

CRR(F)–119-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)–119-2024 (O&M)
Date of Decision : 25.01.2024

Uday Raj

....Petitioner

VERSUS

Kirti and Another

....Respondents

CORAM : HON’BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Manoj Tanwar, Advocate for the petitioner.

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SUDEEPTI SHARMA, J. (Oral)

1. The petitioner in the present petition is challenging order dated 21.12.2023 passed by Learned Principal Judge, Family Court Jhajjar, CAMP Court, Bahadurgarh, whereby the application filed by the respondent-wife for interim maintenance under Section 125 Cr.P.C has been allowed and the petitioner was directed to pay a sum of Rs.4000/- pm to the wife and a child i.e. respondent Nos. 1 and 2 herein.

2. Learned counsel for the petitioner contends that respondent No.1 is not legally wedded wife and the son is also not his biological son. He has placed reliance on the judgment of Madhya Pradesh High Court passed in the case of **Smt. Sangeeta Rathore Vs. Naresh Rathore [2023(3) HLR 375]**, wherein it has been held as under:-

“8. It is unearthed from the aforesaid provision that an illegitimate child is entitled to get maintenance but an illegitimate wife is not entitled to get maintenance. The

intention of legislature is obvious that maintenance can only be granted in favour of legally wedded wife.

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10. *In view of aforesaid settled propositions and provisions of law it is crystal clear that the wife should be a "legally wedded wife" for claiming maintenance from her husband. A woman, having solemnized second marriage to another person is only entitled to get maintenance from that person, when the first marriage has been declared either null and void or she has obtained a divorce decree from her first husband. Since in the case at hand, as the petitioner could not get divorce from her earlier husband, she would not be entitled to get maintenance from her second husband/petitioner."*

3. He further placed reliance upon the judgment of Madhya Pradesh High Court passed in the case of **Bhagwandas Vs. Panpati Shah** **[2023(2) Crimes 492]**, wherein it has been held as under:-

“19. *Additionally, a "wife" under Section 125 Cr.P.C. would include a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. As discussed above, even if a woman does not have the legal status of a wife, she is brought within the inclusive definition of "wife" in order to maintain consistency with the object of the statutory provision. However, a second wife whose marriage is void on account of survival of the first marriage*

would not be a legally wedded wife, and therefore would not be entitled to maintenance under this provision. In the case of Vimala (K.) v. Veeraswamy (K.), (1991) 2 SCC 375, the Supreme Court held as follows:

"3. 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. When an attempt is made by the husband to negative the claim of the neglected wife depicting her as a kept- mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage. The term "wife" in Section 125 of the Code of Criminal Procedure, includes a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. The woman not having the legal status of a wife is thus brought within the inclusive definition of the term "wife" consistent with the objective. However, under the law a second wife whose marriage is void on account of the survival of the first marriage is not a legally wedded wife and is, therefore, not entitled to maintenance under this provision. Therefore, the law which disentitles the second wife from receiving maintenance from her husband under Section 125, CrPC, for the sole reason that the marriage ceremony though performed in the customary form

lacks legal sanctity can be applied only when the husband satisfactorily proves the subsistence of a legal and valid marriage particularly when the provision in the Code is a measure of social justice intended to protect women and children. We are unable to find that the respondent herein has discharged the heavy burden by tendering strict proof of the fact in issue. The High Court failed to consider the standard of proof required and has proceeded on no evidence whatsoever in determining the question against the appellant. We are, therefore, unable to agree that the appellant is not entitled to maintenance."

23. The Chanmuniya case (supra) also envisioned a factual matrix wherein both the parties were unmarried and their cohabitation as husband and wife led to the presumption of them being legally married. However, in the instant case, despite cohabitation as husband and wife, it is not legally tenable to raise a presumption of a valid marriage because both the Petitioner as well as the Respondent are already married to their respective spouses and their marriages are subsisting. Therefore, the Respondent cannot rely upon the Chanmuniya case in order bring herself within the definition of the term "wife" per the Explanation in Section 125 Cr.P.C. so as to avail an order for maintenance, despite the social object of this statutory provision.

24. As this is a petition under Section 125 Cr.P.C. and the term "wife" under Section 125 Cr.P.C. does not envisage a situation wherein both the parties in the alleged marriage have living spouses, this Court is of the opinion that the Respondent herein cannot seek maintenance from the Petitioner under this provision. This Court finds it unfortunate that many women, specially those belonging to the poorer strata of society, are routinely exploited in this manner, and that legal loopholes allow the offending parties to slip away unscathed. In spite of the social justice factor embedded in Section 125 Cr.P.C., the objective of the provision is defeated as it fails to arrest the exploitation which it seeks to curb. In the instant case, while the Court sympathises with the position of the Respondent, it is constrained to deny her maintenance as per the law of the land which stands as of today. However, the Respondent has the liberty to avail other remedies that may be better suited to the facts and circumstances of this case, such as seeking of compensation under Section 22 of the DV Act."

4. I have heard learned counsel for the petitioner and perused the judgments cited by the learned counsel for the petitioner.

5. In the case of **Smt. Sangeeta Rathore (supra)**, it has been held that a legitimate child is entitled to get maintenance and it has been further held in this judgment that under Section 125 Cr.P.C the expression used is 'wife' and wife should be legally wedded wife. This judgment would not be

of any help to the petitioner since admitted fact is that respondent No.1 is legally wedded wife of the petitioner. Judgment passed in the case of **Bhagwandas (supra)**, would also not be applicable in the present case because status of the parties in the present case is distinguishable as in the judgment of **Bhagwandas (supra)**.

6. In the impugned order dated 21.12.2023, learned Principal Judge, Family Court, Jhajjar, Camp Court, Bahadurgarh, has observed as under:-

“10. The conjugal relationship between the parties is not disputed. Though the respondent has raised a plea that the petitioner no.1 had a living spouse at the time of her marriage with him (respondent) and since 07.08.2018, the petitioner no.1 has been residing with her first husband itself and the petitioner no. 2 who is not the biological son of the respondent, no cogent evidence in this regard could be placed on record.

11. No doubt that the respondent has placed on record the copy some DNA Report prepared by DNA Labs India, vide which the probability of the paternity likelihood of the respondent is Zero %, no reliance can be placed upon the same at this stage, for as per his own pleadings the petitioner-wife has been separate from the respondent since 07.08.2018, and as such a question arises as to how the respondent could get the child and himself subjected to DNA examination. As such the above said report is liable to be disbelieved at this stage.”

7. A perusal of the impugned order shows that there is no infirmity in the said order and this Court does not find any merit in the present petition, which is dismissed accordingly.

8. Pending applications, if any, also stand disposed off.

January 25, 2024
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(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No