

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-885-2007 (O&M)
Reserved on:- 09.05.2023
Pronounced on:- 17.05.2023

Kulwant Singh

....Petitioner

Vs.

Parminder Kaur

...Respondent

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. H.P.S. Ghuman, Advocate for the petitioner.

Mr. Bhavyadeep Walia, Advocate and
Mr. Vikrampreet Arora, Advocate for the respondent.

AMARJOT BHATTI, J.

1. The petitioner – Kulwant Singh has filed revision against impugned order dated 25.04.2007 passed by learned Additional Sessions Judge, Adhoc, Patiala vide which the order dated 03.12.2005 passed by learned Sub Divisional Judicial Magistrate, Rajpura was set aside and Parminder Kaur, the petitioner in the main case was granted maintenance at the rate of ₹1,000/- per month from the date of order. Feeling aggrieved of this order, Kulwant Singh has filed the present revision.

2. The brief facts of the case are that Parminder Kaur filed petition under Section 125 Cr.P.C.(Annexure P-1) for grant of maintenance to the tune of ₹2,000/- per month from the respondent Kulwant Singh by alleging that the petitioner Parminder Kaur and respondent Kulwant Singh got married about 4 years ago at Village Gopalpur, Tehsil Rajpura, District Patiala, according to Sikh rites by Anand Karaj. After marriage they lived together as husband and wife at Village Gopalpur. No child was born out

of this wedlock. They lived happily for about two years, thereafter the respondent Kulwant Singh started demanding dowry in the shape of cash amount. She was beaten up without any reason in order to compel her to bring more dowry from her parents. The respondent Kulwant Singh is a Transporter. About one year ago, he went to Bihar on his truck and did not return. The petitioner apprehended threat to her life, therefore she started living in her parents house. The respondent called her once and demanded ₹ 5 lacs and told her to reach Bihar. About two years ago, the respondent had borrowed ₹25,000/- cash from her parents for the marriage of daughter of his friend. All her dowry articles are lying with the respondent, and his parents. On her complaint, FIR No. 263 dated 07.05.2000, under Section 406, 498-A, 506 of I.P.C. was registered at Police Station Sadar, Rajpura. She was taunted by the respondent and his parents by calling her a barren lady. She was turned out of the matrimonial home in September, 1999. The respondent Kulwant Singh has refused and neglected to maintain her. She has no source of livelihood nor she has got any movable or immovable property. The respondent Kulwant Singh is an agriculturist and a transporter. He earns ₹10,000/- per month. The petitioner Parminder Kaur has claimed maintenance of ₹2,000/- per month for her livelihood from the respondent Kulwant Singh.

3. Notice of this petition was given to the respondent Kulwant Singh who contested this petition and filed his reply(Annexure P-2) taking the stand that he never got married with the petitioner Parminder Kaur. All the allegations levelled against him are false and defamatory in nature. There is no question of any relationship of husband and wife nor he raised any demand of dowry as claimed by the petitioner. A false case has been

got registered against him and his family members. The petitioner Parminder Kaur has got no legitimate right to claim maintenance from the respondent Kulwant Singh. The petitioner has filed this petition only to harass him and it is misuse of the process of law. It is prayed that the petition filed by the petitioner may be dismissed with costs.

4. In order to prove the facts of the case, the learned counsel for the petitioner Parminder Kaur had examined petitioner Parminder Kaur as AW-1 (Annexure P-4) and Sarabjit Singh as AW-2, whereas the respondent Kulwant Singh has stepped into the witness box as RW-1.

After hearing arguments advanced by learned counsel for both the parties, the present petition filed under Section 125 Cr.P.C. was dismissed vide order dated 03.12.2005 (Annexure P-3). Feeling aggrieved of this order, Parminder Kaur filed criminal revision bearing Criminal Revision No. 55 dated 04.01.2006, which was accepted vide order dated 25.04.2007 and the respondent Kulwant Singh was directed to pay maintenance in favour of Parminder Kaur at the rate of ₹1,000/- per month from the date of order, resulting the present revision.

5. I have heard the arguments advanced by learned counsel for the petitioner Kulwant Singh as well as learned counsel for the respondent Parminder Kaur and have gone through the record carefully.

6. Learned counsel for the petitioner Kulwant Singh argued this revision on the sole ground that Parminder Kaur is not his legally wedded wife, therefore she is not entitled to claim maintenance under Section 125 Cr.P.C. The learned counsel for the petitioner referred to the statement of Parminder Kaur AW-1, who herself admitted during her cross-examination that he (Kulwant Singh) is having wife namely Rajinder Kaur who is

living in the matrimonial home. The cross-examination of Parminder Kaur AW-1 further shows that she was fully aware of this fact. It is argued that once it is established that he is not married to Parminder Kaur, therefore she cannot claim maintenance from him. The aforesaid facts were rightly considered by learned Sub Divisional Judicial Magistrate, Rajpura and the petition filed by Parminder Kaur was rightly dismissed vide order dated 03.12.2005, which is Annexure P-3. However, the learned Additional Sessions Judge (Adhoc), Patiala, while deciding the revision filed by Parminder Kaur failed to consider these facts and wrongly granted maintenance in favour of Parminder Kaur at the rate of ₹1,000/- per month from the date of order. The learned counsel for the petitioner has relied upon the authority cited in **2005(2) R.C.R.(Criminal) 190 Supreme Court of India**, case titled **“Savitaben Somabhai Bhatiya Versus State of Gujarat and Ors.”**, where in that judgment it was held by The Hon’ble Supreme Court of India that *‘as per the provisions of Hindu Marriage Act, 1955, Section 24 and Section 25, the marriage of a woman in accordance with the Hindu rites with a man having a living spouse is a complete nullity in the eye of law. Therefore, the lady was not held entitled to the benefit of Section 125 of Cr.P.C.* It was further explained that *expression ‘wife’ as per Section 125 of Cr.P.C. refers to only legally married wife’*. Therefore, by relying upon the aforesaid authority, the learned counsel for the petitioner prayed that the revision preferred by him may be accepted and the impugned order dated 25.04.2007 passed by learned Additional Sessions Judge (Adhoc) Patiala, granting maintenance in favour of Parminder Kaur at the rate of ₹1,000/- per month from the date of order may be set aside.

7. On the other hand, the learned counsel for the respondent pointed out that the aforesaid legal position put forward by learned counsel for the petitioner has undergone change. He has relied upon another authority of The Supreme Court of India cited in **2013(4) Cri.CC 653** titled **“Badshah Versus Sou. Urmila Badshah Godse and another”**, where it was explained that *the husband contracting second marriage by suppressing the factum of first surviving marriage, in that case the second wife though not legally wedded wife be treated as legally wedded wife for the purpose of claiming maintenance under Section 125 Cr.P.C.* It is argued that the petitioner cannot be allowed to take benefit of his own wrongful act. Kulwant Singh performed marriage with Parminder Kaur as per Sikh rites and they lived happily for two years and thereafter, the trouble started. One FIR was also registered against him and his family. Now he cannot escape his liability to provide maintenance to Parminder Kaur. It is argued that the law laid down in the aforesaid authority cited in **“Savitaben Somabhai Bhatiya Versus State of Gujarat and Ors.”** (Supra) has been overruled, therefore the revision preferred by the petitioner is without merits and the respondent Parminder Kaur is entitled to claim maintenance on the basis of order dated 25.04.2007 passed by learned Additional Sessions Judge (Adhoc), Patiala. The revision preferred by the petitioner deserves dismissal.

8. I have considered the arguments advanced by learned counsel for both the parties and have gone through the record carefully. As per the facts of the case, Parminder Kaur – respondent (petitioner in the main case) filed petition under Section 125 Cr.P.C. alleging that she got married with Kulwant Singh four years ago. They lived happily for about two years

and thereafter, she was maltreated in the matrimonial home. Her husband i.e. Kulwant Singh was raising demand for cash amount. He was Transporter by profession and was also having agricultural land. About one year ago i.e. from the date of filing of the petition before the trial court, he went to Bihar and did not return home. Thereafter, she started residing with her parents. On her complaint, FIR No. 263 dated 07.05.2000 was registered under Section 406, 498-A, 506 of I.P.C. at Police Station Sadar, Rajpura and she also filed the present petition claiming maintenance under Section 125 Cr.P.C. In reply to this petition, Kulwant Singh – petitioner (respondent in the main case) denied the factum of marriage and on that basis he claimed that Parminder Kaur is not entitled to claim any maintenance as he was never married to her. Therefore, there is no question of maltreatment on account of demand of dowry. As per his version, the petition was filed with malafide intention only to harass him.

