

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 471 of 2006**

Smt. Sukhraj W/o Puran Prasad, Aged about 42 years, R/o village Kapsara, PO Bhatgaon, District Surguja (C.G.)

---- Revisioner/Applicant**versus**

Puran Prasad S/o Dhuldhul Ram, Aged about 45 years, R/o village Kapsara, PS Bhatgaon, District Surguja, Chhattisgarh.

---- Respondent/Non-Applicant

For Revisioner/Applicant : Shri Atanu Ghosh, Advocate.

For Respondent/Non-Applicant : Shri Prakash Tiwari, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice**Order on Board****20/01/2017**

1. This criminal revision is directed against the order dated 26.06.2006 passed by the Judge, Family Court, Ambikapur, District Surguja, in Miscellaneous Criminal Case No. 233 of 2005 whereby the petition filed by the Applicant under Section 125 of the Code of Criminal Procedure (for short 'CrPC') for grant of maintenance was dismissed.
2. The main question which arises for consideration in this revision petition is whether a woman who entered into a marriage with a person and which marriage, strictly speaking is not a legal marriage, but they have lived together as husband and wife for a long time, can claim maintenance in terms of Section 125 CrPC or not?
3. Section 125 CrPC reads as follows:

“125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married

or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Provided that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceedings under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation- For the purpose of this Chapter, -

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875); is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowances remaining for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to

the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No Wife shall be entitled to receive an allowance from the maintenance or the interim maintenance and expenses of proceedings, as the case may be from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

4. It is contended on behalf of the Respondent-husband that only a legally wedded wife can claim maintenance and a long standing live-in relationship cannot be given the character and status of marriage and therefore, even if a woman and man may have lived for many years in an illegal relationship of marriage, cannot claim maintenance. Reliance is placed on the judgment of the Apex Court in *Indra Sarma v. V.K.V.Sarma* {AIR 2014 SC 309} as well as the judgment of the learned Single Judge of this Court in *Smt. Sukanya v. Balak Ram* {(2014) 2 CGLJ 611}. Reliance has also been placed on the judgment delivered by me as a part of Division Bench of the High Court of Tripura in *Chandan Debnath v. Suniti Nath* {2014 LawSuit (TR) 13}.
5. On behalf of the Applicant-wife, it is contended that in view of the pronouncement of the Apex Court in *Badshah vs. Urmila Badshah Godse* {(2014) 1 SCC 188} this matter has now been settled beyond doubt that even if a relationship is not strictly legal but can be termed as a marriage then the wife in such a marriage is entitled to claim maintenance under Section 125 CrPC.
6. Before going into the legal aspect, it would be pertinent to give some undisputed facts.

7. The Applicant-wife Sukhraj was first married to one Baijnath. She admittedly lived with him for 2-4 years. According to her, that marriage was dissolved by a customary divorce i.e. "*Chhor-chutti*" but no document of this divorce has been produced. In any event, there is nothing to show that this divorce was a divorce which could be legally granted under the law. Therefore, I shall proceed on the assumption that there was no valid divorce between the Sukhraj and her first husband-Baijnath.

8. The second undisputed fact is that the Respondent-Puran Prasad was earlier married to one Narkalo. According to him, his wife ran away and thereafter, he entered into a relationship with Sukhraj and even according to his own version, he entered into a "*Sagai Vivah*" with Sukhraj. This Sagai Vivah was entered into on 21.04.1986. Here it will be pertinent to mention that the wife has proved on record an affidavit of Puran Prasad who has not denied his signatures on the said affidavit. He has however denied that the said affidavit was properly attested or witnessed. Puran Prasad has admitted in his testimony that he has signed the document after it was typed. Therefore, even if this document is not treated as an affidavit, it can be treated as an admission on his part. Here, it would be pertinent to refer the contents of the affidavit in detail. After the opening portion, Puran Prasad states on oath that about 6-7 years earlier, he was married to one Narkalo. In the second paragraph, he states that about 2 years earlier, Narkalo had left him and there was "*Chor Chutti*" i.e. separation between two of them and he has no relationship with Narkalo. In para 3 he states that from that about 4 months prior to 21.04.1986, he had married Sukhraj and has kept her as his wife and she is residing with him in his village Kapsara. In para 4, he states on oath that he has entered into this marriage without any pressure from any side and of his own free will. He also states that he has done so with the consent of his parents. He further states that in case he ends this relationship, then Sukhraj would be entitled to half share in his property. He further state that if there is any violation of any law while

performing the marriage, then also he will keep Sukhrajji happy and will not give her any cause to complain.

9. Men may lie, but documents do not. This document was executed in the year 1986. It is true as urged by Shri Tiwari, learned counsel for the Respondent-husband that the marriage of Sukhrajji had not ended in a legal decree of divorce. It is also equally true that the earlier marriage of the husband Puran Prasad had also not ended in a legal decree of divorce. But it is also proved that both Sukhrajji and Puran Prasad entered into a fresh relationship which they termed as marriage and lived in this relationship for 19 long years.
10. The question that arises is whether having signed this affidavit, having given a clear cut undertaking to Sukhrajji that he would always treat her as wife, when the time comes for paying maintenance, the husband can be permitted to resile from the statement and claim that because there was no legal marriage between the two, Sukhrajji is not entitled to claim maintenance.
11. In this behalf, reference may be made to the judgment of the Apex Court in *Indra Sarma* (supra). At the outset, it may be mentioned that in this case, it was not Section 125 CrPC which was under consideration but Section 2(f) and 5 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter called 'the DV Act') which was under consideration. Therefore, to this extent, this judgment does not deal with the provisions of Section 125 CrPC. The Apex Court, while dealing with the concept of marriages in India, held as follows:

“23. Marriage is often described as one of the basic civil rights of man/woman, which is voluntarily undertaken by the parties in public in a formal way, and once concluded, recognizes the parties as husband and wife. Three elements of common law marriage are (1) agreement to be married (2) living together as husband and wife, (3) holding out to the public that they are married. Sharing a common household and duty to live together form part of the ‘Consortium Omnis Vitae’ which obliges spouses to live together, afford each other reasonable marital privileges and rights and be honest

and faithful to each other. One of the most important invariable consequences of marriage is the reciprocal support and the responsibility of maintenance of the common household, jointly and severally. Marriage as an institution has great legal significance and various obligations and duties flow out of marital relationship, as per law, in the matter of inheritance of property, successionship, etc. Marriage, therefore, involves legal requirements of formality, publicity, exclusivity and all the legal consequences flow out of that relationship.

24. Marriages in India take place either following the personal Law of the Religion to which a party is belonged or following the provisions of the Special Marriage Act. Marriage, as per the Common Law, constitutes a contract between a man and a woman, in which the parties undertake to live together and support each other. Marriage, as a concept, is also nationally and internationally recognized. O'Regan, J., in *Dawood and Another v. Minister of Home Affairs and Others* 2000 (3) SA 936 (CC) noted as follows:

“Marriage and the family are social institutions of vital importance. Entering into and sustaining a marriage is a matter of intense private significance to the parties to that marriage for they make a promise to one another to establish and maintain an intimate relationship for the rest of their lives which they acknowledge obliges them to support one another, to live together and to be faithful to one another. Such relationships are of profound significance to the individuals concerned. But such relationships have more than personal significance at least in part because human beings are social beings whose humanity is expressed through their relationships with others. Entering into marriage therefore is to enter into a relationship that has public significance as well.

The institutions of marriage and the family are important social institutions that provide for the security, support and companionship of members of our society and bear an important role in the rearing of children. The celebration of a marriage gives rise to moral and legal obligations, particularly the reciprocal duty of support placed upon spouses and their joint responsibility for supporting and raising children born of the marriage. These legal obligations perform an important social function. This importance is symbolically acknowledged in part by the fact that marriage is celebrated generally in a public ceremony, often before family and close friends....”

Furthermore, the learned Court with respect to the DV Act held as follows:

33. Modern Indian society through the DV Act recognizes in reality, various other forms of familial relations, shedding the

idea that such relationship can only be through some acceptable modes hitherto understood. Section 2(f), as already indicated, deals with a relationship between two persons (of the opposite sex) who live or have lived together in a shared household when they are related by:

- (a) Consanguinity
- (b) Marriage
- (c) Through a relationship in the nature of marriage
- (d) Adoption
- (e) Family members living together as joint family.

