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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-530-2024 (O&M)
Date of decision: 18.04.2024

Shivdhan

... Petitioner

Vs.

Manjeet Kaur

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Nikhil Mittal, Advocate for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been preferred against the impugned order dated 28.02.2024 passed by the learned Family Court, Yamuna Nagar, vide which application filed under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was allowed and maintenance of Rs.6,000/- per month was awarded to be paid to the respondent.

2. The marriage between the petitioner and the respondent was solemnized on 22.09.1996 according to Hindu/Sikh rites and rituals. Out of this wedlock, no child was born. However, matrimonial dispute ensued between the couple and the respondent filed an application under Section 125 Cr.P.C. seeking maintenance of Rs.25,000/- per month. The petitioner filed a reply and contested the claim made by the respondent. The learned Family Court vide order dated 28.02.2024 granted maintenance allowance of

Rs.6,000/- per month in favour of the respondent. Aggrieved by the same, the petitioner has approached this Court by filing the present petition.

3. Learned counsel for the petitioner, *inter alia*, contends that provisions of Section 125 Cr.P.C. can only be invoked by a legally wedded wife. The petitioner is Muslim whereas the marriage, as alleged by the respondent, took place in Gurudwara revered by Sikh community. Nothing on the record reflects that the marriage was solemnised and essential ceremonies were performed in furtherance of the same. As such, it is evident that no legally valid marriage subsists between the petitioner and respondent. He further relies upon the judgment rendered by the Hon'ble Supreme Court in *Savitaben Somabhai Bhatiya Vs. State of Gujarat and others, 2005 (2) RCR (Crl.) 190*, to contend that only legally wedded wife is entitled to maintenance from her husband. Furthermore, the respondent is merely a tenant of the petitioner, who is misusing the law to usurp his property with mala fide intentions.

4. Having heard learned counsel for the petitioner and after perusing the record with his able assistance, this Court is of the opinion that the following questions require adjudication:

(i) *Whether strict proof of marriage is required to claim maintenance under Section 125 Cr.P.C.?*

(ii) *Whether prolonged cohabitation as husband and wife without proof of a valid marriage qualifies for grant of maintenance under Section 125 Cr.P.C.?*

5. The legislative intent behind the provision under Section 125 Cr.P.C is to provide speedy assistance and social justice to women, children and infirm parents. 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 v. 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.”

6. Further, the reliance place by the learned counsel for the petitioner on ***Savitaben Somabhai Bhatiya***'s case (*supra*) is unfounded as the marriage between parties therein was proved to have been solemnized

and the issue was restricted to the same being a second marriage. 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.

7. Further still, the petitioner herein claims to be Muslim. However, it can be reasonably deduced from the circumstances that the respondent was aware of the same. While two persons belonging to different religions cannot get married under Hindu Marriage Act, 1955, the law permits the same under Special Marriage Act, 1954. As such, the respondent's claim for maintenance cannot be dismissed merely on the ground that the marriage was solemnised in a Gurudwara in Punjab.

8. A perusal of the record indicates that the petitioner and the respondent were cohabitating as husband and wife for about two decades. The respondent has placed her Aadhar Card on record wherein the petitioner's name has been mentioned as her husband. Further, the bail order dated 19.03.2021 in FIR No. 90 dated 03.03.2021 reflects that the petitioner has admitted to being married to the respondent for the last 25 years.

Furthermore, the speaking order passed by S.P., Yamunangar states that the petitioner himself has given a statement to the effect that his marriage to the respondent was solemnised in the Gurudwara and they have resided together as a married couple for the last 20-25 years.

9. A two Judge bench of the Hon'ble Supreme Court in ***Chanmuniya v. Virendra Kumar Singh Kushwaha (2011) 1 SCC 141***, speaking through Justice A.K. Ganguly, opined as follows:

“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.”

10. While the matter in *Chanmuniya's case (supra)* has been referred to a larger bench, the current stance remains that prolonged cohabitation by a couple, in a domestic setting, albeit without a duly performed marriage, cannot be denied the right to claim maintenance. 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.

11. 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.”

12. Another objective the legislature has sought to achieve by this provision is to provide maintenance *pendente lite* to the applicant spouse during proceedings emerging out of matrimonial disputes so that she/he can

maintain herself/himself, have sufficient funds to pursue the litigation, and not suffer at the instance of the affluent spouse.

12. While dealing with the issue of maintenance *in extenso*, a two Judge Bench of the Hon'ble Supreme Court in ***Rajnesh Vs. Neha and another, (2021) 2 SCC 324*** laid down the criteria for determining quantum of maintenance and issued the following directions:

"III Criteria for determining quantum of maintenance

(i) The objective of granting interim/permanent alimony is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

82. *The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife. Refer to ***Jasbir Kaur Sehgal v. District Judge, Dehradun and others (1997) 7 SCC 7. Refer to Vinny Paramvir Parmar v. Paramvir Parmar (2011) 13 SCC 112.****

83. *In Manish Jain v. Akanksha Jain (2017) 15 SCC 801, this Court held that the financial position of the parents of the applicant-wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who*

makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the Court should mould the claim for maintenance based on various factors brought before it.

*84. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications. **Reema Salkan v. Sumer Singh Salkan (2019) 12 SCC 303.***

*(ii) A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. **Chaturbhuj v. Sita Bai (2008) 2 SCC 316.***

85. The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

(iii) Section 23 of HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Sub-section (2) of Section 23 of HAMA provides the following factors which may be taken into consideration: (i) position and status of the parties, (ii)

reasonable wants of the claimant, (iii) if the petitioner/claimant is living separately, the justification for the same, (iv) value of the claimant's property and any income derived from such property, (v) income from claimant's own earning or from any other source.

(iv) Section 20(2) of the D.V. Act provides that the monetary relief granted to the aggrieved woman and/or the children must be adequate, fair, reasonable, and consistent with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home.

*(v) The Delhi High Court in **Bharat Hedge v. Smt. Saroj Hegde 40 (2007) DLT 16** laid down the following factors to be considered for determining maintenance:*

“1. Status of the parties.

2. Reasonable wants of the claimant.

3. The independent income and property of the claimant.

4. The number of persons, the non-applicant has to maintain.

5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.

6. Non-applicant's liabilities, if any.

7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.

8. Payment capacity of the non-applicant.

9. Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.

10. The non-applicant to defray the cost of litigation.

11. The amount awarded under section 125 Cr.PC is adjustable against the amount awarded u/s 24 of the Act.”

(vi) Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable.”

12. In view of the discussion above, this Court answers the above framed questions in the following terms:

- (i) For the purpose of Section 125 Cr.P.C., the existence of a marriage does not require proof beyond reasonable doubt. The standard of proof applicable in this regard would be preponderance of probabilities
- (ii) Prolonged cohabitation as husband and wife would entitle the partners to relief under Section 125 Cr.P.C. even if performance of essential ceremonies to solemnise a marriage remain unproven.

13. A perusal of the impugned order passed by the learned Family Court makes it evident that the Court below has duly considered the material placed before it for determining the quantum of maintenance. A careful and just balance has been drawn, keeping in view the spiralling inflation rates and high cost of living corresponding to the reasonable needs of the respondent. Learned counsel for the petitioner has not been able to indicate any perversity in the impugned order, which warrants interference by this Court.

14. Accordingly, the present petition is dismissed being bereft of any merit.

**[HARPREET SINGH BRAR]
JUDGE**

18.04.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No