

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 490 of 2020

Reserved on 12.04.2021

Delivered on 19.05.2021

Meghraj Sahu, S/o. Brijlal Sahu, aged about 50 years,

Alleged Occupation- Service (Administrator, Sahkari Kendriya Bank Gudguda),

Actual occupation- working on daily wages and commission in village Gudguda society,

Residence- Charbhatha, Tahsil Kurud, District Dhamtari, Chhattisgarh.

---- Applicant / Alleged Husband

Versus

Smt. Lata Bai, W/o Bisahu Ram Sahu (falsely written as Meghraj Sahu) aged about 38 years, R/o. Village Charbhata, Tahsil Kurud, District Dhamtari, Chhattisgarh.

---- Respondent/ Alleged Wife

For the Applicant : Shri Malay Jain, Advocate.

For the Respondent : Shri Abhishek Sharma, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

Heard.

1. This criminal revision petition has been brought against the order dated 17.3.2020 passed in M.J.C. No. 154 of 2018, granting monthly maintenance of Rs.3,000/- to the respondent.
2. It is submitted by counsel for the applicant that the impugned order is erroneous and illegal. The respondent has failed to prove that she was legally wedded wife of this applicant. Learned Family Court has erroneously held that although the respondent is not a legally wedded wife of the applicant even then, she was entitled for maintenance. It was clear admission of the respondent in her cross-examination, that

she was married to one Bisahu Ram Sahu and she has a son and daughter from that marriage. She also admitted that she has not obtained any divorce from Bisahu Ram Sahu from any Court of law. Another circumstance that was present was that the applicant was already married to one Devki Bai regarding which, the respondent had made admissions in her cross-examination. Therefore, the applicant and the respondent both were married and their spouses were living, hence, the relation between them could not be termed as a valid marriage.

3. Placing reliance on the judgment of Supreme Court in the case of **Badshah vs. Urmila Badshah Godse and Another**, reported in (2014) 1 SCC 188, it is submitted that it is not a case in which the respondent was ignorant about previous marriage of the applicant, therefore, she cannot be deemed as legally wedded wife of the applicant. Reliance has also been placed on the judgment of Supreme Court in the case of **Smt. Yamunabai Anantrao Adhav vs. Anantrao Shivram Adhav and Another**, reported in (1998) 1 SCC 530, in which it has been held that a woman marrying a man who is already married and his wife is living, is not entitled under Section 125 of the Cr.P.C., as such marriage is void *ab initio*. It is submitted by counsel for the applicant that it has been similarly held in the cases of **Savitaben Somabhai Bhatiya vs. State of Gujarat and Others**, reported in (2005) 3 SCC 636 and **D. Velusamy vs. D. Patchaiammal**, reported in (2010) 10 SCC 469, that for the purpose of Section 125 of the Cr.P.C. the wife must be legally wedded wife. It is further submitted that the impugned order is unsustainable, therefore, the revision petition be allowed and the impugned order be set aside.

4. Learned counsel appearing for the respondent opposes the submissions so made and submits, that the respondent has proved her case to show her entitlement for maintenance under Section 125 of the Cr.P.C. After the dispute arose between the applicant and the respondent, a compromise had taken place between them. Copy of that compromise deed Ex.P/7-C has been produced in the evidence, which shows that the applicant admitted that the respondent is his wife. The applicant has made admissions in his cross-examination that name of the respondent is mentioned in the ration-card Ex.P/1-C, in the post-office saving account Ex.P/2-C, in the Dena Bank Saving Account Ex.P/3-C and in the Aadhar Card Ex.P/4-C, which shows the applicant as her husband. It is also submitted that in the case of **Smt. Motim Bai Borkar vs. Arjun Singh Borkar**, reported in **2017(2) C.G.L.J.330**, it was held by this Court that the respondent husband having married the lady lived together as husband and wife and cohabited with her, now cannot be permitted to turn around and say that the petitioner is not his legally wedded wife. This ratio has been laid down in the judgment of Supreme Court in the case of **Badshah vs. Urmila Badshah Godse and Another** (supra), and also followed in the judgment of this High Court in the case of **Smt. Teras Dongare vs. Avinash Dongare** in **CRR No. 346 of 2019** decided on 10.2.2021, therefore, on the basis of this ratio of law, the respondent has the entitlement for grant of maintenance. Hence, the petition is without any substance which may be dismissed.
5. In reply, it is submitted by counsel for the applicant that the case-laws cited by the respondent side are not applicable in this case. It is very much clear that the respondent was already married and her husband was living when she married to the applicant whose previous wife was

also living. Therefore, it is a clear case of invalid marriage because of which, the respondent has no entitlement.

