

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.446 of 2009

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1. Angoori Khatoon D/o late Md. Khalib and wife of Md. Hasim.
 2. Md. Shahid son of Md. Hasim.
 3. Md. Shajid Son of Md. Hasim.
 4. Md. Aaftab son of Md. Hasim.

All Sl. No.2 to 4 are under the guardianship of their mother and all are resident of Village-Bakarganj Abhanda, P.S. Laheriasarai, District-Darbhanga.

..... Petitioners

Versus

Md. Hasim son of late Md. Kashim, Resident of Mohalla Karamganj, P.S. Laheriasarai, District-Darbhanga at present working as Assistant in Rural Engineering Organisation Office, presently residing in Mohalla Bakarganj Abhanda, P.S. Laheriasarai, District-Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Jha, Advocate Mr. Jayant Anand, Advocate
For the Respondent/s	:	Mr. Nirbhay Prashant, Advocate Mr. Pravin Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

8 07-03-2024 Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State as well as learned advocate on behalf of the opposite party.

2. The instant criminal revision is directed against an order passed in Maintenance Case No.58 of 2006 by the learned Principal Judge, Family Court, Darbhanga rejecting an application under Section 125 of the Cr.P.C. filed by the petitioner no.1 holding inter-alia that the petitioner no.1 is not legally married wife of the opposite party and accordingly, she is not entitled to get any maintenance for herself and her minor children.

3. The aforesaid order is assailed in the instant



revision by the wife/petitioner no.1.

4. A lengthy argument has been advanced by both the learned counsels for the petitioners and the opposite party.

5. I am tempted to proceed with my discussion by recording an observation made by the Hon'ble Supreme Court in *Badshah Vs. Urmila Badshah Godse & Anr.* reported in *(2014) 1 SCC 188* which is relied on by the learned advocate for the opposite party. In para 13.1 the Hon'ble Supreme Court was pleased to observe as follows :-

“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.”

6. So in a proceeding under Section 125 of the Cr.P.C. prima-facie prove of marriage is sufficient. It is not required for the parties to prove marriage as per the customary provisions or personal laws to the hilt. If the Court prima-facie finds that the parties lived together at any point of time as husband and wife,



the Court is entitled to hold the petitioner/wife as married wife of the opposite party and passed an order entitling her for maintenance.

7. In the maintenance case, the opposite party denied his marriage with the petitioner no.1, he claims that he married to one Jahan Ara Begum and in the wedlock of Jahan Ara Begum he has seven children.

8. Though, the petitioner claimed herself to be the first wife, subsequently, she admitted that Jahan Ara Begum is the first wife of the opposite party and she is the second wife and she stayed in the house with the first wife of the petitioner for long twenty years. Her marriage was solemnized with the opposite party in presence of witnesses namely, Md. Zafar Ali and Md. Kamrujjama. However, though Md. Zafar Ali and Md. Kamrujjama admitted their presence in the marriage between Angoori Khatoon and the opposite party, they denied the fact that they were the witnesses of the Nikah.

9. On the other hand, Md. Zafar Ali said that one Mumtaz Ali and Md. Kamrujjama were the witnesses of the said Nikah. The said fact was also denied by Mumtaz Ali. therefore, during trial of the instant petition under Section 125 of the Cr.P.C. the petitioner failed to produce any witness of the marriage under Mohammedan Law between the petitioner and



the opposite party. The Qazi who presided over the marriage under Mohammedan Law was not examined though he is living. Under such circumstances, it is the duty of the Court to give a glance on the case made out by the opposite party. The opposite party has made out a case during cross examination of the petitioner that he had kept Angoori Khatoon as maid servant in her house and thereafter, developed illicit relation with her and on the pressure of Mohalla people he performed Nikah with her. After such cross examination which was denied by the petitioner, is it necessary for the Court to find out as to whether there was marriage between the parties by questioning intricacies of Mohammedan Nikah. From the evidence on record it appears that Angoori Khatoon used to stay in the house of the opposite party.

10. From the cross examination it is also found that the Mohalla people forcibly give marriage of opposite party with Angoori Khatoon. Had there been no marriage between Angoori and opposite party and the Mohalla people forced him to contract a marriage, he could have immediately moved before the Competent Court for declaration that the said marriage was a nullity. The opposite party did not file any case of declaration of the said marriage with Angoori Khatoon as null and void.

11. It is the case of the petitioner that in the wedlock



between the petitioner and the opposite party she gave birth to four children, the opposite party denied the said fact. In a coordinate proceeding under Section 498A of the I.P.C. on the prayer of the petitioner D.N.A. test of the children of the petitioner was done on the basis of their blood sample and the blood sample of the opposite party. The DNA test report proved that the opposite party is the biological father of the aforesaid four children. The said document was exhibited in the criminal case under Section 498A of the I.P.C. The said exhibited document was produced before the Trial Court for consideration that as a result of co-habitation the petitioner gave birth to four children.

12. The learned counsel for the opposite party has raised a question of legality and validity of the said exhibited document i.e. the DNA report stating the provision of Section 294(3) of the Cr.P.C. It is submitted by the learned counsel for the opposite party that since the opposite party had disputed the genuineness of the DNA report, it cannot be marked in the instant proceeding without examination of the Forensic Expert. Section 293 of the Cr.P.C. has made a detailed provision relating to acceptance of the reports of certain Government scientific expert. The said provisions runs thus :-

“293. Reports of certain Government



scientific experts.-- (1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely:-

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Inspector of Explosives;]

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkine Institute, Bombay;

(e) the Director or Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State forensic Science Laboratory;

(f) the Serologist to the Government.

[(g) any other Government scientific Expert



specified by notification by the Central Government for this purpose.]”

13. Plain reading of Section 293 of the Cr.P.C. states that **any document purporting to be a report under the hand of a Government scientific expert may be used as evidence in any inquiry, trial or other proceeding under this Code.** When the scientific expert report of DNA test was marked in a case under Section 498A of the I.P.C. as exhibit. The Court can make use of the said exhibit in another proceeding i.e. proceeding under Section 125 of the Cr.P.C. Thus, DNA test report proves that the children of the petitioner was born as a result of physical relationship between her and the opposite party, in order to bear four children it is not possible to have a solitary or one or two illicit relationship once in a blue-moon. In order to gave birth of four children a long and continuous relationship is required and such relationship is established between the petitioner and the opposite party and on the strength of such relationship the petitioner shall be presumed to be the wife of the opposite party.

14. It is needless to say that 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 marginalised section of the society. The propose 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.

15. It is prevalent in society that there are more than one relations of a male person with different women. Such physical relationship continues for long resulting in birth of children. In the instant case four children were born. The opposite party is proved to have been biological father of the children of the petitioner.

16. Considering such evidence on record can this Court throwaway the case of a destitute lady on the ground that intricacies of law relating to proof of Nikah have not been established during Trial of the proceeding under Section 125 of the Cr.P.C.

17. My answer is ofcourse fortified by the



observations of the Hon’ble Supreme Court.

18. For the reasons stated above, I have no other alternative but to set aside the judgment passed by the learned Principal Judge, Family Court, Darbhanga in Maintenance Case No. 58 of 2006 on 03.09.2008.

19. Accordingly, the instant revision is allowed.

20. The aforesaid case is remanded to the Trial Court for deciding the quantum of maintenance which the petitioner is entitled from the opposite party. Such exercise shall be made within three months from the date of communication of this order.

21. Parties are at liberty to communicate the order taking the same from the official server of the High Court of Judicature at Patna.

(Bibek Chaudhuri, J)

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