former marriage was not entitled to the relief under section 125 Cr.P.C. Having observed Crl. Rev. P. 28 of 2021 Page - 5 of 13 thus, the learned Additional Judge, Family Court rejected her petition. The relevant extract of the impugned judgment is as under:

"Hon'ble Supreme Court in case of Badshah vrs. Urmila Badshah Godse & Anr. on 18.10.2013 in AIR 2014 Supreme Court 869 held that:

"When material on record showing that the petitioner duped the respondent by not revealing fact of his first marriage and the respondent having no knowledge of first subsisting marriage is to be treated as legally wedded wife for the purpose of claiming maintenance.

Purposive interpretation needs to be given to provision of section 125. It is bounded duty of Courts to advance cause of social justice."

Hon'ble Supreme Court in the case of Savitaben Somabhai Bhatiya vrs. State of Gujarat and others reported in (2005) 3 SCC 636 held that where a woman marries a man with full knowledge of subsistence of his first marriage, she is not entitled to claim maintenance.

Similarly Hon'ble Supreme Court in the case of Yamunabai Anantrao Adhav vrs. Anantrao Shivram Adhav & Anr. as reported in (1988) 1 SCC 530 held that Hindu women marrying a Hindu man having a lawfully wedded life is a complete nullity in the eye of law and she is not entitled to the benefit of Section 125 of the code.

In the present case at hand as this petitioner in her cross examination admitted that she married with the O.P. during the subsistence of her earlier marriage. It reveals from the evidence of the O.P. husband that before marrying the petitioner of this case he married with one another lady namely Ratna Deb on 07.07.1995. The petitioner side failed to cross examine the O.P. so the evidence of the O.P. remains un rebutted.

Hence, from the above discussion made it is clear that the petitioner married with the O.P. during the subsistence of her earlier marriage and the said marriage being nullity in the eye of law and thus she is not entitled to the benefit of Section 125 of the Code.

Hence, the present petition filed by the petitioner U/S 125 of Cr.P.C. devoid of merits is accordingly rejected."

[7] Heard Mr. C.S. Sinha, learned advocate appearing for the petitioner and Mr. S. Kar Bhowmik, learned senior advocate appearing Crl. Rev. P. 28 of 2021 Page - 6 of 13 for the respondent along with Mr. A. Bhattacharjee and Mr. J. Das, learned advocates.

[8] There is no dispute in respect of certain things in the case. It is not disputed that appellant petitioner Suparna Saha (Bardhan) was married to Dulal Chandra Saha in the year 1996. She produced her former husband as a witness on her side as PW-2 and he categorically stated in his examination in chief that two children were born within their wedlock. As a result of frustration arising from financial crisis, he deserted his wife and children in July, 2012. It is not also in dispute that marriage between the petitioner and her former husband was dissolved by a decree of divorce granted by the Family Court, Agartala on 28.05.2016 in T.S. (Divorce) 11 of 2015. [9] Evidently, respondent Subhendu Bardhan married the appellant petitioner on 12.11.2014 and their marriage was also registered before the Registrar of Hindu Marriage, West Tripura, Agartala and thereafter the certificate of registration of marriage dated 01.12.2014 was also issued by the Registrar of Hindu Marriage which has been admitted into evidence as Exbt.2 without objection from the side of the respondent.

[10] Even in the cross examination of the appellant petitioner, there was no suggestion from the side of the respondent that the certificate of registration [Exbt.2] was not genuine. Therefore, the facts which stand established from the evidence of the parties are that Dulal Chandra Saha [PW-2] is the former husband of the appellant petitioner. Crl. Rev. P. 28 of 2021 Page - 7 of 13 A daughter and a son were born to the petitioner through her former husband Dulal Chandra Saha. Dulal Chandra Saha deserted his petitioner wife and children in 2012 and in 2014 respondent Subhendu Bardhan married the petitioner during the subsistence of her previous marriage with Dulal Chandra Saha and petitioners' marriage with respondent Subhendu Bardhan was registered before the Registrar, Hindu Marriage and the registration certificate [Exbt.2] was also issued to the petitioner. Thereafter, on 28.05.2016, marriage between the petitioner and her husband Dulal Chandra Saha was dissolved by a decree of divorce by the Family Court and even thereafter respondent Subhendu Bardhan continued to live with the petitioner until he deserted her in 2018 after her daughter committed suicide. The respondent did not deny his marriage with the petitioner. He rather affirmed the fact in his testimony as OPW-1. He categorically stated that he married the petitioner on 12.11.2014 without knowing that she was already married to another person. He also admitted that petitioners' marriage with her former husband was dissolved by a decree of divorce granted on 28.05.2016. It was also admitted by the respondent that before marrying the petitioner, he married another lady named Ratna Deb in 1995.