6. Heard counsel for both the parties and perused the documents present on record.
7. Learned Family Court has drawn a conclusion that the respondent is wife of the applicant on the basis of the ratio laid down by the Madhya Pradesh High Court in the case of **Sumitra Bai vs. Bheekam**, reported in **AIR 1985 SC 765** and on the judgment of Supreme Court in the case of **Dwarika Prasad Satpathy vs. Bidyut Prava Dixit and Another**, reported in **(1999) 7 SCC 675**, in which it has held that the strict proof of marriage is not a requirement in the case under Section 125 of the Cr.P.C. The fact established, that the parties were living as husband and wife is sufficient to draw presumption about their marriage. On the basis of the submissions made and the evidence present, it is found that now it is undisputed that the applicant and the respondent had resided together as husband and wife for sometime. The only ground of contest of the applicant is that his marriage with the respondent was not lawful. The admission of respondent – Smt. Lata Bai (AW-1) in her cross-examination about her previous marriage with Bisahu Ram and that she has not legally divorced him, has been further clarified that she has obtained customary divorce from her previous husband. Halif Khan (AW-2) has stated in his cross-examination that he had no knowledge of previous marriage of the respondent. Hemlal Sahu (AW-3) has stated that he was present when the marriage of the applicant with the respondent was performed. He has also stated about her ignorance regarding the previous marriage of the respondent.
8. Applicant – Meghraj Sahu has stated in his examination-in-chief, about the previous marriage of the respondent and also about his marriage

with Devki Bai which was subsisting. Although, he has made denial to all the suggestions put to him in cross-examination, but he has admitted about the presence of name of the respondent in ration-card Ex. P/1-C, in the saving account of the post-office Ex.P/2-C, in the Dena Bank saving account Ex.P/3-C and in the Aadhar Card Ex.P/4-C, which shows the name of the respondent as his wife regarding which, he was unable to give any explanation. On the basis of this oral statement of the applicant and his witness, it is clear that the applicant was previously married and in support of the same one document Ex.D/1-C has been exhibited which is a copy of ration-card mentions Devki Bai as wife of this applicant.

9. The applicant had filed a reply to the application under Section 125 of the Cr.P.C., in which he has mentioned about his marriage with Devki Bai in the year 1992-93 denying the statement in the application of the respondent. In the evidence of Lata Bai (AW-1)/ respondent has not made a single statement in her examination-in-chief, to deny the statement of the applicant regarding his previous marriage which was subsisting, however, in her cross-examination, she has admitted that the applicant was married to one Devki Bai and he had two children from her. There is no statement to deny that the marriage of the applicant with Devki Bai was continuing. In the case of **Badshah vs. Urmila Badshah Godse and Another** (supra) observed in paragraphs 13.1 and 13.2, which is as follows:

‘13.1. Firstly, in Chanmuniya case, 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 marital 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 and Savitaben 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.’

10. In the case of **Savitaben Somabhai Bhatiya vs. State of Gujarat and Others** (supra), it was held that even if the wife makes a plea that she was not informed about the previous marriage of her husband, that shall be of no avail. In the case of **Smt. Motim Bai Borkar vs. Arjun Singh Borkar** (supra), this High Court has held in paragraph 5, is as follows:

‘5. Having held so, I am clearly of the view that Arjun Singh, the second husband cannot escape from his liability to maintain his wife. The reason is that he married Motim Bai knowing fully well that she had a female child from earlier husband and at the time when he got married, he did not ask to produce a decree of divorce and at that time he was willing to marry her probably on oral submission that she had obtained a divorce. It is not a case where the wife had hoodwinked the husband.’

11. After appreciating the evidence and on the basis of the legal precedents cited, the facts in this case reveal that the applicant had knowledge that the respondent was already married to one Bisahu Ram Sahu, regarding which the respondent claims that she has obtained divorce in customary manner. This also is a fact, that the applicant was married to one Devki Bai in the year 1992-93, but there is no evidence present to show that the previous marriage of the applicant was continuing and subsisting when the marriage of the applicant with the respondent had in the year 2009. The witnesses of the respondent have stated about performance of marriage of the respondent with the applicant and also about the social meeting which was held on account of dispute between the applicant and the respondent, in which the applicant had admitted that the respondent is his wife and he had taken the responsibility for the respondent in compromise. The applicant side has not brought any evidence or examined the previous wife of the applicant, to show that the marriage of the applicant with his previous wife was continuing. In

the case of **Badshah vs. Urmila Badshah Godse and Another** (supra), the Supreme Court has held in paragraphs 13.3 and 20, which is as follows:

‘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 a 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. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the 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.

20. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydon’s Case which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction of *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. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would

legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under [Section 125, Cr.P.C.](#), such a woman is to be treated as the legally wedded wife.'

12. After taking into consideration all the facts and circumstances, the evidence of the case and the position of law as settled, the finding of the learned Family Court that the respondent has entitlement in grant of maintenance cannot be said to be erroneous in any respect. Hence, I am of this view that this revision petition is devoid of any substance and the impugned order does not call for any interference.

13. Accordingly, the revision petition is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi