HIGH COURT OF TRIPURA
AGARTALA

CRL.REV.P 81 of 2019

Sri Bibhuti Ranjan Das,
son of late Santi Ranjan Das,
resident of Rubber Board, Thana Road,
PO & PS: Dharmanagar,
District: North Tripura,PIN-799250

---- Petitioners(s)

Versus

Smt. Gouri Das,
daughter of Sri Dulal Ch. Das
resident of Chanmari,
Near Chanmari Ration Shop,
Ward No. 4, PO: Mauza: Kunjaban,
PS: New Capital Complex (NCC),
District: West Tripura

---- Respondent(s)

For Petitioner(s)	: Mr. R. Chakraborthy, Adv.
For Respondent(s)	: Ms. A. Debbarma, Adv. Mr. S. Bhattacharjee, Adv.
Date of hearing	: 28.02.2020
Date of pronouncement	: 07.07.2020
Whether fit for reporting	: YES

HON'BLE MR. JUSTICE S. TALAPATRA

Judgment & Order

By means of this revision, the petitioner has questioned the legality of the judgment and order dated 17.06.2019 delivered in Misc.462 of 2015 by the Additional

*pronouncement of the judgment has been delayed for lockdown in the court

Judge, Family Court, West Tripura Agartala. By the said judgment and order dated 17.06.2019, the petitioner has been directed to pay maintenance at Rs.4000/- per month to the respondent, the petitioner in the original proceeding under Section 125 of the CrPC from 01.07.2019 until further order for the OP has his previous wife and children and he has also to maintain them. Such maintenance has been directed to be paid within 10th day of every calendar month by money order on deducting the cost of money order from the said amount of maintenance. Further, it is undisputed that in the proceeding being Misc 462 of 2016, the Judge, Family Court, Agartala had directed the petitioner herein to pay of a sum of Rs.12000/- per month. The said proceeding was initiated as the petitioner herein had stopped maintaining the respondent from 2013, but the petitioner (the opposite party in the proceeding before the Family Court) has claimed that the respondent is not his wife. His legally married wife is one Sabitri Das whom he married as per Hindu Rites and Customs in 1993. From the said wedlock, the petitioner has two daughters. Further, the petitioner has asserted that he has been paying maintenance to his wife, Sabitri Das since 2001. Later on, the Family Court had modified

the quantum of allowance on two occasions. Now the petitioner is paying Rs.2000 to his wife, Sabitri Das and two daughters.

[2] The crux of the challenge in this petition is that marriage of a woman with a man while his spouse is alive and their marital relation has not come to an end, the said marriage is a complete nullity in the eye of law. Thus, any court invoking its jurisdiction under section 125 of the CrPC cannot pass two different maintenance orders against the person considering two women as his spouse. Thus, it has been contended that the respondent is not entitled to maintenance. As the Family Court has directed the petitioner to pay the maintenance to the respondent at Rs.4000/- per month by the order dated 17.06.2019, the petitioner has challenged that order.

[2] Mr. R. Chakraborty, learned counsel appearing for the revision petitioner has, in his usual fairness, drawn the notice of this court to the orders directing payment of maintenance in favour of the respondent. By the judgment and order dated 23.11.2002 delivered in Misc 173 of 2001 (Annexure-A to this revision petition) the Judicial Magistrate, Court No.1, Agartala, West Tripura directed the petitioner to pay Sabitri Das Rs.1000 per month as maintenance allowance.

It has been clearly observed by the judgment and order dated 23.11.2002 that Rs.1000/- per month as the maintenance allowance has been distinctly granted to Smt. Sabitri Das and further sum of Rs.500/- each as the maintenance allowance to Smt. Sunanda Das and to Smt. Sikha Das as daughters of the petitioner, from the marriage with Sabitri das. Thus the total sum of maintenance was aggregated to Rs.2000 was directed to be paid to Smt. Sabitri Das and two daughters, Sunanda Das and Sikha Das. Further, by the order dated 16.06.2011 passed in the proceeding initiated under section 127 of the CrPC for enhancement of the maintenance from Rs.2000 to Rs.6000 per month being Misc case No. 179 of 2008, the composite maintenance allowance had been enhanced to Rs.4500/- per month from Rs.2000/- per month. The said order dated 16.06.2011 was passed by the Judge, Family Court, Agartala, West Tripura.

[3] The petitioner herein had also initiated a proceeding under section 127 of the CrPC in the court of the Judge Family Court, Agartala ,West Tripura being Misc 274 of 2014 titled as Bibhuti Ranjan Das Vs Sabitri Das . By the order dated 12.08.2015 as passed in the said proceeding, the plea raised by

the petitioner herein has been accepted by the Judge, Family Court, Agartala, West Tripura that one of the daughters namely Sunanda Das who was granted enhanced maintenance by the order dated 16.06.2011 delivered in Misc. 179 of 2008 had acquired majority and was not entitled to get the maintenance any further. Thus, the order dated 16.06.2011 was modified in exercise of the power conferred by Section 127 of the CrPC by deducting one third of the total maintenance. Thus, the maintenance was reduced to Rs.3000 with the same conditions of payment.

[4] These facts are all peripheral, but the relevant facts for adjudication of the rights claimed by the respondent in this revision petition, to get the maintenance from the petitioner are that the respondent filed the petition under section 125 of the CRPC being Misc. Case No. 462 of 2017 which was taken up for adjudication by the Additional Judge, Family Court, Agartala, West Tripura.

[5] Initially the petitioner did not file the copies of the application filed under section 125 of the CrPC, the objection filed thereto and the records of evidence etc. however, in compliance of the order dated 09.12.2019 passed by this court,

all those materials have been placed in the records. From the application filed under section 125 of the CrPC being Misc (Maintenance) 462 of 2015, it appears that the respondent has claimed that the petitioner herein married her in the year 2003 according to "their own rites and rituals in presence of relatives guardian and other local people. The said marriage was duly consummated.

[6] In the year 2013, when the petitioner was transferred to Udaipur in the Regional Office of Rubber Board from Agartala, the petitioner had allegedly started behaving differently with the respondent. The petitioner used to come at his residence at Chanmari, but in that year after few months the petitioner stopped coming to that residence. That time, the respondent failed to maintain herself being neglected by the petitioner. In para-5 of the said petitioner, the respondent has asserted that knowing well that the respondent was a widow, the petitioner was ready to marry her and accordingly the petitioner married by observing the conditions of marriage under section 5 of the Hindu Marriage Act. The respondent in that application has asserted that she has discharged all matrimonial obligations and as such she was taken aback when

the petitioner had broken all communications with her. The respondent tried to resolve the said marital distance by conciliation with aid of the guardians, but that initiative did fail. Not only that, the petitioner refused to make provisions of essentials of life to the respondents. It has also been stated that the petitioner did not take the respondent to Udaipur and even refused to stay with her at Agartala or Udaipur. It has been categorically asserted in para 9 of the said application since 25.11.2014, the petitioner did not provide any maintenance to the respondent.

[7] As the respondent was unable to maintain herself, she filed the said application under Section 125 of the CRPC claiming monthly maintenance to the extent of Rs.12000/- as the petitioner herein at that point of time used to earn about Rs.30000/- per month and had no other commitment. The petitioner filed the objection against those statements made in the said application and had categorically stated that the respondent was not the wife of the petitioner and there was no marriage between them. All other statements relating to their marriage have been squarely denied by the petitioner. In para-7 of the said objection, the petitioner has disclosed that he

married Sabitri Das on 26.02.1993 in accordance with Hindu rites and customs. In the wedlock, two daughters were born in 1993 and in 1996. For difference of opinion, Sabitri Das began to live separately from the petitioner. Thereafter, he has asserted that he has been paying maintenance to Sabitri Das and his two daughters as per direction of the competent court vide orders dated 23.11.2002, 16.06.2011 and 12.08.2015 as referred before. The petitioner and Sabitri Das started living in an allotted land by constructing hut since 1991-1992 at Chanmari at Agartala. Thereafter, the following statement has been made in the objection:

