

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

CRR(F)-642-2024
Reserved on: 06.05.2024
Pronounced on: 08.05.2024

PinkiePetitioner

Versus

Arvind ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Namit Khurana, Advocate
for the petitioner.

HARPREET SINGH BRAR, J.

1. The present revision petition has been preferred against the impugned order dated 20.03.2024 passed by the learned Family Court, Yamuna Nagar at Jagadhri, vide which application filed by the petitioner under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was dismissed.

2. The marriage between the petitioner and the respondent was solemnized on 15.10.2019 and no child was born out of this wedlock. However, matrimonial dispute ensued between the couple and the petitioner filed an application under Section 125 Cr.P.C. seeking maintenance which was dismissed by the learned Family Court vide impugned order, stating that a valid marriage does not subsist between the parties.

3. Learned counsel for the petitioner, *inter alia*, contends that the marriage between the parties was solemnized on 15.10.2019 according to Hindu rites and rituals in village Rattangarh. The petitioner was treated with utmost

cruelty since the very inception of the marriage and was ultimately turned out of the matrimonial home on 18.07.2020. Learned counsel submits that the petitioner does not have an independent source of income while the respondent-husband works as a Muneem in Universe Raju Paints at Ladwa, earning a salary of Rs. 20,000/-. Further, the respondent, in the reply filed by him, failed to take the plea that the petitioner is not his legally wedded wife. As such, he cannot be allowed to take this stance at a later stage in the trial. Learned counsel places reliance on the judgments rendered by the Hon'ble Supreme Court in ***Deoki Panjhiyara vs. Shashi Bhushan Narayan Azad and another* 2013 AIR SC 346**, ***Kamala and others vs. M. R. Mohan Kumar* 2018(4)R.C.R.(Criminal) 894**, this Court in ***Rohit Chawla vs. Swati* 2022(2) R.C.R.(Civil) 854** and the Allahabad High Court in ***Ram Prakash Achari vs. State of U.P.* 2023(160) ALR 607**.

4. Having heard learned counsel for the petitioner and after perusing the record with his able assistance, it transpires that this is the second marriage of the petitioner. The petitioner had obtained a divorce from her husband Rajat Kumar on 27.01.2020, while her marriage to the respondent was solemnized on 15.10.2019. An FIR bearing number 139 dated 13.10.2020 registered under Sections 498-A, 406, 323, 506 IPC was lodged against the respondent wherein he gave a statement admitting that his marriage was duly solemnized with the petitioner. However, at the time of the marriage, the petitioner presented herself as a divorcee, even though a decree of divorce had not yet been issued. Evidently, a decree of nullity was not sought by the respondent after realizing the factum of invalid second marriage. In the absence of such a decree, considering the fact that the parties were cohabiting in a domestic setting, after

performance of necessary marriage ceremonies, this Court is bound to draw a conclusion indicating existence of a relationship in the nature of marriage in view of ***Chanmuniya v. Virendra Kumar Singh Kushwaha (2011) 1 SCC 141***.

5. While it is evident that the marriage between the parties was solemnized during the subsistence of first marriage of the petitioner, which inevitably makes it invalid, the same does not dis entitle her to claim maintenance under Section 125 Cr.P.C. The term ‘wife’ must be given an expansive meaning to realize 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*.

6. 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.

“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."

7. Considering the fact that the parties were cohabiting peacefully before matrimonial discord ensued, it can be reasonably assumed that the couple 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 the petitioner. Furthermore, since the ambit of the present petition is limited to grant of maintenance, this Court finds no reason to adjudicate upon the validity of marriage between the parties.

8. Accordingly, the matter is remanded back to the learned Court below to decide upon the quantum of interim maintenance and prescribe conditions, if required. The respondent is at liberty to seek remedies in accordance with law qua adjudication on validity of the said marriage.

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

(HARPREET SINGH BRAR)
JUDGE

08.05.2024
Neha

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