



2025:AHC:219588

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 2099 of 2024

Smt. Madhu Alias Aruna Bhajpai

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s) : Rajeev Sawhney, Raju Kumar

Counsel for Opposite Party(s) : Astitva Srivastava, G.A., Pankaj Kumar
Srivastava, Sasmita Srivastava

Court No. - 89

HON'BLE MADAN PAL SINGH, J.

1. Heard Sri Prabhankar Srivastava, learned counsel holding brief of Sri Rajeev Sawhney, learned counsel for the revisionist, Ms. Sasmita Srivastava, learned counsel for opposite party no. 2, learned A.G.A. for the State, and perused the record.

2. This criminal revision has been filed by the revisionist with a prayer to set aside the judgment and order dated 12-02-2024 passed by the learned Additional Principal Judge, Family Court, Court No.2, Kanpur Nagar in Maintenance Execution Case No. 1104 of 2020 (Smt. Madhu @ Aruna Bajpai vs. Shiv Prakash Bajpai), whereby the Trial Court has rejected the application under Section 125 Cr.P.C. filed by the revisionist.

3. Learned counsel for the revisionist submits that the revisionist was earlier married to one Shri Ram Chandra Tiwari on 29.04.1992 according to Hindu rites and two children were born out of the said wedlock. Subsequently, due to matrimonial discord, both parties started residing separately and a suit under Section 9 of the Hindu Marriage Act, being Case No. 237 of 2005, was filed by the husband and was decreed ex-parte on 02.04.2009. During this period, the revisionist came in contact with opposite party no. 2, who is an advocate practicing at District Court, Unnao. He advised her that the prior marriage could be dissolved through a family settlement and notarized agreement. The opposite party no. 2 also represented that he himself had dissolved his earlier marriage by a similar settlement and even provided a copy of the said notarized

settlement dated 24.08.2005 executed with his former wife, Ram Kumari. Believing his representations, the revisionist and opposite party no. 2 allegedly solemnized marriage on 30.06.2009 and cohabited as husband and wife for nearly a decade.

4. Learned counsel further contends that the revisionist's name is recorded as wife of opposite party no. 2 in her official documents including Aadhaar Card and Passport, and she has been socially acknowledged as his spouse. It is submitted that later on the opposite party no. 2, along with his sons, subjected the revisionist to cruelty and harassment, leading to lodging of Case Crime No. 898 of 2017 under Sections 394, 342, 328, 323 & 506 I.P.C. wherein the investigation and statements of witnesses also recognized the revisionist as wife/step-mother. Despite a long marital relationship, the opposite party no. 2 deserted her and denied entry to the matrimonial home in March 2018, compelling her to file an application under Section 125 Cr.P.C. seeking maintenance. The trial court, however, rejected her claim only on the ground of maintainability, ignoring that the law under Section 125 Cr.P.C. recognises even relationships akin to marriage where parties have lived together as husband and wife for a considerable period, as held by the Hon'ble Supreme Court in *Badshah vs. Urmila Badshah Godse & Anr., (2014) 1 SCC 188*.

5. On the other hand, learned counsel for opposite party no. 2 submitted that the revisionist has not obtained a final decree of divorce from her earlier husband, yet in the present case she seeks maintenance from opposite party no. 2, who has no marital relationship with her and is, in fact, residing with his legally wedded wife, Smt. Ram Kumari, along with their two children. During the course of arguments, learned counsel fairly admitted that opposite party no. 2 had earlier married Smt. Ram Kumari, and despite this marriage still being in existence, he allegedly entered into a relationship with the revisionist. It was further submitted that opposite party no. 2 shares only a distant familial acquaintance with the revisionist, as she is the daughter of his distant aunt. In such circumstances, the claim for maintenance against opposite party no. 2 is untenable and liable to be dismissed.

6. Upon consideration of the facts and circumstances, submissions advanced by learned counsel for the parties, and upon perusal of the material on record as well as the impugned order, it stands established that the revisionist, Madhu @ Aruna, was earlier married to *Ram Chandra Tiwari @ Raju* on 29.04.1992 and the said marriage has never been legally dissolved. The divorce petition instituted by her against the said husband under Section 13 of the Hindu Marriage Act was dismissed in default. Thus, the first marriage of the revisionist continues to subsist in law.

7. From the arguments and material on record, it is further evident that opposite party no. 2 was also previously married, yet he too entered into a second marital relationship without dissolution of his earlier marriage. Hence, both individuals stand married in law at the time of their alleged second marriage. In terms of Section 11 of the Hindu Marriage Act, a marriage contracted during the lifetime of a spouse is void ab initio, and such a union cannot create the legal status of husband and wife.

8. The contention of the revisionist that she believed the opposite party no.2 upon being shown a notarized deed of mutual divorce and thereafter solemnized marriage with him, and that in various proceedings the opposite party had acknowledged her as his wife, cannot be accepted. The reason clearly is that under Section 125 Cr.P.C., the revisionist does not fall within the definition of a *legally wedded wife*. The Hon'ble Supreme Court in *Savitaben Somabhai Bhatiya vs. State of Gujarat*, AIR 2005 SC 1809, has held that the expression *wife* cannot be expanded so widely as to include a woman who is not legally married. Though the revisionist has relied upon *Badshah vs. Urmila Badshah Godse & Anr.*, (2014) 1 SCC 188, the ratio therein is distinguishable inasmuch as maintenance was granted only because the second wife was unaware of the first marriage of the husband and her own earlier marriage already stood dissolved. In the present case, the revisionist admits her subsisting marriage with Ram Chandra Tiwari and there is no decree of divorce. Her plea that she acted on the basis of mutual settlement and notarized deed cannot confer her legal status, particularly when she herself initiated divorce proceedings which later stood dismissed. Therefore, the plea of ignorance regarding the dissolution of first marriage cannot be accepted.

8. This Court is of the view that although the revisionist resided with the opposite party for nearly ten years and the relationship may appear akin to marriage, yet such cohabitation does not confer the legal status of a *wife* under Section 125 Cr.P.C. In law, even assuming a marriage ceremony was performed, the same would be void as the applicant's earlier marital tie continued to subsist. Thus, she cannot claim maintenance under Section 125 Cr.P.C. based on a long standing relationship.

9. If such a practice is permitted in society, where a woman continues to remain legally married to one man, yet resides with another without obtaining dissolution of the first marriage, and thereafter seeks maintenance from the latter, the very object and sanctity of Section 125 Cr.P.C. would stand diluted and the institution of marriage would lose its legal and social integrity. Such a proposition neither aligns with the legislative intent nor with the ethical and cultural foundation of Hindu family law.

10. Accordingly, this Court holds that the revisionist does not fall within the ambit of a legally wedded wife for the purpose of Section 125 Cr.P.C. and therefore, her maintenance application was rightly rejected. The impugned judgment warrants no interference.

11. Accordingly, the present criminal revision is **dismissed**.

(Madan Pal Singh,J.)

December 8, 2025

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