

"REPORTABLE"

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 2169 OF 2010
(ARISING OUT OF SLP (CRL.) No. 2060 of 2010)**

Saygo Bai

... Appellant

Versus

Chueeru Bajrangi

... Respondent

J U D G M E N T

V.S. SIRPURKAR, J.

1. Leave granted.

2. The appellant Saygo Bai, wife of Chueeru Bajrangi along with her two minor children Jivti (daughter) and Basant (son) filed an application under Section 125 Cr.P.C. against her husband Chueeru Bajrangi. She pointed out therein that her husband had taken a second wife, namely, one Smt. Gulab Bai and that he was a salaried employee in a Government department. However, he was neglecting to maintain Saygo Bai and her two children. She also pleaded that she had cordial relationship with her husband upto year 1989. However, the respondent-husband started avoiding the family. During the year 1990, he took Gulab Bai as his second wife. As a result, the appellant and her children were thrown out.

She claimed the maintenance of Rs.3,000/- per person per head. The respondent-husband resisted this application claiming that he always maintained good relations with Saygo Bai and used to visit his village Chalani, where his wife and children resided with his parents, off and on. He claimed that when Basant, the younger child was only six months old, Saygo Bai left her matrimonial house without any rhyme or reason and went to her father's place at village Banda. He further pleaded that he tried to bring back the appellant and had gone to that village along with one Shobha and Haria of his village but she refused to come back. All this, according to him, happened five years prior to the second marriage which he had performed for taking care of his two children. In short, he claimed that two children were always with husband and, therefore, there was no question of abandoning them. The claim of the respondent-husband was that the wife left his company without any rhyme or reason. He then pointed out that it was only after five years of abandonment of matrimonial house that his wife Saygo Bai had filed the application for maintenance under Section 125 Cr.P.C. thereby he further pointed out that she was not entitled to any maintenance as she had left his company without any justification.

3. Saygo Bai examined herself in support of her claim and pointed out that till 1989 she used to live along with her two children and the respondent-husband used to visit off and on. However, after he took his second wife, he stopped coming altogether to the village. She also examined one other witness PW-2, Naua. She also spoke about the second marriage of the non-applicant. The third witness Kahru Ram (PW-3) was also examined who was her near relation. She also asserted that the husband Chueeru Bajrangi had contracted the second marriage while the appellant Saygo Bai was living with him. She admitted that the second wife used to take care of the father of the respondent-husband. Kahru Ram was also examined to support the story of the appellant being thrown out of the matrimonial house.

4. On behalf of the respondent-husband, he examined himself and claimed that when he had come to his village from Balangi, where he was posted, his both children were lying unattended in the house and old parents were also not being taken care of and, therefore, he along with one Sona Ram (DW-2) and Jharia Ram (DW-3) went to bring her back and asked her to come back and take care of children and parents but she refused to come back. He, therefore, left the children to the care of his parents and thereafter the

appellant waited for 4-5 years and approached the Court only after he got married with Gulab Bai. The two other witnesses supported the evidence of the respondent-husband.

5. The Trial Court has returned a finding that Saygo Bai (appellant herein) had not come to the Court with clean hands. A strange observation has been made that the appellant used to visit her matrimonial house and also used to meet Gulab Bai but she never made any complaint in the village regarding her being driven out of the matrimonial house. Again, the Trial Court, very strangely, gave a finding that the wife-Saygo Bai never tried to hold *Panchayat* nor made public the reason for her living in her parents' house. Lastly, the Trial Court found that the children were not living with her and the claim of the petitioner (appellant herein) in her evidence that the respondent-husband abducted away the children secretly was also not correct. On account of her not mentioning so in her application the Trial Court found fault with her and strangely gave a finding that Saygo Bai had no sufficient reason to live separately from respondent-husband Chueeru Bajrangi. The Trial Court also held that the children, being appellant Nos.2 and 3 before the Trial Court were not dependent upon Saygo Bai. It also found that the respondent

husband was justified in getting married again since the appellant did not go to her husband for 4-5 years and, therefore, it could not be said that the respondent neglected or avoided to maintain his wife. On the basis of these findings, the Trial Court dismissed the application.

6. A revision was filed against this order. It was pointed out on behalf of the petitioner (appellant herein) that even if it is accepted that she stayed away from husband for 4-5 years, she was still entitled to the maintenance, at least from the date of the application on account of the respondent having married again and she could refuse to stay with him on account of the second marriage. This argument was repelled by the respondent on the ground that the petitioner (appellant herein) had compelled the respondent to enter into the second marriage by not staying with him for 4-5 years. The Revisional Court very strangely in paragraph 12 observed that the respondent had become helpless and, therefore, got married only for his family. On that ground, the Revisional Court dismissed the revision.

7. The appellant, therefore, approached the High Court by way of a petition under Section 482 Cr.P.C. It was pointed out to the High Court by her that she was the legally wedded wife of the respondent and admittedly the respondent had

taken a second wife and, therefore, she was bound to be granted some maintenance. On behalf of the respondent, it was argued before the High Court that the respondent had contracted second marriage only after refusal of the appellant to join him and, therefore, she was not entitled to any maintenance under Section 125 Cr.P.C. and she may avail remedy before the Civil Court. The High Court relied upon the so-called admission by the appellant that she herself had left the house of the respondent and her husband had come for taking her back with him to his house. The High Court then made a very strange observation that the appellant had not left the house on the ground of second marriage performed by the respondent but the respondent had contracted the marriage on the ground that the appellant left the house and failed to discharge her matrimonial obligations. On this ground, the High Court dismissed the petition. The appellant is now before us.

8. To say that we are shocked by the orders passed by all the three Courts below would be an understatement. All the Courts below have completely misunderstood the second proviso of Section 125 (3) Cr.P.C. and the Explanation thereto. Section 125 (3), Cr.P.C. reads as under:

"125.(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's⁴[allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him."

Instead the Courts below have relied on sub-section (4) which is as under:

"(4) No wife shall be entitled to receive an⁴[allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent."

9. In our opinion, all the Courts below have shown scant disregard for the second proviso to Section 125 (3) and the *Explanation*. It was an admitted position that the respondent had taken a second wife, namely, Gulab Bai. The respondent not only admitted this position in his written statement and evidence but also tried to justify his second marriage on the ground that the appellant had left his company and had refused to come back to him and had also not cared for the children. He had to keep the children with his parents at village Chalani. He has, in his examination-in-chief itself, stated that he waited for 5-6 years in the hope that his wife would come back and take care of his children and his parents but he took the second wife since she did not come back. In fact, with this specific admission in the examination-in-chief itself, there was no question of a finding that the appellant was not justified in claiming the maintenance. All the Courts have committed a very serious error of law in holding that since the appellant had left the house for 4-5 years, therefore, the respondent-husband was justified in getting married again. Things did not stop here. The Courts have gone ahead to suggest that since the appellant had left the house without any rhyme or reason, therefore, even if the second marriage had been contracted, the petitioner (appellant herein) would

still not be entitled to the maintenance merely because she had left the matrimonial house earlier. This is completely erroneous.

10. We are not satisfied on the appreciation of evidence by the lower Courts. We have gone through the evidence of the appellant and the other witnesses. She has very specifically stated that after the marriage till the children were born, her relationship was cordial with her husband. Thereafter, the respondent brought a second wife, namely, Gulab Bai at village Chalani where she was residing in her matrimonial home. She was very specific in stating that when the husband brought the second wife, he declared that he would not keep the appellant and started ill-treating her and threw her along with children out of the house. In her cross-examination, she admitted that on her husband's request she was not prepared to go to his house. This question was put to her in a very tricky manner. It was not stated as to at what point of time the husband came to take her back. She has also stated in her cross-examination that her children were with her but for the last one year they were with the respondent. She also admitted very fairly that the respondent was educating the children. She also asserted that for the last 4 years her entry to the

house of her husband was stopped. It is true that in paragraph 13 of the cross-examination she had stated that she had not been to the house of the non-applicant (respondent herein) for 4-5 years and then the non-applicant i.e. the respondent herein entered into the second marriage with Gulab Bai. All the Courts below have relied only on this so-called admission to hold that she had abandoned her husband for 4-5 years and it is as a result of her refusal to come to the house of her husband that the husband took the second wife. In fact, this is a totally incorrect and perverse appreciation of the evidence. The Court must read whole evidence. One stray admission cannot be read in isolation with the other evidence. She has very specifically stated that she was thrown out of the matrimonial house on account of the second wife. All the Courts below have ignored all her evidence and chosen to rely on two lines in paragraph 13 of her cross-examination. In our opinion, this was wholly perverse appreciation of evidence. The Courts have also made a point that she did not call for a *Panchayat* and, therefore, have held against her. We do not understand the implication of this. Even if she did not call a *Panchayat*, it did not mean that the respondent was justified in throwing her out of the house and getting married second time.

11. The finding of the Courts that initially she had left the company and desisted from joining the husband for 4-5 years and, therefore, she would always be dis-entitled to claim maintenance is clearly erroneous and incorrect. In the wake of the admitted second marriage of the respondent, the appellant would be entitled to claim maintenance and her earlier refusal to join the company of the respondent would be of no consequence whatsoever. In fact from the evidence we find that she had not forsaken the company of her husband without any reason. She was very clear in her evidence that the respondent stopped visiting the matrimonial house after his second marriage. She may not have filed the maintenance application immediately on her being thrown out but she asserted that she had taken such action barely within two years after she was thrown out. She was very clear that she was thrown out on account of the respondent having contracted the second marriage. It is nowhere brought on record that she had left the house without any rhyme or reason. In fact, it would be completely unnatural for her to leave the house leaving her children as is claimed by the respondent. In that backdrop, the claim of the appellant appears to be correct that she was thrown out along with children and it was thereafter that the children were brought by the husband. She was candid enough in admitting

that at the time of entering the witness box, it was the second wife who was taking care of the children. This suggested honesty on the part of the appellant. All this evidence was completely ignored. We are quite aware that this Court does not go into the evidence where the Courts below have recorded concurrent findings of fact. However, where we find that the appreciation of evidence by the Courts below is totally perverse, faulty and unconscionable findings have been arrived at, this Court would certainly go to appreciate the evidence on record and that is precisely what we have done.

12. We hold that the orders of the Courts below are wholly incorrect. Firstly, the Courts erred in holding that she left the matrimonial house for 4-5 years and refused to join the company of her husband and, secondly, the Courts are totally in error in holding that on that count she has lost the right of maintenance. In our opinion, the application, at least insofar as the appellant was concerned, was liable to be allowed. We allow that application.

13. Ordinarily, we would have remanded the matter for deciding the amount of maintenance. However, considering that the appellant is in the state of penury and not getting even the interim maintenance, we proceed to decide that

issue ourselves. The appellant in her evidence has claimed that the respondent-husband drew a monthly salary of Rs.2,000/- in the year 1993. Besides, he also had 20 acres of land and grew 40 quintals of Paddy crop, 10 quintals of Wheat crop, 4 quintals of Urad and Rawa crops and Corns etc. There is not even a word of cross-examination on these claims and these claims have gone unchallenged. Even in his own evidence, the respondent has not uttered even a word regarding his salary and has merely claimed that Saygo Bai was maintaining herself by working as a labourer and earned Rs.45 per day. He made a bald statement that there was no immovable property in his name. He had also categorically admitted that after coming out of the matrimonial house he never maintained Saygo Bai. Considering, therefore, the overall situation, it is obvious that the respondent must be earning at least Rs.10,000/- per month presently as salary being a Constable in police force and also has other sources of income from agricultural properties. In that view, we are of the opinion that maintenance at the rate of Rs.1,500/- per month in favour of the appellant would be a proper maintenance. The maintenance shall be payable from the date of the application. The three orders passed by the Courts below are set aside. The appeal is allowed in the above terms.

.....J.

[V.S. Sirpurkar]

.....J.

[T.S. Thakur]

New Delhi

November 19, 2010



