

In the High Court of Punjab and Haryana at Chandigarh.

CMM -54 of 2017

In

FAO-M-213 of 2016

Date of Decision : 12.1. 2018

Harvinder Kaur @ Arvinder Kaur

.....*Applicant/Appellant*

Versus

Gurdeep Singh

.....*Respondent*

CORAM: Hon'ble Mr. Justice M.M.S.Bedi
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : None for the Applicant/Appellant.
Mr. Navin Saini, Advocate, Counsel for the Respondent.

Gurvinder Singh Gill J.

1. The applicant/appellant, by way of this application filed under section 24 of Hindu Marriage Act 1955 (hereinafter referred to as 'the Act'), seeks maintenance *pendente-lite* to the tune of ₹ 15000/- per month, averring therein that she is residing with her widowed mother, having no source of income whereas her husband/respondent is an able bodied person earning more than ₹ 25,000/- per month from business of ready-made garments.
2. The respondent, in his reply has taken a stand that the applicant admittedly was married with one Sukhvinder Singh in the year 1992 and had married the respondent in the year 2006 by concealing the said fact, without getting

divorce from her previous husband and in these circumstances the second marriage of the applicant to respondent cannot be said to be valid marriage as has been rightly held by the learned lower Court declaring the marriage as null and void, and thus the applicant is not entitled to any maintenance.

3. We have heard the submissions addressed before this Court.
4. The main contention of the respondent/husband is that the applicant cannot invoke provisions of section 24 of Hindu Marriage Act seeking maintenance *pendente-lite* in the absence of relationship of husband and wife between the parties as the marriage between the parties had been declared null and void in view of provisions of section 5(1) of the Act. The learned counsel for respondent husband has placed reliance upon a number of judgments to support his aforesaid contention.
5. Before proceeding to examine contentions and the judgments cited by learned counsel for respondent, it needs to be borne in mind that the provisions of section 125 Cr.P.C., which also provide for grant of maintenance, are rather stringent inasmuch the construction of the section lays down that it is the “legally wedded wife” who can claim maintenance. The scope of section 125 Cr.P.C. has, however, been widened by various pronouncements of Hon'ble the Supreme Court so as to give the words “legally wedded wife” a liberal interpretation. Under the provisions of section 24 of Hindu Marriage Act 1955, the words used therein are that a “wife or husband” during pendency of “any proceedings under the Act” can seek maintenance. Section 24 of Hindu Marriage Act 1955 reads as follows:

“24. *Maintenance pendente lite and expenses of proceedings.*

- Where in any proceeding under this Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.

xxx xxx xxx”

6. The present application under section 24 of the Act has been filed during the pendency of the appeal filed by the applicant/appellant challenging the judgment and decree dated 8.4.2016 passed by learned Additional District Judge, SAS Nagar, Mohali, whereby while accepting a petition filed by respondent husband under section 11 of the Act, the marriage of the parties has been declared as null and void. The impugned judgment has not attained finality. The present appeal is in continuation of the proceedings initiated before the lower court and the appeal is in the nature of a statutory appeal provided under section 28 of the Act. Thus, the appeal would fall within the ambit of “any proceedings” as mentioned in section 24 of the Act so as to vest the applicant with a right to move an application seeking maintenance *pendente-lite*.
7. It will also not be out of place to mention that though the husband in his petition under section 11 of the Act averred that it was in the year 2014 that

he came to know about the previous marriage of the applicant, the applicant/wife in her written statement filed before the lower Court controverted the said stand by stating therein that her marriage had been dissolved by Panchayat in the year 2001 which was in knowledge of the respondent/husband and the husband infact in a suit for injunction filed in the year 2011 had himself mentioned about the factum of earlier marriage of applicant thus contradicting his stand that it was in 2014 that he came to know about said fact. In these circumstances the principal of estoppel will be attracted as the husband having taken advantage of this relationship even after coming to know about alleged earlier marriage cannot now be permitted to turn around and say that he is not liable to pay the maintenance as she is not his legally wedded wife.

8. Coming to the judgments which have been cited by the learned counsel for the respondent, the following cited judgments need not be discussed in detail as in none of these judgments, the question of awarding maintenance has been discussed and it is mainly the question of marriage being void under section 5 of Hindu Marriage Act 1955 which has been dealt with:

- (1) 2011(3) RCR(CrI.) 674 (SC) A. Subash Babu vs. State of A.P.
- (2) 2009(4)RCR(Civil)749 (P & H) Mohan Lal Sharma vs. Parveen
- (3) 2015(5)RCR(Civil)510 (P & H) Manpreet Kaur vs. Balkar Singh
- (4) 2016 (4) PLR 392 (P & H) Sukhbir Singh vs. Mandeep Kaur
- (5) 2017(2)RCR(Civil)387 (P & H) Narinder Singh vs. Harjinder Kaur

9. Learned counsel for the respondent also placed reliance on two other judgments of the Hon'ble Supreme Court i.e. 1988(1)RCR 322 (SC) Yamunbai

Anantrao vs. Anantrao Shivram and 2005(2) R.C.R.(Criminal) 190 Savitaben Somabai Bhatiya v. State of Gujarat & Ors., wherein the Hon'ble Supreme Court has been pleased to lay down that the scope of Section 125 Criminal Procedure Code cannot be enlarged to include woman not lawfully married.