> **"When his wife Smt Sabitri Das started living separately, the O.P alone had been living there; but when he was transferred to Udaipur in July, 2012, the OP left Agartala keeping his home at Chanmari, Agartala under lock and key and started living at Udaipur. In the middle of 2013, taking opportunity of his absence, with the help of some hooligans, the petitioner occupied the homestead of the O.P at Chanmari, Agartala and breaking the locks started living in his home. Getting information from the well wishers, the O.P came; but could not enter his homestead due to dreadful obstruction and attempt to attack the O. P by the petitioner and her hooligan troops. The petitioner demanded that it was her house and if the O. P wanted to say anything, they would kill him. The O. P was luckily saved and was compelled to go back to Udaipur at once. He took the matter to the notice of the O.C. of Radhakishorepur P.S who assured the O. P to take proper step and advised him not to come to Agartala for his safety. From the last part of 2013, the petitioner's people were making recurrent threat to the OP by SMS. The O.P took those facts also to the notice of the OC of R.K Pur P.S who assured the O.P to take appropriate steps. The O.P was in serious tension. In the meantime, he was transferred to**

Dharmanagar in June, 2016. Thereafter, the O.P received the application under section 125 of the CrPC.

(iv) On enquiry, the O.P came to know that the petitioner is a widow having one daughter and 2 sons. Her husband Sri Sukumar Malakar died in 2005. Her daughter who is about 20 married on Sanju Das of Chanmari, Agartala in 2015 and has been living with her husband at her matrimonial home. Her sons who are now about 15/16 years and about 12/13 years old are living with her. After the death of her husband in 2005, the petitioner became the central gem of the hooligans and antisocial elements. Occupying the homestead of the O.P and application against the O.P u/s 125 of the CrPC are the parts of anti-social activities of the petitioner for unlawful gain."

[8] As the petitioner was married to Sabitri Das at the time of the alleged marriage with the respondent, the marriage with the respondent is not legal even if it is assumed that such marriage did really occur. Having recorded the evidence the Judge, Family Court by order dated 17.06.2019 held that the marriage between the petitioner and the respondent has been proved by the evidence, even though the petitioner was his spouse living at the relevant point of time, but the fact was grossly suppressed from the respondent at the time of the marriage, which has been challenged now by the petitioner. The Additional Judge, Family Court Agartala has observed that the respondent cannot be permitted to deny the maintenance taking advantage of his own wrong. It has been noted that the documents like ration card, aadhar card etc were prepared

showing the petitioner as her husband. However, the petitioner herein has stated that those were prepared fraudulently but he has failed to controvert those documents, neither had he taken any action for improving of those documents which are allegedly created fraudulently. It has been well established by the respondent that the petitioner denied maintenance for her descent survival. Having observed thus, the petitioner has been directed to pay monthly maintenance allowance of Rs.4000 per month w.e.f. 01.07.2019 and the said sum be paid within 10th day of every English calendar by money order on deducting the charge.

[9] The Additional Judge after evaluating the evidence has found that the incidence of marriage has been broadly established. The Additional Judge having referred to **Dwarika Prasad Satpathy vs. Bidyut Prava Dixit and Anr.** reported in **(1999) 7 SCC 675** has observed that validity of the marriage for the purpose of summary proceeding under section 125 of the CrPC is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceeding is not as strict as is required in a trial of offence under Section 494 of the IPC. If the petitioner or the

applicant in a proceeding under section 125 of the code succeeds in showing that she and the respondent have lived together as husband and wife, the Court can presume that they are legally wedded spouses, and in such a situation, the party who denies the marital status can rebut the presumption. Once it is admitted that the marriage rituals were followed then it is not necessary to further probe into whether the said rituals were complete as per the Hindu rites or not. From the evidence which is led if the Magistrate is prima facie satisfied in respect of performance of marriage in the proceeding under Section 125, Cr.PC which is summary in nature, strict proof of performance of essential rites is not required."

[10] Reliance has been placed on **Badshah Vs Urmila Badshah Godse and Anr** reported in **AIR 2014 SC 869** where the apex court emphasized that when the material record show that the person who married had duped the woman by not revealing the fact of his first marriage and the woman, who married the man having no knowledge of the first marriage is to be treated as equal to legally wed wife for purpose of granting maintenance. Purposive interpretation in such circumstances needs to be given in the provision of section 125 of the CrPC. It

is the bounden duty of the court to advance the cause of social justice.

