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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **MAT.APP.(F.C.)16 /2015**

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Judgment dated 16th September, 2015

JASVINDER SINGH

..... Appellant

Through : Mr. Surendra Yadav with Mr. Siddharth,
Advocates

versus

SARITA & ANR.

..... Respondents

Through : Mr. Davender Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Challenge in this appeal is to the order dated 21.11.2014 passed on an application filed under Section 18 and 20 of the Hindu Adoptions and Maintenance Act by the respondents being wife and minor daughter herein claiming maintenance *pendente lite*.
2. According to the respondent, the marriage between the parties was solemnized on 25.11.2007 at Delhi according to Hindu rites and customs. Out of the wedlock, a daughter was born. The parties have been residing separately. The stand of the appellant herein is that, admittedly, it is the second marriage of the respondent while her first marriage has not been

dissolved by a decree of divorce. It is also the case of the appellant herein that only a *Chunni* ceremony was performed against insistence of the family members of the respondent and it was agreed that marriage would be solemnized after the respondent is granted a divorce. It is claimed that no divorce has been obtained and thus, the marriage between the appellant and the respondent is void and the consequence thereof would be that the respondent would not be entitled to claim any maintenance.

3. Learned counsel for the respondent submits that the appellant was well aware that the marriage of the respondent with her earlier husband stood dissolved and divorce was granted by the *Panchayat* which is recognized as per the customs in Haryana. The learned counsel for the respondent has placed reliance on the decision in the case of ***Narinder Pal Kaur Chawla(Smt.) v. Shri Manjeet Singh Chawla***, reported at 2007 X AD(Delhi) 500, particularly paras 14, 19 and 20.
4. Reliance is also placed on the decision in the case of ***Badshah v. Urmila Badshah Godse & Anr.***, reported at III(2013) DMC 518(SC), particularly paras 15 to 19 and 28.
5. We have heard the learned counsel for the parties and considered the rival submissions. Counsel for the appellant submits that the respondent is not entitled to maintenance for the reason that the marriage between the appellant and the respondent is void as at the time of marriage, the respondent was not legally divorced from her earlier husband. We may notice that the Family Courts has awarded maintenance in the sum of Rs.5,000/- for the wife as also the minor daughter.
6. The case of the respondent is that the appellant was well aware of her marriage with Sudhir Kumar. He was also aware that the marriage was dissolved by the *Panchayat* as per the customs prevalent in their community. We may notice that the Family Courts has allowed the

application filed by the wife seeking maintenance under Sections 18 and 20 of the Hindu Adoption and Maintenance Act. In our view, there is no infirmity in the order passed by the Family Courts.

7. In the case of ***Badshah v. Urmila Badshah Godse & Anr.***, reported at III(2013) DMC 518(SC), the Supreme Court of India was seized of a matter where a wife was claiming maintenance under Section 125 Cr.P.C. for herself and her minor daughter. The husband had raised a similar plea that the marriage between the parties was void as at the time of his marriage he had living wife and the said marriage was still subsisting, thus, the second marriage was void under the Hindu Marriage Act. It would be useful to refer to paras 10 to 22 and 25 of the judgment, which are as under:

“10. Before we deal with the aforesaid submission, we would like to refer two more judgments of this Court. First case is known as ***Dwarika Prasad Satpathy vs. Bidyut Prava Dixit & Anr.***, VIII(1999) SLT 508=IV(1999) CCR 161(SC)=(1999) 7 SCC 675. In this case it was held:

“The validity of the marriage for the purpose of summary proceeding under Section 125 Cr.P.C. is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceeding is not as strict as is required in a trial of offence under Section 494 of the IPC. If the claimant in proceedings under Section 125 of the Code succeeds in showing that she and the respondent have lived together as husband and wife, the court can presume that they are legally wedded spouse, and in such a situation, the party who denies the marital status can rebut the presumption. Once it is admitted that the marriage procedure was followed then it is not necessary to further probe into whether the said procedure was complete as per the Hindu Rites in the proceedings under Section 125 Cr.P.C. From the evidence which is led if the Magistrate is prima facie satisfied with regard to the performance of marriage in proceedings under Section 125, Cr.P.C. which are of summary nature strict proof of performance of essential rites is not required.

It is further held:

It is to be remembered that the order passed in an application under Section 125 Cr.P.C. does not finally determine the rights and obligations of the parties and the said section is enacted with a view to provide summary remedy for providing maintenance to a wife, children and parents. For the purpose of getting his rights determined, the appellant has also filed Civil Suit which is pending before the trial court. In such a situation, this Court in *S.Sethurathinam Pillai v. Barbara @ Dolly Sethurathinam*, (1971) 3 SCC 923, observed that maintenance under Section 488 Cr.P.C. 1898 (similar to Section 125, Cr.P.C.) cannot be denied where there was some evidence on which conclusion for grant of maintenance could be reached. It was held that order passed under Section 488 is a summary order which does not finally determine the rights and obligations of the parties; the decision of the criminal Court that there was a valid marriage between the parties will not operate as decisive in any civil proceeding between the parties.”

11. No doubt, it is not a case of second marriage but deals with standard of proof under Section 125, Cr.P.C. by the applicant to prove her marriage with the respondent and was not a case of second marriage. However, at the same time, this reflects the approach which is to be adopted while considering the cases of maintenance under Section 125, Cr.P.C. which proceedings are in the nature of summary proceedings.

12. Second case which we would like to refer is [Chanmuniya vs. Virendra Kumar Singh Kushwaha & Anr.](#), IX(2012) SLT 534=I (2013) DMC 131 (SC)=(2011) 1 SCC 141. The Court has held that the term “wife” occurring in Section 125, Cr.P.C. is to be given very wide interpretation. This is so stated in the following manner:

“A broad and expansive interpretation should be given to the term “wife” to include even those cases where a man and woman have been living together as husband and wife for reasonably long period of time, and strict proof of marriage should not be a pre-condition for

maintenance under [Section 125](#) of the Cr.P.C. so as to fulfill the true spirit and essence of the beneficial provision of maintenance under [Section 125](#).”

13. No doubt, in Chanmuniya (supra), the Division Bench of this Court took the view that the matter needs to be considered with respect to [Section 125, Cr.P.C.](#), by larger bench and in para 41, three questions are formulated for determination by a larger bench which are as follows:

“1. Whether the living together of a man and woman as husband and wife for a considerable period of time would raise the presumption of a valid marriage between them and whether such a presumption would entitle the woman to maintenance under [Section 125, Cr.P.C.](#)?

2. Whether strict proof of marriage is essential for a claim of maintenance under [Section 125, Cr.P.C.](#) having regard to the provisions of the [Domestic Violence Act, 2005](#)?

3. Whether a marriage performed according to the customary rites and ceremonies, without strictly fulfilling the requisites of [Section 7\(1\)](#) of the Hindu Marriage Act, 1955, or any other personal law would entitle the woman to maintenance under [Section 125, Cr.P.C.](#)?”

14. On this basis, it was pleaded before us that this matter be also tagged along with the aforesaid case. However, in the facts of the present case, we do not deem it proper to do so as we find that the view taken by the courts below is perfectly justified. We are dealing with a situation where the marriage between the parties has been proved. However, the petitioner was already married. But he duped the respondent by suppressing the factum of alleged first marriage. On these facts, in our opinion, he cannot be permitted to deny the benefit of maintenance to the respondent, taking advantage of his own wrong. Our reasons for this course of action are stated hereinafter.

15. Firstly, in Chanmuniya case, the parties had been living together for a long time and on that basis question arose as to whether there would be a presumption of marriage between the two because of the said reason, thus, giving rise to claim of

maintenance under [Section 125,Cr.P.C.](#) by interpreting the term “wife” widely. The Court has impressed that if man and woman have been living together for a long time even without a valid marriage, as in that case, term of valid marriage entitling such a woman to maintenance should be drawn and a woman in such a case should be entitled to maintain application under [Section 125,Cr.P.C.](#) On the other hand, in the present case, respondent No.1 has been able to prove, by cogent and strong evidence, that the petitioner and respondent No.1 had been married each other.

16. Secondly, as already discussed above, when the marriage between respondent No.1 and petitioner was solemnized, the petitioner had kept the respondent No.1 in dark about her first marriage. A false representation was given to respondent No.1 that he was single and was competent to enter into martial tie with respondent No.1. In such circumstances, can the petitioner be allowed to take advantage of his own wrong and turn around to say that respondents are not entitled to maintenance by filing the petition under [Section 125,Cr.P.C.](#) as respondent No.1 is not “legally wedded wife” of the petitioner? Our answer is in the negative. We are of the view that at least for the purpose of [Section 125 Cr.P.C.](#), respondent No.1 would be treated as the wife of the petitioner, going by the spirit of the two judgments we have reproduced above. For this reason, we are of the opinion that the judgments of this Court in Adhav and Savitaben cases would apply only in those circumstances where a woman married a man with full knowledge of the first subsisting marriage. In such cases, she should know that second marriage with such a person is impermissible and there is an embargo under the [Hindu Marriage Act](#) and therefore she has to suffer the consequences thereof. The said judgment would not apply to those cases where a man marries second time by keeping that lady in dark about the first surviving marriage. That is the only way two sets of judgments can be reconciled and harmonized.