34. The definition clause mentions only five categories of relationships which exhausts itself since the expression “means”, has been used. When a definition clause is defined to “mean” such and such, the definition is prima facie restrictive and exhaustive. Section 2(f) has not used the expression “include” so as to make the definition exhaustive. It is in that context we have to examine the meaning of the expression “relationship in the nature of marriage”.

35. We have already dealt with what is “marriage”, “marital relationship” and “marital obligations”. Let us now examine the meaning and scope of the expression “relationship in the nature of marriage” which falls within the definition of Section 2(f) of the DV Act. Our concern in this case is of the third enumerated category that is “relationship in the nature of marriage” which means a relationship which has some inherent or essential characteristics of a marriage though not a marriage legally recognized, and, hence, a comparison of both will have to be resorted, to determine whether the relationship in a given case constitutes the characteristics of a regular marriage.

36. Distinction between the relationship in the nature of marriage and marital relationship has to be noted first. Relationship of marriage continues, notwithstanding the fact that there are differences of opinions, marital unrest etc., even if they are not sharing a shared household, being based on law. But live-in-relationship is purely an arrangement between the parties unlike, a legal marriage. Once a party to a live-in-relationship determines that he/she does not wish to live in such a relationship, that relationship comes to an end. Further, in a relationship in the nature of marriage, the party asserting the existence of the relationship, at any stage or at any point of time, must positively prove the existence of the identifying characteristics of that relationship, since the legislature has used the expression “in the nature of”.

12. Therefore, the Apex Court itself was making a distinction between "a relationship in the nature of marriage" and "marriage". It was not dealing with the meaning to be given to the word wife under Section 125 CrPC. The

Apex Court thereafter, dealing with Section 125 CrPC held as follows:

53. Section 125 Cr.P.C., of course, provides for maintenance of a destitute wife and Section 498A IPC is related to mental cruelty inflicted on women by her husband and in-laws. Section 304-B IPC deals with the cases relating to dowry death. The Dowry Prohibition Act, 1961 was enacted to deal with the cases of dowry demands by the husband and family members. The Hindu Adoptions and Maintenance Act, 1956 provides for grant of maintenance to a legally wedded Hindu wife, and also deals with rules for adoption. The Hindu Marriage Act, 1955 refers to the provisions dealing with solemnization of marriage also deals with the provisions for divorce. For the first time, through, the DV Act, the Parliament has recognized a “relationship in the nature of marriage” and not a live-in relationship simplicitor.

13. The Apex Court in para 53 has itself mentioned that the DV Act for the first time has recognized a relationship in the nature of marriage and not a live in relationship simplicitor. After discussing all these aspects dealing with the status of the Applicant, the Apex Court held as follows:

56. Appellant, admittedly, entered into a live-inrelationship with the respondent knowing that he was married person, with wife and two children, hence, the generic proposition laid down by the Privy Council in *Andrahenedige Dinohamy v. Wiketunge Liyanapatabendage Balshamy*, AIR 1927 PC 185, that where a man and a woman are proved to have lived together as husband and wife, the law presumes that they are living together in consequence of a valid marriage will not apply and, hence, the relationship between the appellant and the respondent was not a relationship in the nature of a marriage, and the status of the appellant was that of a concubine. A concubine cannot maintain a relationship in the nature of marriage because such a relationship will not have exclusivity and will not be monogamous in character. Reference may also be made to the judgments of this Court in *Badri Prasad v. Director of Consolidation* 1978 (3) SCC 527 and *Tulsa v. Durghatiya* 2008 (4) SCC 520. In *Gokal Chand v. Parvin Kumari* AIR 1952 SC 231 this Court held that the continuous cohabitation of man and woman as husband and wife may raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is a rebuttable one and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them. Polygamy, that is a relationship or practice of having more than one wife or husband at the same time, or a relationship by way of a bigamous marriage that is marrying some onewhile already married to another and/or maintaining an adulterous relationship that is having voluntary sexual

intercourse between a married person who is not one's husband or wife, cannot be said to be a relationship in the nature of marriage.

57. We may note, in the instant case, there is no necessity to rebut the presumption, since the appellant was aware that the respondent was a married person even before the commencement of their relationship, hence the status of the appellant is that of a concubine or a mistress, who cannot enter into relationship in the nature of a marriage. Long standing relationship as a concubine, though not a relationship in the nature of a marriage, of course, may at times, deserves protection because that woman might not be financially independent, but we are afraid that DV Act does not take care of such relationships which may perhaps call for an amendment of the definition of Section 2(f) of the DV Act, which is restrictive and exhaustive.

14. The judgment in Indra Sarma (*supra*) has to be read mainly in the context of DV Act which in addition to the maintenance grants a lot of other rights to the woman. It give right of residence, it gives right to claim custody of the child, it gives right in the property. The ambit and scope of DV Act is much wider than the scope of Section 125 CrPC which only provides for maintenance and nothing else. Therefore, in my opinion, while dealing with the DV Act, though a more stricter interpretation to the word marriage and wife may be called for, live in relationship in the nature of marriage but the term 'wife' will have to be given a more broader and purposive interpretation especially in view of the judgment of the Apex Court in *Badshah (supra)* wherein the Apex Court has held as follows:

13.3 *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. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the 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.

14. 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” (*Keynote address on “Legal Education in Social Context” delivered at National Law University, Jodhpur on October 12, 2005*).

15. 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.

16. 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 purposes of the law.

17. Cardozo acknowledges in his classic (*Benjamin N. Cardozo: 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 nonetheless

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 lectures (*John Chipman Gray: The Nature and Sources of the Law*):

"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." "

18. The court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise 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 CrPC, to fulfill its constitutional duty in good faith, had always intended to give relief to the woman becoming "wife" under such circumstances. This approach is particularly needed while deciding the issues relating to gender justice. We already have examples of exemplary efforts in this regard. Journey from *Shah Bano* (*Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556) to *Shabana Bano* (*Shabana Bano v. Imran Khan*, (2010) 1 SCC 666) guaranteeing maintenance rights to Muslim women is a classical example.

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 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 CrPC, such a woman is to be treated as the legally wedded wife."

15. In the case before the Apex Court, the husband had duped the wife in entering into a relationship with him which she believed was a relationship of marriage even though the husband had not divorced his earlier wife. The Apex Court held that since the husband was at fault, he cannot take benefit

of his own fault and deny maintenance. Reliance has also been placed on the judgment delivered by me as Chief Justice of Tripura High Court in *Chandan Debnath* (supra) wherein it was held as follows:

“19. If two adults decide to live together and cohabit with each other without formalising their relationship under the personal laws applicable to them or the Special Marriage Act, then they cannot fall back on the personal or other marriage laws to claim alimony or maintenance from each other under the person laws. If there is right to get such relief under any other law they can do so. The Appellant having entered into a relationship not in accordance with the Hindu Marriage Act, cannot in our view now claim that his marriage should be dissolved in accordance with the Hindu Marriage Act and he be granted alimony.”

16. Reliance has also been placed on the judgment authored by me in *Nitai Debnath v. State of Tripura* {2014 LawSuit (TR) 294}. In my view, this judgment does not help the Respondent-husband. In fact, in para 5, I had clearly held that even if the marriage is not proved but it is established that the man and woman were living like husband and wife then the man will be liable to provide maintenance to the lady.

17. In *Badshah* (supra), the Apex Court in no uncertain terms while dealing with the provisions of Section 125 CrPC has held that the word 'wife' has to be interpreted liberally. The present is not a case of only a live in relationship. It is much beyond a live in relationship. The husband even in his statement in the Court has stated that he entered into a “*Sagai Vivah*” with the wife. This may not be a marriage falling within the purview of the Hindu Marriage Act. It may not be strictly legal but when we read the statement of the husband made in the Court as well as his affidavit which I have adverted to above, there is no manner of doubt that Puran Prasad invited Sukhraj to live with him as his wife. No lady would have entered into this relationship if she had known that she would not be treated as the wife. A person cannot approbate and reprobate at the same time. The husband having taken advantage of this relationship for almost two decades, having had sex with the woman for two decades, having used the woman for two decades, cannot now be permitted to turn around and say that she is not his legally wedded wife and

he is not liable to pay the maintenance. Such interpretation would be totally against the law laid down in *Badshah (supra)*.

18. We live in a country where unfortunately women though they may be worshiped as Goddess in the temple are treated as chattel in home. Women like Sukhrajji are not educated. They are not aware of the niceties of law. In such a situation, the Courts must interpret the laws in such a manner that destitute women do not become vagabonds.

19. As far as reliance placed on the judgment of the learned Single Judge of this Court is concerned, all I can say is that the judgment is *per incurium* and that judgment is in relation to the DV Act and that judgment has not taken into consideration the law laid down by the Apex Court in *Badshah (supra)*.

20. In view of the above discussion, I am clearly of the view that though the marriage between Puran Prasad and Sukhrajji strictly speaking may not be a legal in terms of Hindu Marriage Act but for the purpose of Section 125 CrPC, Sukhrajji would be treated as the wife of Puran Prasad. The Privy Council, as far back as 1927, in *Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy* {AIR 1927 PC 185} held that where a man and woman lived together and act as husband and wife in front of the society, the law presumes that they are living together in consequence of a valid marriage. The law must always raise a presumption of legitimacy. It is true that in this case no children were born out of this marriage, but if children had been born, would this Court give such an interpretation that the children born out of such a relationship are illegitimate. I am clearly of the view that giving such interpretation would fall foul of all canons of judicial interpretation because if this interpretation given by the Respondent-husband is accepted that only if the marriage is strictly legal, then only the wife would be entitled to maintenance, it would mean that if children are born out of such relationship, they are illegitimate and would not be entitled to many rights. Therefore, the interpretation has to be given in a manner

which furthers the cause of justice in society.

21. It is true that if a woman with open eyes enters into a live in relationship with any another man knowing fully well that there is no relationship of marriage, knowing fully well that there could be no marriage, then she may not be entitled to claim maintenance. Here, facts are slightly different. Both Puran Prasad and Sukhrajji were previously married. Both had entered into a customary divorce of "*Chhor-Chutti*". True it is that this divorce may not be strictly legal but this is what both of them accepted to be correct and on the basis of this "*Chhor-Chutti*" they entered into a relationship which they both of them clearly understood to be a relationship of marriage. Therefore, I have no hesitation in holding that the Applicant-wife is entitled to maintenance.

22. Next comes the question whether the Applicant-wife had a reasonable cause to stay away from her matrimonial home. It is admitted case that since child was not born out of this relationship, the husband has now entered into a third relationship with another woman, namely Sonkalia and out of that relationship, a child has been born. The husband still has the temerity and audacity to argue before this Court, that he is entitled to have three different relationship so that he can beget a child but when it comes to performing his part of the duty, he takes shelter behind the technicalities of law that his wife is not a legally wedded wife. Because the husband has now got another women in his house, the Applicant-wife is justified in living separately.

23. Now comes the question as what amount should be fixed as maintenance. The learned Trial Court has come to the conclusion that the husband was earning Rs. 6169/- per month at the time when the application under Section 125 CrPC was filed. Now, the income may have increased manifolds. Therefore, I asses the maintenance payable to the Applicant-wife at Rs. 1500/- per month. I am assessing the maintenance on the lower side keeping in view the fact that the Respondent-Puran Prasad has another

wife and child to maintain and I do hope that he would not claim that this third lady is not his wife and that child is not his child. The amount of maintenance shall be payable from the date of filing of the application under Section 125 of CrPC. However it may not be possible for the husband to pay all the arrears together. Therefore, the husband shall with effect from the month of February pay a sum of Rs. 3,000/- each month till all entire arrears are paid off. Thereafter, he shall pay Rs.1,500/- per month as maintenance to the wife.

24. Learned counsel for the wife is directed to supply bank account number of the Applicant-wife to learned counsel for the Respondent-husband within two weeks from today so that the husband on or before 15th of each month can deposit the amount in the account of the wife directly so that there is no dispute with regard to the amount paid.

25. With these observations, the revision petition is allowed and disposed of.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE