

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.364 of 2019**

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Sujit Kumar son of Ram Pravesh Singh, Resident of Village- Lekha Vidha,
P.S.-Arwal Samanpura, District-Arwal, at present Electric Junior Engineer,
Bariarpur Section, Mohalla- Bariarpur, P.S. -Bariarpur, District- Munger.
... .. Opposite party-Petitioner

Versus

Guriya Kumari wife of Sujit Kumar, Resident of Village-Lekha Vidha, P.S.
Arwal Samanpura, P.S.Bariarpur, District-Arwal, at present village- Saidpur,
P.S. Pandarak, District- Patna.

... .. Petitioner/Respondent

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Appearance :

For the Appellant/s : Mr.Madan Jeet Kumar, Advocate
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 04-07-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for quashing the order dated 12.02.2019 passed in Maintenance Case No.28 of 2017 by the learned Principal Judge, Family Court, Munger whereby while allowing the application filed under Section 125 of the Code of Criminal Procedure (for short 'Cr.P.C.'), he be directed the petitioner to pay Rs.5,000/- per month from the date of filing of the petition as interim maintenance and Rs.500/- per day as litigation cost to the respondent.

3. Learned counsel for the petitioner submitted that the order impugned passed by the court below is erroneous both on law and facts. The petitioner has never ever married the respondent. The respondent was already married with one Satish Singh in the year 2003 and was not divorced by her husband. He



has been married to one Pushpa Kumari on 15.07.2016 and is living peacefully with her as husband and wife. He submitted that without ascertaining the fact whether there is any relationship between the petitioner and the respondent, the court below has allowed the application filed by the respondent under Section 125 of the Cr.P.C., which is not sustainable in law.

4. Having heard learned counsel for the petitioner and perused the materials on record, I find that in her application under Section 125 of the Cr.P.C., the respondent has stated that she had fallen in love with the petitioner in the year 2011 and with consent of her family members she had married the petitioner on 13.06.2016 whereafter they started living at Jamalpur in the house of one Ratan Mandal. Since the parents of the petitioner expected dowry in marriage of their son, a demand of rupees fifteen lacs made by them could not be fulfilled by her father whereafter under the pressure of his parents, the petitioner married another lady namely, Pushpa Kumari, daughter of one Arun Kumar Singh of village Tendua, P.S.-Obra, District- Aurangabad after taking rupees fifteen lacs in dowry. When the respondent came to know about the subsequent marriage of the petitioner, she informed to the Officer-in-charge of the Mahila Police Station, Munger pursuant



to which Mahila P.S. Case No.02 of 2017 was registered under Sections 498-A and 494 read with 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act against the petitioner and his relatives.

5. The respondent further claimed in her application that she has no source of income whereas her husband is a Junior Engineer. His salary is Rs.50,000/- per month.

6. On the basis of the said assertion, the respondent had claimed Rs.15,000/- per month as interim maintenance allowance and Rs.5,000/- as litigation cost.

7. As noted above, the petitioner denied that he was ever married to the respondent.

8. On query, learned counsel for the petitioner admitted that in the police case instituted by the respondent, upon completion of investigation, the investigating officer has submitted charge-sheet against the petitioner in Mahila P.S. Case No.02 of 2017 finding the case to be true against him.

9. However, he has contended that in course of investigation, the police recorded statements under Section 161(3) of the Cr.P.C. of the family members of the respondent only. According to him, the investigation into the police case



was perfunctory.

10. Be that as it may, in the instant case, the legality of investigation conducted by the police in the case lodged by the respondent against the petitioner is not in question.

11. It is well settled position in law that strict proof of marriage is not necessary for claiming maintenance under Section 125 of the Cr.P.C..

12. In **Dwarika Prasad Satpathy vs. Bidyut Prava Dixit and another** since reported in **AIR 1999 SC 3348**, the Supreme Court held that no strict proof of performance of marriage is required if the claimant prima facie satisfied the court that claimant and her husband lived as husband and wife. The court further observed that the standard of proof of marriage is not as strict as required in trial of offences under Section 494 of the Indian Penal Code. If the claimant in a proceeding under Section 125(1) of the Cr.P.C. 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.

13. A similar observation was made by the



Supreme Court in **Sethurathinam Pillai vs. Barbara @ Dolly** since reported in (1971) 3 SCC 923, wherein it observed that maintenance under Section 125(1) of the Cr.P.C. cannot be denied where there was some evidence on which conclusion for grant of maintenance could be reached.

14. In **Chanmuniya vs. Virendra Kumar Singh Kushwaha** since reported in (2011) 1 SCC 141 the Supreme Court observed as under:-

"A broad and expansive interpretation should be given to term "wife" to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period time, and strict proof of marriage should not be a precondition for maintenance under Section 125 CrPC, so as to fulfill the true spirit and essence of the beneficial provision of maintenance under Section 125."

15. Thus, strict proof of marriage at the stage of awarding maintenance to the respondent was not required. The court below was satisfied with the evidence adduced by the respondent regarding the marriage between the parties. The same cannot be held to be bad for the reason that the petitioner has denied the relationship. The conclusion of the police in the



criminal case after investigation regarding the bona fide of the marriage is an additional factor, which prima facie satisfied the court in arriving at the conclusion regarding the existence of marital relationship between the parties. As the petitioner has denied the marital status, he can rebut the presumption by leading evidence in accordance with law.

16. Having considered the materials on record, as there is no dispute that the petitioner is employed as a Junior Engineer and the respondent has no independent source of income, if the court below has awarded Rs.5,000/- per month as interim maintenance and Rs.500/- as litigation cost for each of the day to be fixed by the court in the case, I see no illegality or perversity in the order impugned. The same warrants no interference by this Court in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India.

17. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Md. S/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	13.07.2019
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