[11] In the said factual background, the question which falls for consideration before this Court is whether the petitioner can be treated as the wife of respondent Subhendu Bardhan for the purpose of getting maintenance from him under section 125 Cr.P.C. Crl. Rev. P. 28 of 2021 Page - 8 of 13 [12] Mr. C.S. Sinha, learned counsel appearing for the petitioner has argued that admittedly the respondent lived with the petitioner as husband and wife and people around them treated them as husband and wife. They continued their relationship for more than two years even after the marriage of the petitioner with her former husband Dulal Chandra Saha was dissolved by a decree of divorce granted by the Family Court. Counsel contends that in such circumstances, the Family Court

should not have denied maintenance allowance to the appellant petitioner particularly when it was proved that the respondent was a government servant drawing a handsome monthly salary and the petitioner was completely in a distressed condition and unable to maintain herself. Having relied on the decision of the Apex Court in the case of Kamala & Ors. vs. M.R. Mohan Kumar reported in (2019) 11 SCC 491, Mr. Sinha, learned counsel has contended that unless a broad view of the definition "wife" having regard to the social object of section 125 Cr.P.C is taken by the Court, the agony and financial suffering of the distressed petitioner cannot be ameliorated. Counsel has referred to paragraph 19 and 20 of the said judgment of the Hon'ble Apex Court wherein the Apex Court has held as under:

"19. After referring to the divergence of judicial opinion on the interpretation of the word "wife" in Section 125 CrPC, speaking for the Bench A.K. Ganguly, J. held that the Bench is inclined to take a broad view of the definition of "wife", having regard to the social object of Section 125 CrPC.

20. In Chanmuniya case [(2011) 1 SCC 141], this Court formulated three questions and referred the matter to the larger Bench. However, after discussing various CrI. Rev. P. 28 of 2021 Page - 9 of 13 provisions of the Criminal Procedure Code, this Court held that a broad and extensive interpretation should be given to the term "wife" under Section 125 CrPC and held as under:

"42. 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 precondition for maintenance under Section 125 CrPC, so as to fulfil the true spirit and essence of the beneficial provision of maintenance under Section 125. 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." [13] Counsel has also referred to the decision of the Hon'ble Supreme Court in the case of Rajnesh vs. Neha & Anr. reported in (2021) 2 SCC 324 wherein the Apex Court having reiterated the law laid down in the case of Chanmuniya vs. Virendra Kumar Singh Kushwaha reported in (2011) 1 SCC 141 has succinctly held that a man should not be allowed to benefit from legal loopholes by enjoying the advantages of a de facto marriage without undertaking the duties and obligations of such marriage. Observation of the Hon'ble Apex Court in paragraph 39 of the judgment is as under:

"39. The issue whether presumption of marriage arises when parties are in a live-in relationship for a long period of time, which would give rise to a claim under Section 125 Cr.P.C. came up for consideration in Chanmuniya v. Virendra Kumar Singh Kushwaha [(2011) 1 SCC 141] before the Supreme Court. It was held that where a man and a woman have cohabited for a long period of time, in the absence of legal necessities of a valid marriage, such a woman would be entitled to maintenance. A man should not be allowed to benefit from legal loopholes, by enjoying the advantages of a de facto marriage, without undertaking the duties and obligations of such marriage.

A broad and expansive interpretation must be given to CrI. Rev. P. 28 of 2021 Page - 10 of 13 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. Strict proof of marriage should not be a precondition for grant of maintenance under Section 125 CrPC. The Court relied on the Malimath Committee Report on Reforms of Criminal Justice System published in 2003, which recommended that evidence regarding a man and woman living together for a reasonably long period, should be sufficient to draw the presumption of marriage." [14] Counsel contends that in view of the law laid down by the Apex Court in the said judgments, appellant petitioner is entitled to maintenance allowance from the respondent. Counsel, therefore, urges the Court to allow her appeal.

[15] Mr. S. Kar Bhowmik, learned senior advocate appearing for the respondent vehemently opposes the contentions raised by the counsel of the petitioner. It is argued by Mr. Kar Bhowmik, learned senior advocate that personal law of the parties cannot be excluded altogether in a proceeding under section 125 Cr.P.C. Counsel contends that "wife" in section 125 Cr.P.C. would mean only a legally wedded wife and unless it is proved that the woman was lawfully married, she cannot be treated as a wife for the purpose of section 125 Cr.P.C. Having relied on the decision of the Apex Court in Yamunabai Anantrao Adhav vs. Anantrao Shivram Adhav & Anr. reported in (1988)1 SCC 530, learned senior advocate has argued that since both the parties to the proceeding are Hindus, their marriage in contravention of section 5(i) of the Hindu Marriage Act, 1955 is void from the very inception by virtue of the application of section 11 of the Hindu Marriage Act and as such the petitioner not being a legally CrI. Rev. P. 28 of 2021 Page - 11 of 13 wedded wife of the respondent is not entitled to any maintenance in terms of section 125 Cr.P.C. Counsel contends that former marriage of the petitioner as well as that of the respondent were in subsistence when they married each other in the year 2014. Therefore, such marriage was absolutely void from the very inception in terms of the application of section 5(i) and section 11 of the Hindu Marriage Act, 1955 and as such the petitioner was not entitled to claim maintenance from the respondent. Counsel has referred to paragraph 8 of the said judgment of the Apex Court wherein the Apex Court has held that 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 he is not entitled to the benefit of section 125 of the code. Counsel, therefore, urges the Court to uphold the judgment of the trial court and dismiss the appeal.

[16] Even though the respondent claimed that he married another woman before he married the petitioner, the respondent did not lead any evidence to prove his contention. He claimed that at the time of marrying the petitioner he had no knowledge that the petitioner was already married to another person. His statement appears to be absolutely false because when he married the petitioner she was having two children which has also been admitted by the respondent in his written statement wherein the respondent stated that he was aware that the petitioner was legally married wife of Dulal Chandra Saha and within their wedlock, a son and a daughter were born to them. Even CrI. Rev. P. 28 of 2021 Page - 12 of 13 though in his written statement he denied his relationship with the petitioner, in his deposition as OPW-1 he categorically stated that he married the petitioner on 12.11.2014. It would be appropriate to reproduce the entire deposition of the respondent which is as under:

"I am the OP of this case. I was married with the petitioner of this case on 12.11.2014. I was not knowing at the time of marriage with the petitioner that she was already married with some other person. I came to know later on that the petitioner filed a divorce case bearing No. TS(Div)11 of 2015 and judgment was passed on 28.05.2016 between the petitioner of this case and Dulal Ch. Saha. Before marrying petitioner of this case I married with one another lady namely Ratna Deb on 07.07.1995. Witness on behalf of the petitioner, Dulal Ch. Saha was the ex-husband of the petitioner. I was married to the petitioner without my consent forcefully."

[17] Situated thus, respondent Subhendu Bardhan cannot deny his marriage with the petitioner. In the admitted position of the case, marriage between the petitioner and the respondent was solemnized on 12.11.2014 which was registered on 01.12.2014 during the subsistence of the former marriage of the petitioner with Dulal Chandra Saha [PW-2] because admittedly former marriage of the petitioner with Dulal Chandra Saha was dissolved by a decree of divorce dated 28.05.2016. The parties are Hindu and under section 5 of the Hindu Marriage Act, a marriage can validly be solemnized between any two Hindus subject to one of the conditions that neither party has a spouse living at the time of marriage [section 5(i) of the Hindu Marriage Act]. It is well settled that a marriage which is null and void is no marriage in the eye of law. In the admitted position of the case, petitioner contracted second marriage with the respondent on 12.11.2014 when her marriage with her former husband Dulal Chandra Saha was subsisting. Former marriage was dissolved by decree of divorce only on 28.05.2016.

[18] Therefore, she cannot be treated as a legally wedded wife of the respondent. The Family Court committed no error by rejecting her application for maintenance allowance. Consequently, the criminal revision petition stands dismissed.

[19] In terms of the above, the criminal revision petition stands disposed of. Pending application(s), if any, shall also stand disposed of.

JUDGE Rudradeep Crl. Rev. P. 28 of 2021