

**CRR-(F)-246-2015 (O&M)**

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

**CRR-(F)-246-2015 (O&M).  
Decided on: October 16, 2015.**

**Mai Ram**

**..... Petitioner(s)**

**Versus**

**Smt.Manjula and others**

**..... Respondent(s)**

**\* \* \***

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI**

**PRESENT Mr.Raman Chawla, Advocate,  
for the petitioner.**

**M.M.S. BEDI, J (ORAL).**

The petitioner has challenged the award of Rs.10,000/- per month granted to the respondents under the provisions of Section 125 Cr.P.C.

The main ground of challenge by the husband-petitioner to the order passed by the Family Court is that respondent No.1 is the second wife of the petitioner. The petitioner has submitted that respondent No.1 had knowledge about the first marriage of the petitioner with Kavita, as such, she would not be entitled to maintenance under Section 125 Cr.P.C.. He has placed reliance on the judgment of Hon'ble the Apex Court in **Savitaben Somabhai Bhatiya Vs. State of Gujarat and others, 2005 (2) RCR (Crl.) 190,** wherein it was observed that second marriage being null and void wife would not be entitled to maintenance under Section 125 Cr.P.C. In said case on payment of lump sum compensation of Rs.2 lacs, the

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dispute was settled. The observations in **Savitaben Somabhai Bhatiya** (supra) came up for consideration in a recent judgment of Hon'ble the Supreme Court in **Badshah Vs. Urmila Badshah Godse and another, 2013 (4) Crl., C.C. 653**, wherein the judgments of **Savitaben Somabhai Bhatiya** (supra) was distinguished by observing that a husband cannot be allowed to take advantage of his own wrong and turn around to say that respondent (second-wife) is not entitled to maintenance by filing petition under Section 125 Cr.P.C., as she was not legally wedded wife. In para 16 of the judgment, Hon'ble the Apex Court has stated that for the purpose of Section 125 Cr.P.C., the second wife would be treated as wife of the petitioner. The judgment of **Savitaben Somabhai Bhatiya** (supra) was distinguished observing that if the second wife has got knowledge of the first marriage of husband and the second wife has not been kept in dark about the first surviving marriage, the maintenance would be denied to second wife.

With the assistance of counsel for the petitioner, I have gone through the judgment passed by the Family Court. It is an admitted fact that respondent No.1 had registered FIR No.57 of 2011 at Police Station, Siwani, under Sections 494, 498-A, 406 and 506/34 IPC against the petitioner and said criminal litigation was compromised and the respondent No.1 had withdrawn the same as a result of which the petitioner and his family members were acquitted on account of matter having been compromised.

In view of said circumstances, where the second

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wife launched prosecution under Section 494 IPC etc., against the petitioner and the matter was compromised, the petitioner relied upon the statement of respondent No.1 which has been produced as EX.R2, made in the above said FIR. The controversy whether the marriage of respondent No.1 Manjula with petitioner was null and void or that the respondent No.1 or the minor daughter born out of the wedlock would not be entitled to any maintenance under Section 125 Cr.P.C. was not specifically proved by producing any cogent evidence. The knowledge and consent of respondent No.1 was not a fact in issue nor it was the controversy raised before the trial Court. Even otherwise, the judgment relied upon by the counsel for the petitioner **Savitaben Somabhai Bhatiya** (supra), has been distinguished in subsequent judgment in case of **Badshah** (supra), the petitioner having married respondent No.1 and respondent No.2 having born out of the wedlock, the petitioner in said circumstances would be estopped by his conduct to deny the legal rights of the wife after having admitted her as wife especially after the child has been born out of the said marriage.

In view of said circumstances, no ground is made out for interference in the order of Family Court granting maintenance.

The petition is dismissed.

**October 16, 2015.**  
**rka**

**(M.M.S. BEDI)**  
**JUDGE**