10. Upon considering aforesaid contention, we find that aforesaid two judgments have been discussed in subsequent case reported as 2014(1) SCC 188 Badshah v. Sou. Urmila Badshah Godse (SC) wherein husband had contracted second marriage and plea of void marriage had been raised to oppose grant of maintenance, but the said contention was repelled and order awarding maintenance to wife u/s 125 Cr.P.C. was upheld.
11. Another judgement cited by learned counsel i.e 1988(1) RCR(Crl) 304(SC) Bakulabai vs. Ganga Ram is also based on Yamunbai Anantrao's case(supra). In view of subsequent judgment in Badshah's case(supra), where grant of maintenance was upheld, the applicant can not draw any advantage from cited judgment.
12. Though the learned counsel for applicant relied upon a judgment of High Court of Bombay reported as 2004(2) RCR(Civil) 268 Bhausaheb vs. Leelabai wherein it was held that section 25 of Hindu Marriage Act 1955 regarding grant of permanent alimony is not attracted in case of "illegitimate wife" whose marriage has been declared null and void but in a subsequent judgment, the position of law has been settled to the contrary by Hon'ble Supreme Court in 2005(2) SCC 33 Ramesh Chandra Rampratapji Daga v.

Rameshwari Ramesh Chandra Daga, In the said case, despite the fact that wife had remarried without divorce from previous husband and her second marriage had been declared null and void by decree of divorce by Court, it was held that Court is competent to grant maintenance under Section 25 of the Act.

13. Learned counsel for the respondent while relying on a judgment of this Court in Navdeep Kaur v. Dilraj Singh, 2003(1) R.C.R.(Civil) 365, vehemently submitted that the husband or the wife is entitled to maintenance only if there exists relationship of husband or wife and the expression used in section 24 viz., 'husband and wife' means the legally wedded husband or wife.
14. We have perused the above cited judgment. In the said case, the plea of the wife that her first marriage had been dissolved by custom did not find favour. Even the first marriage of husband was subsisting at the time of second marriage and consequently the dismissal of application for grant of maintenance was upheld. However, in a subsequent case 2009(4) RCR(Civil) 320 Gurmit Kaur Vs. Buta Singh where the aforesaid judgment in Navdeep Kaur's case(supra) was sought to be relied upon, this Court did not follow the same while relying upon Rameshchandra Daga's case(supra). Even in 2016(4) RCR(Civil)728 Kirti Khanna Vs. Deepak Verma, this Court did not rely upon Navdeep Kaur's case(supra) by distinguishing it on facts.
15. Hon'ble the Supreme Court in Badshah's case(supra) has dealt in detail the issue of grant of maintenance in terms of provisions of section 125 of Cr.P.C., to a wife, even though not legally wedded wife, and while referring to earlier judgments on the matter in issue held as follows:

“14. *Of late, in this very direction, it is emphasised 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"]

15. *The 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 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....”

16. Hon'ble the Supreme Court, thus, held that purposive interpretation needs to be given to the provisions of Section 125 Cr.P.C., the purpose being to achieve "social justice", which is the constitutional vision, enshrined in the Preamble, especially while dealing with the application of destitute wife or hapless children or parents. It was held therein that wife, even though not legally wedded, was entitled to grant of maintenance in terms of section 125 of Cr.P.C.
17. The scope of grant of maintenance in terms of provisions of section 125 Cr.P.C., as per language of the section, when compared with provisions of sections 24 of Hindu Marriage Act 1955, is rather narrower inasmuch as while in the former it is the “legally wedded wife” who is entitled to maintenance, under provisions of latter the import is that “in any proceedings under this Act” the “wife” may be awarded maintenance. Thus, if under stricter provisions of 125 Cr.P.C, Hon'ble the Supreme Court in Badshah's case(supra) has held the wife to be entitled to maintenance even where prima-facie the marriage was not valid, then under similar circumstances there would be no justification in denying maintenance under provisions of section 24 of Hindu Marriage Act 1955 to wife in similar circumstances. Navdeep Kaur's case (supra) would not hold good in view of the shift in approach of

the Courts towards a liberal interpretation of provisions meant for achieving the object of social justice, as is apparent from judgment in Badshah's case (supra).

18. In view of discussion made above, there can possibly be no doubt that the applicant is entitled to be maintained by her husband during the pendency of the present proceedings especially since the impugned judgment declaring the marriage of the parties as null and void has not attained finality.
19. While the applicant asserts that the income of the respondent is ₹ 25,000/- per month, the respondent while denying the same in his reply has stated therein that he is working as security guard at Security and Personal Service Private Limited, Manimajra, and is earning ₹ 17,332/- per month. Though during the course of arguments the learned counsel for respondent submitted that the applicant/wife is also earning by working as a sweeper but no document or evidence indicating her employment has been placed on record. In any case even if it is presumed that the applicant is compelled to work as a sweeper or to do some menial jobs to sustain herself, the same would not deprive her of her right to seek maintenance in terms of section 24 of the Act. In view of the admitted income of the respondent, the applicant/wife is held entitled to maintenance *pendente-lite* at the rate of ₹5000/- per month. Consequently the application under section 24 of the Act is allowed and a sum of ₹ 5000/- per month is ordered to be paid as maintenance *pendente-lite* to the appellant wife with effect from the date of application. A sum of ₹ 10,000/- is assessed as litigation expenses.

20. The matter is adjourned to 30.4.2018 for payment of entire arrears of maintenance *pendente-lite* and the balance of litigation expenses.
21. Nothing stated above shall be taken to be an expression of any opinion on the merits of the main case.

(M.M.S. Bedi)
Judge

(Gurvinder Singh Gill)
Judge

January 12, 2018

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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No