



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR(F)-567-2022 (O&M)

Judgment reserved on: 27.11.2024

Pronounced on: 02.12.2024

Yogita

....Petitioner

Versus

Sunil

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Gobind Dhanda, Advocate
for the petitioner.Mr. Sumit Sangwan, Advocate
for the respondent.**HARPREET SINGH BRAR, J.**

1. The present revision petition has been preferred against the impugned judgment dated 01.04.2022 passed by the learned Additional Principal Judge, Family Court, Bhiwani under Section 125 of the Cr.P.C. vide which the petitioner was not held entitled to maintenance and consequently her petition was dismissed.

2. The marriage between the petitioner and the respondent was solemnised on 08.07.2003 in accordance with Hindu rites and rituals. Out of this wedlock, two children namely, Vanshika and Vansh were born. However, matrimonial dispute ensued between the couple and the petitioner filed a petition under Section 125 Cr.P.C. seeking maintenance of Rs. 1,00,000/- per month. The respondent contested the claim made by the petitioner. The learned Family Court vide judgment dated 01.04.2022 dismissed the petition on the ground that the case falls within the purview of Section 125(4) of Cr.P.C. since



the petitioner committed adultery and deserted the respondent. Aggrieved by the same, the petitioner has approached this Court by filing the present petition.

3. Learned counsel for the petitioner contended that learned Family Court has fallen into grave error by dismissing the petition. There was nothing wrong going on between the petitioner and one Rakesh. They met at the hotel to resolve a family dispute. No effective opportunity was given to the petitioner to cross-examine the witnesses produced by the respondent and therefore, to conclude that the petitioner committed adultery is illegal and unwarranted. The finding of the learned trial Court is solely based on conjecture and surmises. Further, the testimony of the daughter of the petitioner (RW-4), supporting the case of the respondent, is a tutored one as she is in the custody of the respondent. Lastly, learned counsel submitted that even if the case set up by the respondent is accepted, it is settled law that the husband has to establish with definite evidence that the wife has been living in adultery and that one or isolated acts of adultery would not amount to “living in adultery” as specified under Section 125(4) of Cr.P.C. Reliance in this regard was placed on the judgments of the Delhi High Court rendered in ***Pradeep Kumar vs. Deepika Sharma 2022(3) CivCC 413*** and the Kerala High Court in ***Rupa. C. vs. Puthalath Anil Kumar 2021(2) KLT 239***.

4. *Per contra*, learned counsel for the respondent argued that the petitioner withdrew from the society of the respondent without any reasonable cause. In fact, she was living in adultery with one Rakesh who were found together at the Royal Crown Hotel, Gurugram on 28.12.2017. In support of his contention, learned counsel for the respondent drew the attention of this Court towards the testimony of RW2 Head Constable Sombir Singh as well as the complaints of the respondent dated 03.01.2018 and 19.01.2018. Further, the



police had also concluded that an offence under Section 497 of IPC was made out against Rakesh. Moreover, RW3 Ram Kumar Meena, Manager of the Royal Crown Hotel, Gurugram, had appeared to depose that as per the hotel record, the petitioner along with Rakesh had hired a room and CCTV footage as well as other documents were duly produced to corroborate this fact. Similarly, ASI Jitender Singh while appearing as RW4 has also corroborated the statements of RW2 Head Constable Sombir Singh and RW3 Ram Kumar Meena. As per Sub-Section 4 of Section 125 of the Code of Criminal Procedure, no wife shall be entitled to receive an allowance from her husband if she is living in adultery, or if, without any sufficient reasons, she refuses to live with her husband and in the instant case, since the petitioner is residing separately from the respondent without any reasonable cause and living in adultery, therefore, she is not entitled to receive any maintenance.

5. I have heard the learned counsel for the parties and perused the record of the case with their able assistance.

6. With respect to the allegations of desertion, this Court finds it apposite to reproduce the findings of the learned trial Court:

“The petitioner in her petition in para No.25 has disclosed as to when and in what manner, she had left her matrimonial home and according to her, one week before 28.07.2017, she had come to Delhi from Lucknow for the purpose of getting her examination center changed as she was pursuing M.A. in Psychology and on 28.07.2017, the respondent along with children also joined her and when the respondent abused the petitioner in a filthy and vulgar language, then the same was heard by her relative Jyoti and said Jyoti disclosed all the conversation to the mother of the petitioner and when her mother asked her, only then, she had disclosed the atrocities being faced by her from the hands of the respondent and ultimately, the mother of the petitioner decided not



to send the petitioner back with the respondent. After that, admittedly, no efforts were made from the side of petitioner to reconcile the matter, which amounts to willful withdrawal from the society of respondent without any reasonable cause.”

In view of the above observations, it is evident that the conduct of the respondent, as detailed hereinabove, was of such a nature that it compelled the petitioner to refrain from returning to her matrimonial home. The specific instance of abuse, which was heard by the relative of the petitioner and subsequent disclosure to her mother, demonstrate that the petitioner was subjected to treatment that justified her decision to not cohabit with the respondent. Therefore, the conclusion of the learned Court below, holding that the petitioner deserted the respondent without any reasonable cause, is not sustainable in law. The evidence on record clearly establishes that the petitioner's decision was not willful desertion but was necessitated by the respondent's behavior.

7. The phrase *‘living in adultery’* as mentioned in Section 125(4) of Cr.P.C. has been duly examined by several High Courts, who have taken a uniform view that the aforementioned phrase denotes a continuous course of conduct or living or living in the state of *‘quasi-permanent union’* with the adulterer. Isolated acts of immorality and one or two lapses from virtue would although definitely be construed as a wife having committed adultery, however, it would not be enough to prove that she was *‘living in adultery’*.

8. The Bombay High Court in case of ***Pandurang Bakru Nathe vs. Leela Pandurang Nathe and another*** 1997 SCC OnLine Bom 264, while considering the scope of Section 125(4) of Cr.P.C. made the following observations:



"11. Section 125(4) Cr. P.C. reads thus:

125(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or it, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

12. A perusal of the said provision would show that a wife who is living in adultery would not be entitled for maintenance.

13. In my view the expression "living in adultery" in the sense in which it is used in section 125 Cr. P.C. connotes a wife living perpetually or semi perpetually as a wife with a male, other than her husband and having sexual relations with him. Sporadic instances of sexual relationship between a wife and a person other than her husband, would not fall within the ambit of the expression "living in adultery".

14. Laymen invariably and men of law often treat the concept of wife living in adultery as synonymous with a wife occasionally committing adultery. The two are distinct and if the distinction is overlooked as it has been by the trial Court, the result would be gross miscarriage of justice.

15. It is only a wife living in adultery who is not entitled for maintenance under section 125(4) Cr. P.C.; a wife who is occasionally guilty of committing adultery would not forfeit her claim for maintenance under the said section.

16. I am fortified in my view by the observations of Tekchand, J., in the decision rendered in (**Ramsaran v. Soman Wati**)1964 (1) CriLJ 483 (Punj). The said observation which are found at page 486 read thus:

"Living in adultery" is living together as husband and wife and exercising sexual rights and duties implied by such relation when legally created. Proof of occasional acts of illicit intercourse may fall short of what is intended by the expression "living in adultery". It suggests a man and the wife of another living continually as husband and wife. An adulterous intercourse is a condition contemplating repetition of extra marital relationship when opportunity offers itself. It is a condition of cohabitation in contradistinction to occasional acts. The wife forfeits her right to be maintained on proof of repeated adulterous meetings."

17. It would be pertinent to point out that the said observations were approved by Maheswaran, J., in the case of (**Kasthuri v. Ramasamy**), reported in 1979 Cr. L.J. 741. Maheswaran, J., observed as under:

"The term "living in adultery" has now been consistently held to mean an outright adulterous conduct when the wife lives in a quasi-permanent union with the man with whom she is committing adultery."



9. Further, the Kerala High Court in ***Sandha vs. Narayanan 1999***

SCC OnLine Ker 64, opined as follows:

*"8. The phrase "living in adultery" used in Section 488(4) of the Cr. P.C. 1898 which is akin to Section 125(4) of the present Cr. P.C. has been considered by various High Courts in India and have taken the uniform view that living in adultery denotes a continuous course of conduct or living in the state of quasi permanent union with the adulteror. In the decision in **Ma Mya Khin v. N.L. Godenho AIR 1936 Rang. 446** the Rangoon High Court has observed as follows:*

"Emphasis must be laid upon the words "living in adultery". The words used are not "committed adultery", and there is clearly a great distinction between "committing adultery" and "living in adultery" denotes a continuous course of conduct and not isolated acts of immorality. One or two lapses from virtue would be acts of adultery but would be quite insufficient to show that the woman was "living in adultery", which means, so far as I understand the expression, that she must be living in a state of quasi permanent union with the man with whom she is committing adultery."

*9. In the decisions in **Lakshmi Ambalam v. Andiammal AIR 1938 Madras 66** and **Kista Pillai v. Amirthammal AIR 1938 Madras 833** the Madras High Court has held that living in adultery is something different from leading an unchaste life and unless the wife is actually living in adultery at or about the time of the application, she is not disentitled to obtain maintenance and continued adulterous conduct and not occasional lapses from virtue constitutes sufficient reason for refusing maintenance.*

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*11. In the decision in **Nesamma v. Hentri (1961) KLT 964** this court after considering the decisions of several High Courts has held that an occasional lapse from virtue, or immoral conduct long before the time maintenance is applied for does not disentitle a wife for relief under Section 488 of Cr. P.C. 1898 and observed as follows:*

"The provision that the wife is disentitled to maintenance if she is 'living in adultery' means that the husband can withhold his aid only when her adulterous conduct has continued for some length of time suggesting thereby that she has found another albeit less honourable haven from the chill winds of penury."

Further reliance can be placed on the judgments of the Delhi High Court

in ***Sh. Pradeep Kumar Sharma vs. Smt. Deepika Sharma 2022(2) DMC 564;***

Madhya Pradesh High Court in ***Ashok vs. Anita 2011 SCC OnLine MP 2249;***



Andhra Pradesh High Court in *Aleti Jagadishwari vs. Aleti Bikshapathy* 1998(3) R.C.R. (Criminal) 697; Mysore High Court in *M. P. Subramaniyam vs. T. T. Ponnakshiammal* 1958 MLJ (Criminal) 68.

10. The object and purpose behind granting maintenance is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of failure of marriage. At the same time, a just and careful balance must be struck to ensure that this provision does not degenerate into a weapon to punish the other spouse. The Courts are required to conduct the maintenance proceedings while being alive to the legislative intent behind the provision under Section 125 Cr.P.C in its true spirit, which is to provide speedy assistance and social justice to women, children, and infirm parents. The provisions of Section 125 Cr.P.C. were enacted as a measure to further social justice and protect dependent women, children, and parents, which also fall within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India.

11. A two Judge Bench of the Hon'ble Supreme Court in *Kirtikant D. Vadodaria v. State of Gujarat* (1996) 4 SCC 479, speaking through Justice Faizan Uddin, opined as follows:

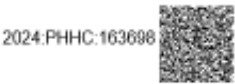
“15. ... While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.”



12. There is a general tendency on the part of the wife to amplify her needs and the husband to conceal his actual income, making it difficult to determine the earning capacity of the rival claimants with exactitude. The rival claimants must scrupulously bring on record their actual respective earning capacities for the Court to arrive at quantum of maintenance which is just and fair in terms of principle of equistatus. The quantum of maintenance must be justifiable and realistic to provide succor to the dependent spouse and to avoid occurrence of the two extremes of the maintenance being either paltry or extravagant, ensuring that neither of the two is reduced to a life of penury. The adequacy of the maintenance allowance must be determined by the yardstick of the dependent spouse being able to lead a life of reasonable comfort.

13. The evidence on record indicates that the sole act of adultery attributed to the petitioner occurred on 28.07.2017, with no material to establish that the petitioner was in a '*quasi-permanent union*' i.e. cohabiting with Rajesh. The phrase "living in adultery," connotes a continuous course of conduct or a state of cohabitation resembling a quasi-permanent union with the adulterer. While isolated acts of infidelity or sporadic lapses in virtue may amount to adultery, they are insufficient to meet the threshold of "living in adultery." Consequently, the lower court erred in disqualifying the petitioner from claiming maintenance.

14. In view of the discussion above, the impugned judgment dated 01.04.2022 is hereby set aside. However, the matter is remanded back to the Court of learned Additional Principal Judge, Family Court, Bhiwani, with the direction to pass a fresh order in consonance with the observations so made.



15. With the aforesaid observations and directions, present revision petition stands disposed of.

16. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

02.12.2024
Neha

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No