Parminder Kaur filed this petition under the provisions of Section 125 of Cr.P.C, according to which a wife can claim maintenance from her husband who is unable to maintain herself. As per the explanation given in the section itself, the word ‘wife’ includes a woman who has been divorced by or has obtained divorce from her husband and has not remarried. Therefore, in order to claim maintenance under the aforesaid provision Parminder Kaur was required to establish that she is legally wedded wife of Kulwant Singh. I have gone through the statement of Parminder Kaur AW-1, Annexure P-4. During her cross-examination, she claimed that earlier she was married to Baljeet Singh. She had taken divorce from him. She further alleged that she had taken alimony of ₹3 lacs from her first husband. However, in this case Parminder Kaur has not

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placed on record any decree of divorce vide which she took divorce from her first husband Baljeet Singh. During cross-examination as AW-1, she claimed that she got married with Kulwant Singh by way of Anand Karaj ceremony and at one point, she claimed that for the purpose of marriage only *Ardas* was performed. She again said that the *Ardas* was performed at the time of Anand Karaj ceremony. During further cross-examination, she clearly admitted that at the time of aforesaid marriage, wife of Kulwant Singh was alive who is residing with Kulwant Singh in the matrimonial home. During further cross-examination, she further admitted that Kulwant Singh and his wife Rajinder Kaur are still living together in the matrimonial home. Therefore, it is clear that Parminder Kaur knew fully well that Kulwant Singh was a married man and he was having a wife who continued to live with Kulwant Singh in the matrimonial home. As per the provisions of Section 5 of the Hindu Marriage Act, 1955, one of the condition for a marriage is that a marriage may be solemnized between any two Hindus, where neither party has a spouse living at the time of marriage. Therefore, in the case in hand, Kulwant Singh was having a wife living with him in the matrimonial home and this fact was in the knowledge of Parminder Kaur and even then she claimed that she had performed marriage with Kulwant Singh. No doubt, society has changed with the passage of time and in some cases even couples in live-in relationship have been recognized. There is decision of The Hon'ble Supreme Court of India in **2010(4) CivCC 775** case titled “**D. Velusamy Versus D. Patchaiammal**”, where it was explained that *a man and woman not married but having live-in relationship could claim maintenance under the provisions of Protection of Women from Domestic*

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Violence Act, 2005 where the relationship is in the nature of marriage and it was held that the couple must fulfill the following ingredients which are explained as in para no. 33 and 34 of the said judgment, which reads as under :-

“33. In our opinion a ‘relationship in the nature of marriage’ is akin to a common law marriage. Common law marriages require that although not being formally married :-

(a) The couple must hold themselves out to society as being akin to spouses.

(b) They must be of legal age to marry.

(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

(see ‘Common Law Marriage’ in Wikipedia on Google)

In our opinion a ‘relationship in the nature of marriage’ under the 2005 Act must also fulfill the above requirements, and in addition the parties must have lived together in a ‘shared household’ as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a ‘domestic relationship’.

34. In our opinion not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a ‘keep’ whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage”.

Even as per the aforesaid conditions, the said couple should otherwise be qualified to enter into a legal marriage including being not married. But in the case in hand, Parminder Kaur knew right from the beginning that Kulwant Singh was a married man and his wife was still living in the matrimonial home. It is not a case where anything was concealed from Parminder Kaur or she was not aware of the marriage of

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Kulwant Singh with Rajinder Kaur. The judgment referred above in case titled **Badshah Versus Sou. Urmila Badshah Godse and another** (supra), the facts in that case were different as the petitioner had cheated the respondent by suppressing the factum of his first marriage. In para no. 16 of the aforesaid judgment, it was further explained that the judgment of **“Savitaben Somabhai Bhatiya Versus State of Gujarat and Ors.”** (supra) would apply only in those circumstances where a woman married a man with full knowledge of the first subsisting marriage, which is the case applicable to the facts of the present case.

Therefore, the respondent - Parminder Kaur does not fit in the definition of wife as provided under Section 125 of Cr.P.C. and her claim for maintenance under this provision is not justified. The learned Additional Sessions Judge (Adhoc), Patiala while passing impugned order dated 25.04.2007 failed to consider these facts. Therefore, the revision preferred by the petitioner – Kulwant Singh is accepted and accordingly, the aforesaid judgment passed by learned Additional Sessions Judge (Adhoc), Patiala is set aside by upholding the order dated 03.12.2005 (Annexure P-3) passed by learned Sub Divisional Judicial Magistrate, Rajpura.

The revision is accordingly, accepted.

Pending application(s), if any, also stands disposed of.

17.05.2023

lalit

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes
No