

**IN THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**CRL. REV. P. No. 46 of 2014**

**Smt. Manika Debbarma (Singha)**

Wife of Sri Soumendra Singha,  
C/O- Sri Sishu Pal, Amtali Roy  
Colony, P.O. & P.S. Amtali,  
District – West Tripura

..... **Petitioner**

**- V e r s u s -**

**Shri Soumendra Debbarma,**

son of late Nanda Singha,  
resident of Gajaria, P.O.  
Chechuria, P.S. Sidhai,  
Mohanpur, District – West  
Tripura.

..... **Respondent**

**BEFORE**  
**THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioner : Mr. H.K. Bhowmik, Advocate.

For the respondent : Ms. P. Sen, Advocate.

Date of hearing : 27.01.2015

Date of delivery  
of Judgment & Order : **30.01.2015**

Whether fit for reporting : 

|            |           |
|------------|-----------|
| <b>Yes</b> | <b>No</b> |
| √          |           |

**JUDGMENT & ORDER**

Whether it is the legal illiteracy or the deliberate attempt not to acknowledge the legal liability or the irresponsible bravado which led to a 'disputed' marriage may not be explored by this Court but the time has come the law must assert its authority to bring end to the misery of the woman, who suffers for such brazen act. Here is the case that the respondent married the petitioner and when the petitioner in a vagrant condition

approached the court of the competent jurisdiction, he took the plea that the petitioner is not entitled to get the maintenance as the marriage is not acknowledged by law and unless the petitioner is legally married wife, she cannot claim maintenance. This plea has been accepted by the Judge, Family Court, Agartala, West Tripura by the judgment and order dated 28.11.2013 delivered in Misc. 365 of 2011 holding that:

**Thus from the entire evidence of both the petitioner and the opposite party it is admitted fact that the petitioner is the 3<sup>rd</sup> wife of the opposite party. The first wife Sushila Debbarma is now alive and no divorce was done in between herself and the opposite party is also an admitted fact. In view of the facts of no divorce between the opposite party and the 1<sup>st</sup> wife Sushila Debbarma, the 2<sup>nd</sup> wife, the 3<sup>rd</sup> wife Manika Debbarma(respondent) have no legal existence/status. During the existence of the 1<sup>st</sup> marriage with Sushila Debbarma, the 2<sup>nd</sup> and 3<sup>rd</sup> marriage are void from ab initio.**

**[2]** On the face of such observation, it is apparent that the Judge, Family Court has exceeded its jurisdiction by making a declaration as regards the marital status while exercising the jurisdiction under Section 125 of the Cr.P.C. However, so far the child from the 'illegitimate marriage' of the petitioner is concerned, the Judge, Family Court has directed the respondent to pay maintenance of Rs.3,000/- per month w.e.f. 01.12.2013 to his son Sri Joydeb Singha and send the same to the petitioner Manika Singha (Debbarma) to her address noted in the judgment within 10<sup>th</sup> day of every English Calender month. Money order commission has been ordered to be borne by the respondent. Leave has also been granted to send the amount through the bank, if details of the bank account of the petitioner is furnished.

**[3]** Since the claim of maintenance by the petitioner was denied by the said order dated 28.11.2013, this order has been challenged by this petition filed under Section 19(4) of the Family Courts Act, 1894.

**[4]** Mr. H.K. Bhowmik, learned counsel appearing for the petitioner has submitted that by concealing the subsistence of the previous marriages, the respondent on 29.09.2004 married the petitioner and in the wedlock, one son namely, Joydeep Singha, who was 4(four) years of age at the time of filing the petition for maintenance under Section 125 of the Cr.P.C., was born. The respondent after his retirement started ill-treating the petitioner on unlawful demand and thus, she was compelled to leave the respondent's place. There are allegations and counter allegations which wrecked their relation and led in filing a criminal case against the respondent. The petitioner thereafter started residing in a rented house along with her minor son. The petitioner has asserted the respondent has been drawing a sum of Rs.15,000/-(Rupees fifteen thousand) as pension. The respondent has admitted that he lived with the petitioner as husband and wife and cohabited and in the wedlock, their son Joydeep Singha was born. He has also admitted that in the year 1972 he married one Sushila Singh and thereafter, he got a job in the Border Security Force. Thereafter, Sushila Singh deserted him leaving behind their minor son Pradip Singha in the year 1978 and she married another person. The respondent has further admitted that in the year 1988 the respondent married Padmasakhi Singha of Kamalghat. From that

marriage he has another son namely, Sudip Singha. According to him, their marriage was dissolved according to the custom. The petitioner refused to lead conjugal life with the respondent after birth of their son Joydeep. Even she stated that Joydeep was not his son. The respondent even alleged that the petitioner was an illicit relation with one of his sons from the other marriages. The respondent further stated in his objection filed against the petition that the petitioner fled with his son from the other marriage on taking away some valuables from his house. But he never refused to live together and hence, there is no refusal to maintain her.

**[5]** It appears from the records that the petitioner adduced 3(three) witnesses whereas the respondent adduced 2(two) witnesses to substantiate their respective pleas and claims.

**[6]** Ms. P. Sen, learned counsel appearing for the respondent has stoutly contended that the *sine qua non* for granting maintenance is that the woman who claims for maintenance must have the status of legally wedded wife, otherwise she cannot claim maintenance under Section 125 of the Cr.P.C. She has referred the decision of the apex court in **Savitaben Somabhai Bhatiya vs. State of Gujarat and Ors.**, reported in **(2005) 3 SCC 636**, where the apex court approving the interpretation in **Yamunabai's case : (1998) 1 SCC 530** has observed as under:

**"15. In Yamunabai's case : (1988) 1 SCC 530, it was held that expression 'wife' used in Section 125 of the Code should be interpreted to mean only a legally wedded wife. The word 'wife' is not defined in the**

Code except indicating in the Explanation to Section 125 its inclusive character so as to cover a divorcee. A woman cannot be a divorcee unless there was a marriage in the eye of law preceding that status. The expression must therefore be given the meaning in which it is understood in law applicable to the parties. The 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 she is therefore not entitled to the benefit of Section 125 of the Code or the Hindu Marriage Act, 1955 (in short the 'Marriage Act'). Marriage with a person having a living spouse is null and void and not voidable. However, the attempt to exclude altogether the personal law applicable to the parties from consideration is improper. *Section 125 of the Code has been enacted in the interest of a wife and one who intends to take benefit under sub-section (1)(a) has to establish the necessary condition, namely, that she is the wife of the person concerned. The issue can be decided only by a reference to the law applicable to the parties. It is only where an applicant establishes such status or relationship with reference to the personal law that an application for maintenance can be maintained. Once the right under the provision in Section 125 of the Code is established by proof of necessary conditions mentioned therein, it cannot be defeated by further reference to the personal law. The issue whether the section is attracted or not cannot be answered except by reference to the appropriate law governing the parties.*

16. But it does not further the case of the appellant in the instant case. Even if it is accepted as stated by learned counsel for the appellant that the husband was treating her as his wife it is really inconsequential. It is the intention of the legislature which is relevant and not the attitude of the party.

17. *In Yamunabai's case plea similar to the one advanced in the present case that the appellant was not informed about the respondent's earlier marriage when she married him was held to be of no avail. The principle of estoppel cannot be pressed into service to defeat the provision of Section 125 of the Code."*

[Emphasis supplied]

[7] Ms. P. Sen, learned counsel has further submitted that there is no averment in the petition that the respondent concealed

his previous marriages. Rather from the narrative covering the circumstances related to her 'marital status' would indicate to her knowledge of previous marriages of the respondent. As such, any plea of concealment cannot be sustained.

**[8]** In response to such reply, Mr. H.K. Bhwomik, learned counsel appearing for the petitioner has referred the deposition of the petitioner as PW-1 where the petitioner has categorically asserted that at the time of marriage it was stated to her by the respondent that his wife had died and a son was living from his first wife. After four days of living together she came to know that she was his third wife. His two wives are also living and he has two sons from the first and the second wife. At that time the respondent was working as the Sub Inspector of the BSF and whenever he used to visit her, he would torture her physically without any reason. She has admitted that a male child Joydeep Singha was born in the 'wedlock'. Being unable to bear such physical torture, she left the respondent's place on 05.06.2011 and started living separately in a rented house at Amtali.

**[9]** This statement however has not been challenged in the cross examination or in the deposition of the respondent. The other witnesses have not placed any material for determining the marital status of the petitioner. Rather, it is the deposition of the respondent as DW-1 is revealing. There he has stated that his first wife Sushila deserted him but without having the marriage dissolved in accordance with law and thereafter he married one

Padmasakhi Singh. From both the marriages, he had sons. Even Padmasakhi deserted him. However, he has asserted that as per Manipuri Customs he divorced Padmasakhi. Only thereafter, he married the petitioner in the year 2004. But what is surprisingly evident that he did not support his own averments made in the written objection as to the 'immorality' which he had alleged in that objection. Nowhere he has stated that he had revealed to the petitioner of his previous marriages. He has stated that he has been drawing a sum of Rs.10,000/- per month as the pension. Even DW-2 Braja Kishore Sharma has stated that the respondent married the petitioner as per the customary law.

**[10]** From a meticulous scrutiny of the records particularly from reading of the petition under Section 125 of the Cr.P.C. it appears that Ms. P. Sen, learned counsel appearing for the respondent is absolutely correct that in the petition no averment as regards the concealment of the previous marriages has been placed. In Para-5 of the petition it has been stated as under:

**"That, it is pertinent to mention here that in the year 1983 the first wife namely, Smt. Sushila Singh was socially divorced by the OP and out of their said wedlock the petitioner No.2 was born, thereafter, the first wife of the OP married to another person. Thereafter, the OP married again to the mother of the petitioner No.3, namely Smt. Padma Sakhi Singh was also socially divorced in the year 1994 and thereafter, the present petitioner No.1 was married by the OP in the year 2004 and the petitioner No.4 was born out of their said wedlock. The petitioner Nos.2,3 & 4 are living with their mother, petitioner No.1 at present."**

This averment has not been denied by the respondent. It is disturbing to note that in the written objection the respondent has alleged of incest by the petitioner.

**[11]** However, it is apparent that the marriage of the petitioner with the respondent was deceitfully solemnized on concealment of the previous marriages and that fact has been introduced in the evidence without any challenge from the respondent. Even though the proceeding under Section 125 of the Cr.P.C. is a quasi-civil in nature but the strict principles of evidence based on the pleadings are not followed. It is the duty of the court to cause inquiry summarily. In the deposition, the petitioner has categorically stated that she had no knowledge of the previous marriages of the respondent. Thereafter, no endeavour even though the respondent has deposed in the proceeding was made to rebut such statement. Thus, a conjoint reading of the oral testimonies, the petition and the written objection will not leave this Court at lurch, rather on the facts established by the evidence it can safely be presumed that either the petitioner had no knowledge of the previous marriages or she was impressed that the respondent was legally competent to contract the marriage with her. This Court in **Nitya Gopal Sukla Das vs. Anjali Nag**, reported in **(2014) 2 TLR 263** having relied on **Badshah vs. Urmila Badshah Godse & Anr.**, reported in **(2014) 1 SCC 188** held that on social context judging the meaning of the wife as provided under Section 125 of the Cr.P.C. has to be purposively interpreted. The legislation cannot be reduced to futility by

interpretation but it shall be interpreted for achieving its broader objective of deterring the destitution. In **Badshah vs. Urmila Badshah Godse & Anr.**, the apex court has enunciated the law in no uncertain term as under:

**"19. In Rameshchandra Rampratapji Daga v. Rameshwari Remeshchandra Daga: AIR 2005 SC 422, the right of another woman in a similar situation was upheld. Here the Court had accepted that Hindu marriages have continued to be bigamous despite the enactment of the Hindu Marriage Act in 1955. The Court had commented that though such marriages are illegal as per the provisions of the Act, they are not 'immoral' and hence a financially dependent woman cannot be denied maintenance on this ground.**

**20. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydon's Case: (1584) 3 Co. Rep. 7a which became the historical source of purposive interpretation. The court would also invoke the legal maxim *construction ut res magis valeat quam pereat*, in such cases i.e. where alternative constructions are possible the Court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125 of Cr.P.C., such a woman is to be treated as the legally wedded wife."**

[Emphasis supplied]

**[12]** In the record of evidence, de-facto marriage is admitted by the respondent and there is no attempt to deny the said marriage whereas the petitioner has categorically stated that she was at dark about the previous marriages of the respondent. Thus, the petitioner for purpose of granting maintenance 'be treated as the legally wedded wife'.

**[13]** The brooding presence of constitutional empathy for the weaker section like woman and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause of derelict. Such view of the apex court in **Captain Ramesh Chander Kaushal vs. Mrs. Veena Kaushal & others, reported in (1978) 4 SCC 70** emboldens this Court to take the view that the findings so returned by the Judge, Family Court is an outcome of not appreciating the controversy having regard to the broader object this legislation intended to achieve, as Justice Benjamin Cardozo in his *The Nature of Judicial Process* has observed that it is true that the codes and statutes do not render the Judge superfluous, nor his work perfunctory and mechanical, there are gaps to be filled..... There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning, which, however obscure and latent, had nonetheless a real and ascertainable pre-existence in the legislator's mind. The process is, indeed, that at times, but it is often sometimes more.

**[14]** Having held so, this Court is inclined to interfere with the impugned judgment and order and accordingly, the same is partly set aside on affirming that part whereby the maintenance has been granted in favour of the son of the petitioner namely, Joydeep Singha.

**[15]** The petitioner is also entitled to maintenance. Having regard to the income of the respondent it is directed that the respondent shall pay another Rs.2,000/- (Rupees two thousand) to the petitioner per month in the same manner as the Judge, Family Court has directed to pay the maintenance of the petitioner's son namely, Joydeep Singha. Any breach of the direction would entail harsh action for enforcement. The said maintenance be remitted to the petitioner within 10<sup>th</sup> day of every English Calendar month and the money order commission for that purpose shall be borne by the respondent. However, the respondent shall be at liberty to transfer the maintenance allowance to the bank account of the petitioner, if the petitioner furnished details of her bank account. In the circumstances however, this Court is not inclined to grant arrears of maintenance as it is found that the petitioner has enjoyed the benefit of interim order of maintenance.

**[16]** In the result, this petition stands allowed.

**JUDGE**

*Sujay*