[11] In a previous decision, in **Chanmuniya vs. Virendra Kumar Sing Kushwaa and Anr** reported in **(2011) 1 SCC 141**, the apex court had occasion to interpret the term 'wife' as appearing in section 125 of the CrPC having takeng note of the changing pattern of the man-woman relationship in the following unambiguous term:

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

[12] Mr. R. Chakraborty, learned counsel appearing for the petitioner has submitted that under Section 125 one explanation has been provided for removing the confusion in respect of the definition of wife. Whether a divorced woman can be treated as wife for purpose of section 125(1) of the CrPC where provision has been engrafted to create a right for the wife unable to maintain herself for getting maintenance if she had no sufficient means to maintain herself? By explanation, the said legislation provides that 'wife' includes a woman who

has been divorced or has obtained a divorce from her husband and has not remarried. Otherwise, according to Mr. Chakraborty, learned counsel appearing for the appellant, the woman except those are legally married could not be included within the class of 'wife' for purpose of section 125(1) of the CrPC. Mr. Chakraborty, learned counsel having referred to the fact of the revision petition has submitted that the petitioner has denied that he has even married the respondent. It is a ploy to exploit him by exercising fraud on the process. He has categorically submitted that he had his wife living at the time when the respondent has claimed that the petitioner had married her and as such the said marriage as claimed to have occurred cannot be treated as legal marriage and hence no right under Section 125 (1) Cr.PC would arise in favour of the respondent. He has in order to buttress his submission, referred a few decisions of the apex court.

[13] In **Yamunabai Anantrao Adhav vs. Anantrao Shivram Adhav and Another** reported in **AIR 1988 SC 644**, the apex court has observed as follows:

> **"3. For appreciating the status of a Hindu woman marrying a Hindu male with a living spouse some of the provisions of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act) have to be examined. Section 11 of the Act declares such a marriage as null and void in the following terms:**

"11. Void marriages- Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5. "

Clause (1)(i) of S. 5 lays down, for a lawful marriage, the necessary condition that neither party should have a spouse living at the time of the marriage. A marriage in contravention of this condition, therefore, is null and void. It was urged on behalf of the appellant that a marriage should not be treated as void because such a marriage was earlier recognised in law and custom. A reference was made to S. 12 of the Act and it was said that in any event the marriage would be voidable. There is no merit in this contention. By reason of the overriding effect of the Act as mentioned in S. 4, no aid can be taken of the earlier Hindu Law or any custom or usage as a part of that Law inconsistent with any provision of the Act. So far as S. 12 is concerned, it is confined to other categories of marriage and is not applicable to one solemnised in violation of S.5(i) of the Act. Sub-section (2) of S. 12 puts further restrictions on such a right. The cases covered by this section are not void ab initio, and unless all the conditions mentioned therein are fulfilled and the aggrieved party exercises the right to avoid it, the same continues to be effective. The marriages covered by s. 11 are void-ipso- jure, that is, void from the very inception, and have to be ignored as not existing in law at all if and when such a question arises. Although the section permits a formal declaration to be made on the presentation of a petition, it is not essential to obtain in advance such a formal declaration from a court in a proceeding specifically commenced for the purpose. The provisions of s. 16, which is quoted below, also throw light on this aspect:

" 16. Legitimacy of children of void and voidable marriages.- Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under Section 12, any child begotten or conceived before the decree is made, who would

have been the legitimate child of the parties of the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child not withstanding the decree of nullity.

(3) Nothing contained in sub-section (1) or sub section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under Section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.

(Emphasis added).

Sub-section (1), by using the words underlined above clearly, implies that a void marriage can be held to be so without a prior formal declaration by a court in a proceeding. While dealing with cases covered by s. 12, sub- section (2) refers to a decree of nullity as an essential condition and sub-section (3) prominently brings out the basic difference in the character of void and voidable marriages as covered respectively by ss. 11 and 12. It is also to be seen that while the legislature has considered it advisable to uphold the legitimacy of the paternity of a child born out of a void marriage, it has not extended a similar protection in respect of the mother of the child. The marriage of the appellant must, therefore, be treated as null and void from its very inception."

