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**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 09.05.2019

+ CRL.REV.P. 587/2015

NASIR KHAN

..... Petitioner

versus

SARPHINA GEORGE

..... Respondent

**Advocates who appeared in this case:**

For the Petitioner: Mr. S.D. Wadhwa with Mr. Rakesh Vats, Advocates.

For the Respondent: Mr. Abhishek Rai, Advocate.

**CORAM:-**

**HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**JUDGMENT**

**SANJEEV SACHDEVA, J. (ORAL)**

**CRL.REV.P. 587/2015 & CrI.M.A.13412/2015 (stay)**

1. Petitioner impugns judgment dated 22.05.2015, whereby, the Principal Judge, Family Court has disposed of the petition, filed by the respondent under Section 125 Cr.P.C. and directed petitioner to pay maintenance @ Rs.5,000/- per month from the date of the filing of the petition i.e. 01.08.2003.

2. Learned counsel for the petitioner submits that Trial Court has erred in not appreciating that the respondent was not the legally wedded wife of the petitioner and has not been able to establish the factum of marriage. He submits that no proof of marriage was

produced nor were the witnesses to the marriage produced by the respondent to prove the factum of marriage.

3. Learned counsel for the respondent, *per contra*, contends that the respondent has established that they were married and has also proved before the Trial Court that they were living together as husband and wife for over a period of 20 years.

4. Learned counsel for the respondent submits that the judgment of the Trial Court is a well-reasoned order and has considered all the documents and material produced by the respondent to return a finding that the parties were married and living as husband and wife.

5. In the impugned judgment, the Trial Court has considered the testimony of the respondent, wherein, she had deposed that she got married to the petitioner in the year 1983. She had deposed that her marriage took place at about 10 am at Kotla Mubarakpur according to Muslim rites and customs and a Qazi was brought from the Nizamuddin area by the petitioner. She in her cross-examination stated that she could not file the Nikahnama and the photographs of the marriage as the same were in the custody of the petitioner husband.

6. The Trial Court has noticed that the respondent had produced several documents to show that she was married to the respondent; and that they lived together as husband and wife at 1731, Kotla Mubarak Pur. New Delhi, since 1983 to May 2003. Both of them were

enrolled as voters from the said address. She had produced as Ex.PW1/C and Ex.PW1/D, carbon copies of Record of Enumeration i.e., declaration about correctness of their particulars and acknowledgement of receipt of Electoral Cards. Ex.PW1/E - Election I-Card of the Petitioner. Record of the eviction petition filed by the landlord against the respondent to establish her residence. The eviction petition was filed against the respondent on the ground that she alongwith her husband – the petitioner was misusing the premises.

7. Petitioner in his examination in chief and cross examination admitted that he was residing at 1731, Kotla Mubarakpur, but, has denied that he was residing with the Respondent. Said version was not believed by the Trial court as the both parties were enrolled as voters from the same address i.e., 1731, Kotla Mubarak Pur, New Delhi, in 1994 at serial Nos.369 and 370 and received their voter cards.

8. As per the Electoral Roll the address of the petitioner and respondent is the same i.e. 1731, Kotla Mubarak Pur, New Delhi . They are enrolled as voters at the same address and the name of the respondent is shown as Sarphina W/o Naseer Khan, R/o 1731, Kotla Mubarakpur Village, New Delhi.

9. The Trial Court found several contradictions in the version of the petitioner and also noticed the contradictory stand being taken by him.

10. Respondent to establish her case has also placed on record

Ex.PW1/O, a receipt issued, by Jai Mata Finance Company dated 25.02.2000 regarding a sum of Rs.25.000/- received from Nasir Khan R/o 1731, Gurudwara Road, Kotla Mubarakpur, New Delhi. Respondent has also placed on record EX.PW1/P, a challan dated 14.12.99 for purchase of one Onida TV which is in the name of Nasir Khan and his address is mentioned as 1731, Gurudwara Road, KM Pur, New Delhi. It also bears the signatures Nasir Khan in Hindi. Respondent was not cross examined in this regard. Nor were these documents disputed.

11. The Trial Court further relied on the proceedings held before the Delhi legal Services Authority in File No.786/02/A, wherein, the presence of the petitioner husband has been recorded and even an admission has been made by him that he was the husband of the respondent. He had even made a statement that he would pay her monthly maintenance.

12. Further, the Trial Court referred to the medical record of the Safdarjung Hospital where the respondent was taken for treatment and the petitioner was shown as the husband of the respondent. Respondent had further proved the letter for permission for sewer connection of the property where she was residing apart from the water bill and also the gas connection documents to show that the name of the husband is mentioned as that of the petitioner and that her name after marriage has been changed from “Sarphina George” to “Saphina Begum/Saphina Khan”. The Trial Court also relied on the

evidence to substantiate that the respondent was operating the bank account of the petitioner.

13. Perusal of the judgment of the Trial Court and the documents, as referred to by the Trial Court, clearly establish that the respondent has been able to prove that for nearly 20 years parties were residing together as husband and wife.

14. Supreme Court in *Kamala & Ors Versus M.R Mohan Kumar* 2018 SCC OnLine SC 2121 held as under:

*“ 15. Unlike matrimonial proceedings where strict proof of marriage is essential, in the proceedings under Section 125 Cr.P.C., such strict standard of proof is not necessary as it is summary in nature meant to prevent vagrancy. In Dwarika Prasad Satpathy v. Bidyut Prava Dixit (1999) 7 SCC 675, this Court held that “the standard of proof of marriage in a Section 125 proceeding is not as strict as is required in a trial for an offence under Section 494 IPC. The learned Judges explained the reason for the aforesaid finding by holding that an order passed in an application under Section 125 does not really determine the rights and obligations of the parties as the section is enacted with a view to provide a summary remedy to neglected wives to obtain maintenance. The learned Judges held that maintenance cannot be denied where there was some evidence on which conclusions of living together could be reached.” When the parties live together as husband and wife, there is a presumption that they are legally married couple for claim of maintenance of wife under Section 125 Cr.P.C. Applying the well-settled principles, in the case in hand, appellant No.1 and the respondent were living together as husband and wife and also begotten two children.*

*Appellant No.1 being the wife of the respondent, she and the children appellants No.2 and 3 would be entitled to maintenance under Section 125 Cr.P.C.*

*16. It is fairly well settled that the law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for a number of years. After referring to various judgments, in Chanmuniya v. Virendra Kumar Singh Kushwaha (2011) 1 SCC 141, this Court held as under:-*

*11. Again, in Sastry Velaidar Aronegary v. Sembecutty Vaigalie (1881) 6 AC 364, it was held that where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary is clearly proved, that they were living together in consequence of a valid marriage, and not in a state of concubinage.*

*12. In India, the same principles have been followed in Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy AIR 1927 PC 185, in which the Privy Council laid down the general proposition that where a man and woman are proved to have lived together as man and wife, the law will presume, unless, the contrary is clearly proved, that they were living together in consequence of a valid marriage, and not in a state of concubinage.*

*13. In Mohabbat Ali Khan v. Mohd. Ibrahim Khan AIR 1929 PC 135 the Privy Council has laid down that the law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for number of years.*

*14. In Gokal Chand v. Parvin Kumari AIR 1952 SC 231, this Court held that 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 rebuttable and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them.*

15. *Further, in Badri Prasad v. Director of Consolidation (1978) 3 SCC 527, the Supreme Court held that a strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin.* 16. *Again, in Tulsa v. Durghatiya (2008) 4 SCC 520, this Court held that where the partners lived together for a long spell as husband and wife, a presumption would arise in favour of a valid wedlock.”*

*This Court in Chanmuniya case further held as under:-*

24. *Thus, in those cases where a man, who lived with a woman for a long time and even though they may not have undergone legal necessities of a valid marriage, should be made liable to pay the woman maintenance if he deserts her. The man should not be allowed to benefit from the legal loopholes by enjoying the advantages of a de facto marriage without undertaking the duties and obligations. Any other interpretation would lead the woman to vagrancy and destitution, which the provision of maintenance in Section 125 is meant to prevent.”*  
*[underlining added]*

17. *Chanmuniya case referred to divergence of judicial opinion on the interpretation of the word “wife” in Section 125 Cr.P.C. In paras (28) and (29) of*

*Chanmuniya case, this Court referred to other judgments which struck a difficult note as under:-*

- “28. However, striking a different note, in Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav (1988) 1 SCC 530, a two-Judge Bench of this Court held that an attempt to exclude altogether personal law of the parties in proceedings under Section 125 is improper (see para 6). The learned Judges also held (paras 4 and 8) that the expression “wife” in Section 125 of the Code should be interpreted to mean only a legally wedded wife.*
- 29. Again, in a subsequent decision of this Court in Savitaben Somabhai Bhatiya v. State of Gujarat (2005) 3 SCC 636, this Court 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 held that this inadequacy in law can be amended only by the legislature. While coming to the aforesaid finding, the learned Judges relied on the decision in Yamunabai case (1988) 1 SCC 530.”*
- 18. After referring to the divergence of judicial opinion on the interpretation of the word “wife” in Section 125 Cr.P.C., speaking for the Bench A.K. Ganguly J. held that the Bench is inclined to take a broad view of the definition of “wife”, having regard to the social object of Section 125 Cr.P.C.*
- 19. In Chanmuniya case, this Court formulated three questions and referred the matter to the larger Bench. However, after discussing various provisions of the Criminal Procedure Code, this Court held that a broad*

*and extensive interpretation should be given to the term “wife” under Section 125 Cr.P.C. and held as under:-*

*“42. We are of the opinion that a broad and expansive interpretation should be given to the 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 of time, and strict proof of marriage should not be a precondition for maintenance under Section 125 CrPC, so as to fulfil the true spirit and essence of the beneficial provision of maintenance under Section 125. We also believe that such an interpretation would be a just application of the principles enshrined in the Preamble to our Constitution, namely, social justice and upholding the dignity of the individual.”*

15. As held by the Supreme Court in *Kamala & Ors Versus M.R Mohan Kumar* unlike matrimonial proceedings where strict proof of marriage is essential, in the proceedings under section 125 Cr.P.C, such strict standard of proof is not necessary as it is summary in nature meant to prevent vagrancy. An order passed in an application under section 125 does not really determine the rights and obligations of the parties as the section is enacted with a view to provide a summary remedy to neglected wives to obtain maintenance. Further it was held that when the parties live together as husband and wife, there is a presumption that they are legally married couple for claim of maintenance of wife under Section 125 Cr.P.C.

16. It is fairly well settled that law presumes in favour of marriage

and against concubinage when a man and woman have cohabited continuously for a number of years.

17. Supreme Court has further held that when the family court has held that there was a valid marriage, the High Court being the Revisional Court has no power to reassess the evidence and substitute its views on findings of fact.

18. In the present case, the Trial Court has extensively considered the material on record and found that the parties have resided together as husband and wife for 20 years and there is a presumption of marriage. In view of the same I find no infirmity in the view taken by the Trial Court that the respondent has been able to establish that she is married to the Petitioner.

19. I find no error in the impugned judgment and thus find no merit in the petition.

20. The Petition is, accordingly, dismissed.

21. Order *Dasti* under signatures of the Court Master.

**SANJEEV SACHDEVA, J**

**MAY 09, 2019**  
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