

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

CRR(F) No. 281 of 2015(O&M)

Date of decision: 7.3.2017

Asha Rani

....Petitioner

VERSUS

Sandeep Kumar

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Malkeet Singh, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition directs challenge against order dated 14.09.2015 passed by the Family Court, S.B.S. Nagar whereby application filed by the petitioner under Section 125 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') for grant of maintenance has been dismissed.

The petitioner claimed maintenance on the premise that her marriage with the respondent was solemnized on 29.10.2006 in village Chak Mai Dass according to Sikh religious rites and ceremonies. However, no child was born out of the wedlock. She was physically and mentally mal-treated, tortured and mercilessly beaten by the respondent as respondent and his parents were not satisfied with dowry given in the marriage. She was turned out of the matrimonial house on different occasions but finally she was thrown out of the matrimonial house after giving severe beatings on 15.09.2008 and since then she is residing in village Chak Mai Dass and dependent upon her father for her livelihood

and maintenance as she is unable to maintain herself due to her poor financial condition.

Respondent left India about a year and half prior to filing of the petition and he is working in Dubai in a multinational company on contract basis, earning Rs.50,000/- per month. She has claimed maintenance at the rate of Rs.5,000/- per month.

The respondent-husband controverted all the allegations with the plea that the petitioner herself left the matrimonial home and is not ready to join the matrimonial home. He is a labourer and is unable to perform labour work because of litigation. He has been living in India and has been summoned in a complaint case under Sections 406 and 498-A of the Indian Penal Code, 1860 (in short 'IPC'). The petitioner is well trained in nursing and is doing the job.

Taking into consideration evidence adduced by the parties and the rival submissions made by their respective counsel, the trial Court declined claim of the petitioner with the findings that as the petitioner was earlier married and her marriage with her previous husband had not been dissolved in accordance with law, the second marriage being void cannot create a legal status of husband-wife between the parties, therefore, the petitioner cannot claim maintenance by invoking the provisions of Section 125 Cr.P.C. In para 14 of the judgment, the Court has noticed certain material facts elicited in cross examination of the petitioner admitting the fact of earlier marriage. A relevant extract therefrom, reads as follows:-

"....The petitioner Asha Rani has admitted that her marriage with the respondent is her second marriage and her earlier marriage ended in compromise and divorce. She further stated that her first marriage was

ended by compromise effected in Panchayat and divorce was not obtained from any Court. She further admitted that she cannot produce said Panchayati Divorce nor she is in possession of said writing of Panchayati Divorce. She has further admitted that she cannot produce the Panchayati Divorce of any of her relatives or Spindas and all the witnesses of said Panchayati Divorce had died. She further admitted that one of the witnesses of said Panchayati Divorce is Teja Ram, Sarpanch of her village and Som Nath, who is also alive but she failed to examine any of the witnesses regarding the Panchayati Divorce, if any prevalent in their custom. She even failed to bring on record any Panchayati Divorce deed vide which divorce was granted by the Panchayat."

Counsel for the petitioner has not disputed factual findings recorded by the Court below extracted hereinbefore. However, it has been vehemently argued that even if the petitioner was earlier married and her marriage with her previous husband had not been dissolved by a decree of divorce granted by a court of law, the very fact that the petitioner and respondent performed marriage and they remained residing together as husband and wife till the petitioner was turned out of the matrimonial house on 15.09.2008, she is still entitled to get maintenance under Section 125 Cr.P.C. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court of India Chanmuniya Vs. Virendra Kumar Singh Kushwaha and another, 2010 (4) RCR (Criminal) 704, Badshah Vs. Sou. Urmila Badshah Godse and another, 2013 (4) RCR (Criminal) 764. Further reference has been made to judgment of the Karnataka High Court Meharunnisa Vs. Syed Habeeb, 2015(3) RCR (Criminal) 449.

I have heard counsel for the petitioner, perused the paper-book and records of the trial Court.

Taking into consideration the facts brought-forth during cross examination of the petitioner, it becomes undisputed position of the case that prior to marriage of the petitioner with respondent, she has performed marriage but the petitioner has failed to prove that the said marriage was dissolved under any custom prevalent in her society when admittedly there is no decree of divorce passed by a Court of law. The trial Court by taking into consideration the provisions of Section 5 of the Hindu Marriage Act, 1955 (in short 'HMA Act') more specifically Section 5 (i) has held that as the petitioner had a living spouse at the time of performance of marriage with the respondent, marriage of the petitioner with respondent is a nullity and *void ab initio* even though it has not been so declared under Section 11 of the HMA Act.

As has been noticed hereinbefore, counsel for the petitioner has not challenged the factual findings recorded by the trial Court. The question that calls for determination is whether in the circumstances of the present case, the petitioner can claim maintenance by taking advantage of the fact that the petitioner and respondent had been residing together as husband and wife after her alleged marriage in October 2006 till she left the matrimonial home in September 2008 or she is entitled to get maintenance on the analogy that a women in live-in relationship is also entitled to get maintenance under Section 125 Cr.P.C.

In **Chanmuniya's case** (supra), a Bench consisting of two Hon'ble Judges of the Supreme Court by taking into consideration various judgments of the Apex Court referred to in para 12 to 31 has referred the following, amongst other questions to be decided by a Larger Bench.:-

“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 Criminal Procedure Code?

2. Whether strict proof of marriage is essential for a claim of maintenance under Section 125 Criminal Procedure Code having regard to the provisions of Domestic Violence Act, 2005?

3. Whether a marriage performed according to 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 Criminal Procedure Code?”

However, in **Savitaben Somabhat Bhatiya Vs. State of Gujarat and others, 2005(2) RCR (Criminal) 190** referred to in para 31 of the judgment, it was held that however desirable it may be to take note of plight of an unfortunate woman, who unwittingly enters into wedlock with a married man, there is no scope to include a woman not lawfully married within the expression of 'wife'. The Bench further held that this inadequacy in law can be amended only by the Legislature. While coming to the aforesaid findings, the learned Judges relied on decision of the Court in **Yamunabai Anantrao Adhav and another Vs. Anantrao Shivram Adhav and another, 1988 (1) RCR (Criminal) 322**, wherein it was held that an attempt to exclude altogether personal law of the parties in proceedings under Section 125 Cr.P.C. is improper. The expression 'wife' in Section 125 of the Code should be interpreted to mean only a legally wedded wife.

When the facts and circumstances of the present case are examined in the light of settled ratio as it exists on date, it is difficult to

accept contention of the petitioner that she is entitled to get maintenance from the respondent though her marriage with respondent is not a legal marriage rather the same is *void ab initio*. Under these circumstances, the petitioner cannot derive any advantage to his contentions from what has been held by the Karnataka High Court in **Meharunnisa's case** (supra).

For the foregoing reasons, the petition fails and is accordingly dismissed in *limine*.

MARCH 7, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no