

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

CRMM-7298-2014 (O&M)

Date of Decision: September 14, 2015

Smt.Sunita

.....Petitioner

Versus

Sant Ram Garg

.....Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.P.S.Jammu, Advocate
for the petitioner.

Mr.B.S.Bedi and
Mr.Jasmeet Singh, Advocates
for the respondent.

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- 1. Whether Reporters of local papers may be allowed to see the judgment ? yes**
- 2. To be referred to the Reporters or not ? yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

NARESH KUMAR SANGHI, J.(ORAL)

Challenge in this petition, filed under Section 482, Cr.P.C., is to the order, dated 28.02.2013, passed by learned Sessions Judge, Panchkula, whereby Criminal Revision No.20 of 2012 preferred by the petitioner challenging the order of learned Judicial Magistrate Ist Class, Panchkula, dismissing her

application under Section 125, Cr.P.C., was dismissed.

Learned counsel contends that there is no dispute that the petitioner had solemnized the marriage with the respondent on 03.08.1990 in Arya Samaj Mandir, Parwanoo, according to Hindu Customs and rites. At that time, the earlier husband of the petitioner was alive and no legal divorce was obtained from her earlier husband. However, he submits that for several years, the respondent lived with the petitioner as her husband and cohabited with her and thereafter he refused to maintain the petitioner and, as such, despite the fact that the petitioner was earlier married would not debar her from seeking monthly maintenance from the respondent. In support of his contention, learned counsel has placed reliance on **Chanmuniya vs Virendra Kumar Singh Kushwaha and another**, (2011) 1 Supreme Court Cases 141.

On the other hand, learned counsel for the respondent has placed reliance on **Indra Sarma vs V.K.V.Sarma**, 2014 (1) RCR (Criminal) 179 (SC); **Narayan Jangluji Thool and ors vs. Mala**, 2015 (3) RCR (Criminal) 413 (Bombay High Court); and **Suman Kumari vs Harbans Lal**, 1998(2)R.C.R. (Criminal) 661 (Punjab and Haryana High Court) to say that the petitioner was not legally married wife of the respondent and, as such, she

cannot claim maintenance as per Section 125, Cr.P.C.

I have heard the learned counsel for the parties and with their able assistance gone through the material available on record.

It is not in dispute that while the earlier husband of the petitioner was alive, she solemnized the marriage with the respondent without getting a legal divorce from her earlier husband from the Court of competent jurisdiction. The only explanation put forth by the learned counsel for the petitioner is that a panchayati divorce was obtained by the petitioner from her earlier husband.

In the matter of **Chanmuniya** (supra), Hon'ble the Supreme Court held that maintenance in case of live-in-relationship can be granted but the facts of the said case were different than the case in hand. In the matter of **Chanmuniya** (supra), the wife had not solemnized the second marriage while the earlier marriage was in existence. In the case in hand, petitioner Sunita solemnized the marriage with the respondent knowing fully well that she had earlier solemnized the marriage and no divorce has been granted by the Court of competent jurisdiction.

In the matter of **Indra Sarma** (supra), Hon'ble the

Supreme Court held that a woman, who entered into a live-in-relationship with a man knowing that he was a married person, with wife and two children, in such a circumstance it cannot be held that the woman and the man had relationship in the nature of marriage and the status of the wife was that of a concubine and the woman was not entitled to protection under the provisions of Protection of Women from Domestic Violence Act, 2005 (for brevity, 'the 2005 Act').

In the matter of **Suman Kumari** (supra), this Court held that the wife remarried when her first husband was alive, then the second marriage was a nullity. The wife was not entitled to claim maintenance from the second husband as per provisions contained in Section 125, Cr.P.C.

In the matter of **Narayan Jangluji Thool** (supra), Hon'ble the Bombay High Court had also held that a married woman having live-in-relationship with another man is not entitled to protection under the provisions of the 2005 Act. It was clarified that the same principle was not applicable in the case of unmarried woman, who is otherwise qualified to marry.

In view of the totality of the facts and circumstances of the case, the order passed by learned Judicial Magistrate Ist Class and affirmed by learned Sessions Judge are maintained.

There is no merit in the present petition and the same
is hereby dismissed.

September 14, 2015
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(NARESH KUMAR SANGHI)
JUDGE