

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

**CRR No.3625 of 2012 (O&M)**  
Date of decision: 26<sup>th</sup> July, 2016

Parminder Kaur @ Sukhpreet Kaur and another

... Petitioners

Versus

Harpal Singh @ Gurpal Singh

... Respondent

**CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**

Present: Mr. I.S. Mann, Advocate  
for the petitioners.

Mr. Jasmail Singh Brar, Advocate  
for the respondent.

**FATEH DEEP SINGH, J.**

After a long ding dong battle, with reverses the revisionist Parminder Kaur alias Sukhpreet Kaur and her minor offspring Navdeep Singh, out of whom initially the son was only successful in getting maintenance of ₹500 per month from the Court of Judicial Magistrate 1st Class, Muktsar through orders dated 02.03.2010 have both come up in this invocation after this order was challenged by them before the Court of learned Additional Sessions Judge, Sri Muktsar Sahib which through judgment dated 15.05.2012 upheld the orders of the learned Magistrate and thus dismissed their appeal.

Heard Mr. I.S. Mann, Advocate for the petitioners; Mr. Jasmail Singh Brar, Advocate for the respondent and perused the records.

It is an admitted case that Parminder Kaur alias Sukhpreet Kaur was earlier married to one Mander Singh and which marriage the wife claims was dissolved by customary decree through Panchayat and thereafter Parminder Kaur alias Sukhpreet Kaur entered into a wedlock with Harpal Singh alias Gurpal Singh respondent out of which applicant No.2 Navdeep Singh who was minor at the time of filing of the application was born. Subsequently, differences cropped up between the two and thereafter the applicant wife claims that she was thrown out of the house and thus, sought maintenance for herself as well as her minor child alleging that the husband is an able bodied person and runs a dairy farm and earns handsomely as well as from his avocation as a bus conductor and has about ₹15,000 earnings from these.

The respondent husband's stand though admits the relationship but claims that she is not his legally wedded wife and thus, her marriage with Mander Singh son of Gurcarhan Singh is subsisting as on date of filing of the application, since they had not been legally divorced and therefore was not entitled to any maintenance. It was as an admission of this situation between the couple, the trial Court and so the first appellate Court has declined the wife the maintenance allowance.

Appreciating the submissions of the two sides, it is by no means denied that initially the applicant Parminder Kaur alias Sukhpreet Kaur was married to Mander Singh and subsequently this marriage was put to an end and almost four years prior to the filing of the application

for maintenance i.e. around the year 2003 they have entered into this relationship. It could not be refuted by learned counsel for the respondent by any means that minor son Navdeep Singh is not an offspring out of this relationship. Thus, the moot point that comes up is if in such a situation the minor son and so the application No.1 Parminder Kaur alias Sukhpreet Kaur is entitled to maintenance or not.

The statement of Parminder Kaur alias Sukhpreet Kaur as AW1 as has been highlighted is supported by the depositions of AW2 Nachhatar Singh and AW3 Mander Singh son of Gurcharan Singh and all these witnesses univocally spell out that after the dissolution of the marriage of Parminder Kaur alias Sukhpreet Kaur with Mander Singh the couple had entered into a wedlock and stayed together for a long period of time giving birth to an offspring Navdeep Singh. However, evidence of the wife's side has not been controverted by the respondent who has failed to examine even a single witness to prove his stand or to examine even himself to rebut these contentions and rather it is admitted stand of the counsel of the husband that the husband Harpal Singh alias Gurpal Singh had earlier on 20.03.2007 filed a petition under Section 9 of the Hindu Marriage Act seeking decree of restitution of conjugal rights and which was subsequently dismissed as withdrawn which is reflected from Ex.PX and Ex.PY. The petition itself reflects that the husband claims that a marriage between them was solemnized on 12.03.2003 by way of sikh rites by way of Anand Karaj ceremony and

further admits that out of this wedlock between them Navdeep Singh a male child was born to them. This stand of the husband is not at all disputed and rather as per Ex.PX the wife was granted ad-interim maintenance under Section 25 of the Hindu Marriage Act and the concerned Court had framed issues on their pleadings including the entitlement of husband for a decree of restitution of conjugal rights and which fact escaped the judicial notice of the Courts below. Since there is an admission before a Court of law by the husband of this matrimonial relationship of a husband and wife which he has tried to enforce through a Court of law is the best piece of evidence and now at this stage when faced with this music of paying maintenance cannot be allowed to withdraw from it and thus, in terms of Sections 17, 18, 19 of the Evidence Act is a reliable un rebuttable legitimate piece of evidence and a party cannot wriggle out of such admission made before a Court of law and thus, are relative piece of evidence in terms of Section 21 of the Evidence Act. To the mind of this Court being an admission in a civil case is certainly relevant in terms of Section 23 of the Evidence Act. Thus in the totality of this written admission before a Court of law washes away the benefit of the admission of the wife in her cross-examination that her marriage was dissolved and the onus shifts upon the husband in terms of Sections 101 and 102 of the Evidence Act to establish the invalidity of this marriage.

Looking from another angle, with the advent of modernization and introduction of new ethos, patterns and social norms that have come about in this modern era, the term 'wife' needs to be given a broad and expansive interpretation to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time and thus, does not necessitates strict proof of marriage for the purposes of grant of maintenance.

Hon'ble the Supreme Court of India in '**Indra Sarma v. V.K.V. Sarma**' 2013(15) SCC 755 had considered various elements in such relationships consisting of duration of period of relationship, shared household, pooling of resources and financial arrangements, domestic arrangements, sexual relationship, children, socialization in public, intention and conduct of the parties, as strict indicators of such a relationship, impels this Court to hold this relationship in the nature of a marriage which is within the meaning assigned to Section 2(f) of the Domestic Violence Act. The husband knowingly has as is admitted by him married her and thus accepted unconditionally her as his wife and after a long cohabitation begotten a child from her womb.

From the overall interpretation of the evidence, it clearly and strongly bears out that this woman and man knowing well that the lady had already divorced her previous husband have chosen to undergo a marriage as per his admission by way of Anand Karaj ceremony, lived together under a roof, had relationship, catering to each others needs and

desires and begetting the child are in itself exhaustively defining the domains of their relationship to be of a pure and simplicitor that of husband and wife. Now the husband faced with this matrimonial ignominy is trying to shed away his obligation of paying maintenance and trying to hide under the garb of 'not legally wedded wife' which coinage has been rampantly used by him in his pleadings and invariably suggests that he admits their relationship to be of a husband and wife. Though, in the light of reference made by the Hon'ble Supreme Court in **'Chanmuniya v. Virendra Kumar Singh Kushwaha & another'** **2011(1) SCC 141** to a Full Bench of that Court to answer the question whether living together of a man and woman as husband and wife for a considerable period of time would arise presumption of valid marriage between them and whether such a presumption would entitle the woman to maintenance under Section 125 Cr.P.C. But for the time being the rights of the wife and the child cannot be stalled.

Since husband in the present case has on his own forgiven the past of the wife and has accepted her as such for a long period of time till their relationship remained cordial, now cannot be allowed to get out of the same by any means. Since the wife in her testimony as AW1 and so her two witnesses have categorically asserted the quantum of earnings of the husband which remained unrebutted and in view of the escalating trend of rising prices wife needs money for her own upkeep and maintenance, for a roof over her head, a nutritious diet for a

child, his education and upbringing, are matters which impinge the judicial conscience and that such a provision which is for the uplifting of the weaker sex and minor children and is more of a social upliftment cannot be given a burial under such hyper-technicalities of the Court and needs to be liberally construed with wider interpretation. This court holds that in view of the economic status of both the sides and holding that the husband out of his dairy-farming and job as conductor of a bus must be earning around ₹20,000 and it would subserve the ends of justice if the wife is allowed maintenance at the rate of ₹6,000 per month and the minor child at the rate of ₹5,000 per month from the date of filing of the application and the one granted by the Court below is modified to that extent.

In the light of the same, the instant revision is allowed thereby setting aside and modifying the impugned judgment/order. Records be sent back.

**(FATEH DEEP SINGH)**  
**JUDGE**

**July 26, 2016**  
*rps*

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |