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

CRR-665-2010 (O&M)

Date of decision: 17.05.2024

Mukesh

....Petitioner

Versus

Rekha and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ashwani Bhardwaj, Advocate
for the petitioner.

None for respondent No.1.

HARPREET SINGH BRAR, J.

1. The present revision petition has been preferred against the impugned order dated 13.11.2009 passed by the learned Family Court, Hisar, 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.1150/- per month was awarded to be paid to respondent No.1, who is the wife of the petitioner and Rs.550/- to the respondent No.2, who is their minor son.

2. The marriage between the petitioner and respondent No.1 was solemnized on 23.11.2004 according to Hindu rites and rituals. Out of this wedlock, a male child was born on 19.07.2007. However, matrimonial dispute ensued between the couple and the respondents filed an application under Section 125 Cr.P.C. seeking maintenance of Rs.4,000/- per month. The petitioner filed a reply and contested the claim made by the respondents. The learned Family Court vide order dated 13.11.2009 granted maintenance



allowance of Rs.1,700/- per month in favour of the respondents. 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 learned trial Court failed to consider that respondent No.1 concealed the factum of her first marriage before marrying the petitioner. The marriage of respondent No.1 with the petitioner during the subsistence of her first marriage is void in the eyes of law and hence does not entitle her to the grant of maintenance. There is no evidence on record to prove that the first marriage of respondent No.1 was dissolved by way of legally passed decree under the Hindu Marriage Act. As such, it is evident that no legally valid marriage subsists between the petitioner and respondent No.1.

4. I have heard learned counsel for the petitioner and perused the record with his able assistance.

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 being a measure to further the cause of social justice. The same also falls 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 Section 125 Cr.P.C., as it would be antithetical to the legislative intent behind the same.

6. 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 validity of marriage is concerned, the same is not required to be proved beyond reasonable doubt to claim 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. Furthermore, a hypertechnical view regarding grant of maintenance under Section 125 Cr.P.C. would allow the avoidant partner to twist the law to their benefit and leave the less affluent partner to unjustly suffer. Reliance in this regard may also be placed on the judgment rendered in this Court in ***Shivdhan vs. Manjeet Kaur CRR(F)-530-2024*** as decided on 18.04.2024

8. A perusal of the record indicates that the petitioner and respondent No.1 were cohabiting as husband and wife. In fact, three years after their marriage was solemnised, a son was born out of this wedlock,. This Court is of the opinion that the term ‘wife’ must be given a wider meaning, in context of Section 125 Cr.P.C. The validity of the marriage cannot be made ground to deny maintenance to the wife, when the couple has been in prolonged cohabitation of a domestic nature. Admittedly, the marriage between the parties was solemnised



in accordance with Hindu rites and rituals on 23.11.2004 at Hisar. As such, notwithstanding the possibility of the marriage being void *ipso jure*, the fact that the couple was cohabiting as husband and wife, would bestow respondent No.1 with certain inchoate rights, making her eligible to claim maintenance under Section 125 Cr.P.C.

9. A two Judge bench of the Hon'ble Supreme Court in ***Badshah vs. Urmila Badshah Godse and another*** 2014(1) SCC 188 had held the husband, who performed second marriage after concealing the factum of the first, to be liable to pay maintenance to the second wife in spite of lack of legal validity to their marriage. Speaking through Justice A.K. Sikri, the following was observed:

“11. No doubt, it is not a case of second marriage but deals with standard of proof under Section 125, Criminal Procedure Code by the applicant to prove her marriage with the respondent and was not a case of second marriage. However, at the same time, this reflects the approach which is to be adopted while considering the cases of maintenance under Section 125, Cr.P.C. which proceedings are in the nature of summary proceedings.

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*24. In **Rameshchandra Daga v. Rameshwari Daga**, 2005(1) RCR (Civil) 615, the right of another woman in a similar situation was upheld. Here the Court had accepted that Hindu marriages have continued to be bigamous despite the enactment of the Hindu Marriage Act in 1955. The Court had commented that though such marriages are illegal as per the provisions of the Act, they are not 'immoral' and hence a financially dependent woman cannot be denied maintenance on this ground.*

*25. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in **Heydon's Case**, (1854)3 Co.Rep.7a, 7b which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction *ut res magis valeat quam pereat*, in such cases i.e. where alternative constructions are possible the Court must give effect to that which will be*



responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125, Criminal Procedure Code, such a woman is to be treated as the legally wedded wife.

26. The principles of Hindu Personal Law have developed in an evolutionary way out of concern for all those subject to it so as to make fair provision against destitution. The manifest purpose is to achieve the social objectives for making bare minimum provision to sustain the members of relatively smaller social groups. Its foundation spring is humanistic. In its operation field all though, it lays down the permissible categories under its benefaction, which are so entitled either because of the tenets supported by clear public policy or because of the need to subserve the social and individual morality measured for maintenance.

*27. In taking the aforesaid view, we are also encouraged by the following observations of this Court in **Capt. Ramesh Chander Kaushal v. Veena Kaushal, (1978)4 SCC 70** :*

"The brooding presence of the Constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause - the cause of the derelicts."

10. 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. 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. Considering the fact that the parties were cohabiting before matrimonial discord ensued, it can be reasonably assumed that they intended to continue their relationship as husband and wife. Therefore, in view of the settled law, the threshold for invoking Section 125 Cr.P.C. has been successfully breached by respondent No.1. Furthermore, since the ambit of the present petition is limited to the question of maintenance, this Court finds no reason to comment upon the validity of marriage between the parties.

13. Accordingly, the present petition stands dismissed and impugned order dated 13.11.2009 passed by the learned Family Court, Hisar is upheld. However, the petitioner is at liberty to seek remedies in accordance with law qua adjudication on validity of the said marriage.

14. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

17.05.2024
Neha

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