4. <u>The question, then arises as to whether the expression 'wife used in s. 125 of the Code should be interpreted to mean only a legally wedded wife not covered by s. 11 of the Act. The word is not defined in the Code except indicating in the Explanation its inclusive character so as to cover a divorcee. A woman cannot be a divorcee unless there was a marriage in the eye of law preceding that status. The expression must, therefore, be given the meaning in which it is understood in law applicable to the parties, subject to the Explanation (b), which is not relevant in the present context.</u>

[Emphasis added]

[14] This proposition of law has been followed by the apex court in **Savitaben Somabhai Bhatiya vs. State of Gujarat** reported in **(2005) 3 SCC 636**. Mr. Chakraborty, learned

counsel has contended that the expression "wife" in section 125 cannot be stretched beyond the legislative intent, which implies only a legally wedded wife, such wife is entitled to maintenance in terms of section 125(1) of the CrPC. In absence of such relation, no equity can be claimed by any other woman save and except the divorced woman who had not remarried, as provided in the explanation as referred above.

[15] Mr. Chakraborty, learned counsel has thus contended that no inclusive interpretation be given to the definition of the wife except the interpretation as provided in the law, relevant for the subject matter. Mr. Charkbaoty, learned counsel has submitted that it was the burden on the respondent to prove that there was a legal marriage and that has been subsisting between the petitioner and the respondent. Mr. Chakraborty, learned counsel has pointed out that in order to rebut the evidence of the respondent, the petitioner examined himself as OPW-1 where he has categorically stated that he had never married the respondent and he has his spouse (Sabitri) who has been living with his two children. Thus there no legal marriage can take place between the petitioner and the respondent in the year 2003 or any other time. So far

the evidence of the respondent is concerned, Mr. Chakraborty, learned counsel has submitted that all these are concocted and therefore, not reliable.

[16] Appearing for the respondent, Ms. A. Debbarma learned counsel has submitted that the respondent has led adequate evidence in respect of her marriage with the petitioner. When the petitioner stopped maintaining her and when she enquired and came to know that the petitioner had married another woman earlier but the petitioner had never even whispered about his first wife. She has denied the suggestion that she knew about the first marriage of the petitioner with one Sabitri Das and with ill intention she has brought the legal action demanding maintenance allowance.

[17] PW-2 Papiya Acharjee was tenant in the house of the respondent. She has categorically stated that the petitioner and the respondent are husband and wife and they were living normal marital life. But for last 3 -4 years the petitioner was avoiding visit to the house of the respondent and providing her any maintenance.

[18] PW-3 Amrit Chakraborty has stated in the proceeding that 9-10 years ago, on the occasion of Dol Purnima

a big puja and 'yagna' was performed where the petitioner and the respondent performed *saptapadi* (the seventh steps). The petitioner and the respondent were living as husband and wife. Ms. Debbarma, learned counsel has submitted that this evidence could not be rebutted by the petitioner and as a result the Additional Judge, Family Court allowed the prayer for maintenance in favour of the respondent. Ms. Debbamra, learned counsel has placed reliance on a decision of the apex court in **Badshah vs. Urmila Badshah Godse and Another** reported in **(2014) 1 SCC 188** where the apex court has observed as follows:

> **"13. On this basis, it was pleaded before us that this matter be also tagged along with the aforesaid case. However, in the facts of the present case, we do not deem it proper to do so as we find that the view taken by the courts below is perfectly justified. We are dealing with a situation where the marriage between the parties has been proved. However, the petitioner was already married. But he duped the respondent by suppressing the factum of alleged first marriage. On these facts, in our opinion, he cannot be permitted to deny the benefit of maintenance to the respondent, taking advantage of his own wrong. Our reasons for this course of action are stated hereinafter.**
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> **13.1. Firstly, in Chanmuniya case : (2011) 1 SCC 141, the parties had been living together for a long time and on that basis question arose as to whether there would be a presumption of marriage between the two because of the said reason, thus, giving rise to claim of maintenance under Section 125,Cr.P.C. by interpreting the term "wife" widely. The Court has impressed that if man and woman have been living together for a long time even without a valid marriage, as in that case, term of valid marriage entitling such a woman to maintenance should be drawn and a woman in such a case should be entitled to maintain application under Section 125,Cr.P.C. On the other**

hand, in the present case, respondent No.1 has been able to prove, by cogent and strong evidence, that the petitioner and respondent No.1 had been married each other.

13.2. Secondly, as already discussed above, when the marriage between respondent No.1 and petitioner was solemnized, the petitioner had kept the respondent No.1 in dark about her first marriage. A false representation was given to respondent No.1 that he was single and was competent to enter into martial tie with respondent No.1. In such circumstances, can the petitioner be allowed to take advantage of his own wrong and turn around to say that respondents are not entitled to maintenance by filing the petition under Section 125,Cr.P.C. as respondent No.1 is not "legally wedded wife" of the petitioner? Our answer is in the negative. We are of the view that at least for the purpose of Section 125 Cr.P.C., respondent No.1 would be treated as the wife of the petitioner, going by the spirit of the two judgments we have reproduced above. For this reason, we are of the opinion that the judgments of this Court in Adhav (1988) 1 SCC 530 and Savitaben : (2005) 3 SCC 636 cases would apply only in those circumstances where a woman married a man with full knowledge of the first subsisting marriage. In such cases, she should know that second marriage with such a person is impermissible and there is an embargo under the Hindu Marriage Act and therefore she has to suffer the consequences thereof. The said judgment would not apply to those cases where a man marries second time by keeping that lady in dark about the first surviving marriage. That is the only way two sets of judgments can be reconciled and harmonized.

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

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 purpose of the law."**
>
> **[Emphasis added]**

[19] Prior to **Badshah** (supra) the apex court, in **Tulsa and Others vs. Durghatiya and Others** reported in **(2008) 4 SCC 520,** had occasion to observe as follows:

> **11. At this juncture reference may be made to the Section 114 of the Indian Evidence Act, 1872 (in short "the Evidence Act"). The provision refers to common course of natural events, human conduct and private business. The court may presume the existence of any fact which it thinks likely to have occurred. Reading the provisions of Sections 50 and 114 of the Evidence Act together, it is clear that the act of marriage can be presumed from the common course of natural events and the conduct of parties as they are borne out by the facts of a particular case.**
>
> **12. A number of judicial pronouncements have been made on this aspect of the matter. The Privy Council, on two occasions, considered the scope of the presumption that could be drawn as to the relationship of marriage between two persons living together. In first of them i.e. Andrahennedige Dinohamy vs. Wijetunge Liyanapatabendige Blahamy : AIR 1927 P.C. 185 their Lordships of 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 be clearly proved that they were living together in consequence of a valid marriage, and not in a state of concubinage."**
>
> **13. In Mohabhat Ali v. Md. Ibrahim Khan : AIR 1929 PC 135 their Lordships of the Privy Council once again 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. It was held that such a presumption could be drawn under Section 114 of the Evidence Act.**

> **15. Where the partners lived together for long spell as husband and wife there would be presumption in favour of wedlock. The presumption was rebuttable, but a heavy burden lies on the person who seeks to deprive the relationship of legal origin to prove that no marriage took place. Law leans in favour of legitimacy and frowns upon bastardy. (See: Badri Prasad v. Dy. Director of Consolidation and Ors. : AIR 1978 SC 1557.**
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> **16. This court in Gokal Chand v. Parvin Kumari :AIR 1952 SC 231, observed that continuous co-habitation of (sic man and) woman as husband and wife and their treatment as such for a number of years may raise the presumption of marriage, but the presumption which may be drawn from long co-habitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them."**

[Emphasis added]

[20] This court has also applied the interpretative tool of social context judging in **Nityagopal Sukladas vs. Anjali Nag Nath @ Sukladas** reported in **(2014) 2 TLR 263**, **Manika Debbarma (Singha) vs. Soumendra Debbarma** reported in **(2015) 2 TLR 983** and in **Sridam Karmakar @ Partha vs. Smt. Sankari Debnath Das** (judgment dated 05.07.2017 delivered in Crl.Rev.P 09 of 2017) and having noticed the long live in relation declared the woman to be deemed as wife within the meaning of section 125 of the CrPC for purpose of providing maintenance.

[21] In rejoinder, Mr. R. Charkraborty learned counsel has reemphasized that unless the marriage between two Hindus is solemnized by observing rites and customs of Hindu Marriage

and also fulfilling the conditions of marriage as laid down in the Hindu Marriage Act, such marriage cannot be declared valid. In absence of any valid marriage between man and woman, the woman cannot be termed as the legally wedded wife of the man. What is gathered from such statement is that even the marriage cannot be deemed. That is what has exactly been declared in **Badshah** (supra) and **Tulsa** (supra).

[22] The purpose of section 125 of the CrPC is well noted in **K. Vimal Vs. K.Veeraswammy** reported in (**1991) 2 SCC 375** in the following words:

> **"Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife."**

In **Badshah** (supra) it has been laid down that the object of the said act is to empower the destitute and achieving the social justice or equality and above all dignity of the individual. While dealing with such category of cases drift in the approach from adversarial litigation to social context judging is the need of the hour.

[23] Benjamin N. Cardozo in **The Nature of Judicial Process** has observed that no system of *jus scriptum* has been able to escape the need of it. It is true that codes and statutes

do not render the judges superfluous nor his work perfunctory and mechanical. There are gaps to be filled. He has further observed that 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 preexistence in the legislature's mind. The social context judging had also been recognized in the legal maxim *ut res magis valeat quam pereat.* Where alternative constructions are possible, the court must give effect to that which will be responsible for smooth-working of the system for which purpose the statute has been enacted rather than one which will put a road block in its way. It is expected that court should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that the parliament would legislate only for purpose of bringing about an effective result. A woman who lived like a wife and in the perception she was treated as the wife cannot be deprived of the maintenance. For this purpose a co-terminus provision for granting maintenance may be looked into and a uniformity in the definition may be brought in. The provision of

maintenance for the Hindu wife is also available in section 18 of the Hindu Adoption and Maintenance Act, 1956. But the most recent legislation which according to me has taken into its embrace the changing reality of the man-woman relationship is the Protection of Women from Domestic Violence Act, 2005. In Section 20, the said act provides for monetary reliefs. For our purpose, we would gainfully reproduced Section 20(1)(d) of the said Act:

> **"20. Monetary reliefs.(1)……**
> **(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force."**

[24] The word aggrieved person has been defined in section 2(a) of the said Act. Aggrieved person means any woman who is or has been in a domestic relationship with the respondent and also to have been subject of domestic violence. The word 'domestic violence' almost exhaustively defined in section 3 of the said Act. One of the aspect is economic abuse which includes in terms of section 3 (iv) of the said Act, deprivation of all or any economic or financial relationship to which the aggrieved person is entitled under any law or custom

whether payable under an order of a court or otherwise of which the aggrieved person requires out of necessity including, but not limited to household necessity for the aggrieved person and her children, if any, sridhon property jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance. The primary test to be an aggrieved person is his to be in a domestic relationship "which according to section 2 of the said Act means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

[25] When one statute ensures maintenance for the person to be in the relationship in the nature of marriage, the other statute cannot be interpreted to abrogate the provision relating to grant of maintenance. Thus, a purposive interpretation would be extremely instrumental and evocative for achieving its object. Moreover, such interpretation will be harmonious to the constitutional empathy embedded in Article

21 of the Constitution of India as, such woman has right to live in society with dignity and for not as destitute.

[26] The respondent in the case in hand has stated that she was not aware that the petitioner was married but they have lived for more than ten years as husband and wife after a ritual on the day of Dol Purnima. On the face of such prima facie material, the burden was on the petitioner to disprove such element but he has failed to do so. Thus, no infirmity is found in the observation of the Additional Judge, Family Court, Agartala, West Tripura.

Hence, this court is of the view that this is not a case where by invoking the revisional jurisdiction as provided under section 19(4) of the Family Court Act 1984, this court should intervene.

Hence, the revision petition fails and accordingly the same is dismissed. The petitioner shall pay the maintenance in terms of the said order dated 17.06.2019.

Failure in making payment shall be dealt with sternly.

JUDGE

Dipak