17. Thirdly, in such cases, purposive interpretation needs to be given to the provisions of [Section 125,Cr.P.C.](#) While dealing with the application of destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalized sections of the society. The purpose is to achieve

“social justice” which is the Constitutional vision, enshrined in the Preamble of the Constitution of India. Preamble to the Constitution of India clearly signals that we have chosen the democratic path under rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the Courts to advance the cause of the social justice. While giving interpretation to a particular provision, the Court is supposed to bridge the gap between the law and society.

18. Of late, in this very direction, it is emphasized that the Courts have to adopt different approaches in “social justice adjudication”, which is also known as “social context adjudication” as mere “adversarial approach” may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:

“It is, therefore, respectfully submitted that “social context judging” is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social- economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication.”[Delivered a key note address on “Legal Education in Social Context”]

19. Provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach

from “adversarial” litigation to social context adjudication is the need of the hour.

20. The law regulates relationships between people. It prescribes patterns of behavior. It reflects the values of society. The role of the Court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society’s changing needs. In both Constitutional and statutory interpretation, the Court is supposed to exercise direction in determining the proper relationship between the subjective and objective purpose of the law.

21. *Cardozo* acknowledges in his classic[The Nature of Judicial Process].

“....no system of *jus scriptum* has been able to escape the need of it”, and he elaborates: “It is true that 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 none the less a real and ascertainable pre- existence in the legislator’s mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a judge’s troubles in ascribing meaning to a statute.” Says Gray in his lecture[From the Book “The Nature and Sources of the Law” by John Chipman Gray]

“The fact is that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to

determine that the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present.”

22. The Court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonize results with justice through a method of free decision—“libre recherche scientifique” i.e. “free Scientific research”. We are of the opinion that there is a non-rebuttable presumption that the Legislature while making a provision like [Section 125 Cr.P.C.](#), to fulfill its Constitutional duty in good faith, had always intended to give relief to the woman becoming “wife” under such circumstances.

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25. 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 (1854) 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, Cr.P.C.](#), such a woman is to be treated as the legally wedded wife.”

8. We have quoted in detail from the aforesaid decision for the reason that the Supreme Court has extensively analysed the purpose and objective of the Legislature in enacting the provision for grant of maintenance for a destitute wife or hapless children. In the present case as well, there is no dispute that the appellant and the respondent after marriage were residing as man and wife and out of their wedlock a child was born.
9. We may notice that the case of ***Badshah*** (supra) took into consideration the facts of a case where the husband has duped the wife into a second marriage while the earlier marriage was still in force. Whereas in the present case, it is alleged that the wife had married the petitioner while her first marriage was subsisting.
10. In our view, the underlining principle would remain unchanged that the parties had been living together as man and wife and there would be presumption of marriage between the two. It has also not been disputed that out of their wedlock, a child has been born and in any case the child would be entitled to be maintained by the father.
11. In the present case, the validity of divorce claimed by respondent no.1 (through Panchayat) as per customs is yet to be decided. Whether the petitioner was aware of the previous marriage of respondent no.1 and her panchayati divorce is also a question that can be decided only after the evidence is led by both the parties. The respondent no.1, in the circumstances, cannot be deprived of maintenance at this stage.
12. The respondent no.1, in our view, cannot be denied maintenance on the alleged ground that the marriage between the parties was void. Since the appellant and the respondent no.1 were residing as man and wife, in our view, the maintenance cannot be denied to respondent no.1.
13. On merit, the Family Court has taken into consideration the submissions made by both the parties and assessed the maintenance as per the Minimum

Wages Act as none of the parties were able to establish the amount of salary being received by the appellant herein. We may reiterate that as has been held in the case of *Jasbir Kaur v. District Judge, Dehradun*, reported at (1997) 7 SCC 7, it is common for parties not to disclose their income truthfully and it often left for the Courts to estimate the income of the parties. We are unable to accept the submission of the learned counsel for the appellant that since the marriage between the appellant and the respondent would be a nullity, the respondent would not be entitled to maintenance. Resultantly, we find no ground to interfere in the impugned order passed by the Family Courts

14. The appeal is dismissed accordingly.

CM.APPL 3061/2015(stay)

15. Since the present appeal has been dismissed, the application also stands disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 16, 2015

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