



**254 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-24302-2018
Reserved on: 25.07.2024
Pronounced on: 29.07.2024

Palwinder SinghPetitioner

Versus

Amanjot Kaur ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vivek Salathia, Advocate
for the petitioner.

Ms. Ravinder Kaur Manaise, Advocate
for the respondent.

HARPREET SINGH BRAR, J.

1. The present petition has been preferred under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') against the impugned order dated 17.03.2016 (Annexure P-1) passed by the learned Additional Sessions Judge, Gurdaspur whereby in appeal interim maintenance of Rs. 3,000/- granted to the respondent order dated 12.02.2016 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Gurdaspur (hereinafter 'JMIC') in application under Section 125 Cr.P.C., has been enhanced to Rs. 4,000/- per month.

2. Briefly, the facts are that the marriage between the petitioner and the respondent was solemnised on 16.02.2013 in accordance with Sikh rites and rituals. However, marital discord ensued and the respondent filed respondent filed an application under Section 125 Cr.P.C., which was allowed and Rs. 3,000/- per month by the learned JMIC 12.02.2016 (Annexure P-2) as interim maintenance. Aggrieved by the same, the respondent preferred a revision



petition before the lower Appellate Court, which was allowed vide order dated 17.03.2016 (Annexure P-1) and the maintenance allowance was enhanced to Rs. 4,000/- per month.

3. Learned counsel for the petitioner, *inter alia*, contends that the learned Courts below have fallen into grave error by awarding maintenance to the respondent as she is not a legally wedded wife of the petitioner. The respondent had concealed the factum of non dissolution of her earlier marriage with one Darshan Singh from the petitioner. The said fact has also been admitted by the respondent in her cross-examination on 31.08.2015 (Annexure P-3). While the first marriage of the respondent subsists, she cannot be said to be the legally wedded wife of the petitioner and as such is not entitled to any maintenance under Section 125 Cr.P.C.

4. *Per contra* learned counsel for the respondent submits that the parties were duly married on 16.02.2013 and have resided together as husband and wife from the date of the marriage to 20.06.2013. It was only due to the continuous harassment meted out to her that the respondent left the company of the petitioner.

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that this is the second marriage of the respondent. The petitioner has not denied the solemnization of marriage but only claims the same to be void. The couple was cohabiting as husband and wife for about 4 months after marriage. The respondent was mistreated and shunned out of her matrimonial house on 20.06.2013, which is reason sufficient enough for the respondent to not want to reside with the petitioner. As such, the petitioner cannot be allowed to shrug off his legal and moral duty to maintain the respondent.



6. The provisions of Section 125 Cr.P.C. were enacted as a measure to further social justice and protect dependent women, children and parents, which also fall within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. Being alive to the same, this Court is of the considered opinion that strict proof of marriage cannot be made a condition precedent for claiming maintenance under the provision of Section 125 Cr.P.C., as it would be antithetical to the legislative intent behind the same. In ***Dwarika Parsad Satpathy vs. Bidyut Prava Dixit (1999) 7 SCC 675***, a two Judge bench of the Hon'ble Supreme Court, speaking through Justice M.B. Shah, has made the following observations:

“13. Hence, in our view from the evidence which is led if the Magistrate is prima facie satisfied with regard to the performance of marriage in proceedings under Section 125 Criminal Procedure Code, 1973 which are of summary nature, strict proof of performance of essential rites is not required. Either of the parties aggrieved by the order of maintenance under Section 125, Criminal Procedure Code, 1973 can approach the civil court for declaration of status as the order passed under Section 125 does not finally determine the rights and obligations of the parties.”

7. As far as the question of performance of essential ceremonies is concerned, the same is not required to be proved to file a claim for maintenance under Section 125 Cr.P.C. While the same would be necessary to make out the offence of bigamy as defined under Section 494 of the IPC, the standard of proof required under Section 125 Cr.P.C. remains preponderance of probabilities. It would be against the interest of justice to require the marriage to be proved beyond reasonable doubt since, as previously observed, Section 125 Cr.P.C. is beneficial in nature and aims to avoid vagrancy or destitution to dependents. Reliance in this regard can also be placed on ***Shivdhan vs. Manjeet***

Kaur 2024(2) R.C.R(Criminal) 815.



8. The Courts must endeavour to realise the purpose behind Section 125 Cr.P.C. by being conscious of the practical realities of society. A hypertechnical view regarding the same would allow the avoidant partner to twist the law to their benefit and leave the less affluent partner to unjustly suffer. At this junction, it would be apposite to refer to judgment rendered by a two Judge bench of the Hon'ble Supreme Court in ***Chanmuniya vs. Virendra Kumar Singh Kushwaha (2011) 1 SCC 141***, wherein, speaking through Justice A.K. Ganguly, the following was held:

“43. We are thus of the opinion that if the abovementioned monetary relief and compensation can be awarded in cases of live-in relationships under the Act of 2005, they should also be allowed in a proceedings under Section 125 of Criminal Procedure Code It seems to us that the same view is confirmed by Section 26 of the said Act of 2005.

44. We believe that in light of the constant change in social attitudes and values, which have been incorporated into the forward-looking Act of 2005, the same needs to be considered with respect to Section 125 of Criminal Procedure Code and accordingly, a broad interpretation of the same should be taken.

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46. We are of the opinion that a broad and expansive interpretation should be given to the term 'wife' to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a pre-condition for maintenance under Section 125 of the Criminal Procedure Code, so as to fulfil the true spirit and essence of the beneficial provision of maintenance under Section 125.”

9. Even if the marriage between the parties was solemnised during the subsistence of first marriage of the petitioner, it would not disentitle her to claim maintenance under Section 125 Cr.P.C. The term ‘wife’ must be given an expansive meaning to realise the social purpose behind it which is to avoid vagrancy and destitution. Furthermore, the wife is bestowed with certain



inchoate rights by the virtue of marriage, notwithstanding the possibility of a the same being void *ipso jure*. Reliance in this regard can be placed on the judgment rendered by this Court in ***Pinki vs. Arvind*** in ***CRR(F)-642-2024*** decided on 08.05.2024.

10. Further, a two-Judge Bench of the Hon’ble Supreme Court in ***Kirtikant D. Vadodaria Vs. State of Gujarat (1996) 4 SCC 479***, speaking through Justice Faizan Uddin, opined as follows:

“15... While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.”

11. Moreover, at this stage, merely interim maintenance has been granted to the respondent. The parties are yet to prove their claims in accordance with law, by leading evidence in order to assist the Court in arriving at the final verdict. As such, this Court does not find any grounds to interfere with the impugned order.

12. Accordingly, the present petition is dismissed. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

29.07.2024

Neha	Whether speaking/reasoned	:	Yes/No
	Whether reportable	:	Yes/No