



CRM-M-32597-2021 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-32597-2021 (O&M)

Reserved on: 20.08.2024

Date of Pronouncement:- 06.11.2024

PARUPKAR KAUR ALIAS UPKAAR AND ANOTHER

.....PETITIONERS

Vs.

SARABJIT SINGH ALIAS SARABJIT SAGAR

.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

(As on the reserved date)

Present: Mr. Karambir Singh Kahlon, Advocate,
for the petitioners.Mr. H.S. Dhindsa, Advocate,
for the respondent.

HARPREET KAUR JEEWAN, J.

1. The challenge in the present Criminal Revision Petition is to the order dated 13.07.2018 (Annexure P-8), whereby the revisional Court had modified the order passed by the Judicial Magistrate and declined to grant the relief of interim maintenance to petitioner No. 1-Parupkar Kaur alias Upkaar during the pendency of a petition filed under Section 125 of the Code of Criminal Procedure, 1973 (for short '*the Cr.P.C.*').

2. Learned counsel for the petitioner *inter alia* contends that the marriage of petitioner No. 1-Parupkar Kaur and the respondent-Sarabjit

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Singh alias Sarabjit Sagar was solemnized with the respondent on 07.06.2000 and out of the said wedlock, a female child, i.e. petitioner No. 2-Sargun was born on 12.08.2002. The relationship between petitioner No. 1-Parupkar Kaur and the respondent-Sarabjit Singh alias Sarabjit Sagar got strained after two years of marriage as respondent wanted to perform a second marriage which was objected by petitioner No. 1-Parupkar Kaur. Ultimately, petitioner No. 1 along with her minor child, i.e. petitioner No. 2 was turned out of the matrimonial house on 03.01.2003. Petitioner No. 1-Parupkar Kaur alias Upkaar, along with her minor child, i.e. petitioner No. 2-Sargun, is living in her parental home and she was never rehabilitated by the respondent despite many efforts made by the relatives.

2.1 It is further contended that the respondent had solemnized the second marriage with Sukhwinder Kaur @ Preety on 24.03.2006 upon which petitioner No. 1- Parupkar Kaur alias Upkaar filed a complaint under Sections 420 and 494 of the Indian Penal Code, 1860 (for short '*the IPC*') read with Section 120-B thereof on 07.09.2018 (Annexure P-2) and a summoning order was passed whereby the respondent was summoned to face trial, vide order dated 06.09.2019 (Annexure P-3). Thereafter, the respondent-Sarabjit Singh alias Sarabjit Sagar and petitioner No. 1-Parupkar Kaur alias Upkaar jointly filed a petition under Section 13-B of the Hindu Marriage Act, 1955 (Annexure P-4) and a decree of divorce was passed on 19.03.2010 (Annexure P-5), dissolving the said marriage. Petitioner No. 1-Parupkar Kaur alias Upkaar filed an application under Section 125 of the Cr.P.C. in August 2017 (Annexure P-6) and during the pendency of the said petition, the Area Magistrate passed the order granting

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interim maintenance to both the petitioners. However, the order was challenged by the respondent and by passing the impugned order dated 16.12.2019 (Annexure P-10), the revision filed by petitioners seeking enhancement and a revision filed by the respondent was decided, whereby the order passed by the Area Magistrate was partly modified. The application filed on behalf of petitioner No. 1-Parupkar Kaur alias Upkaar was declined whereas the order granting maintenance to petitioner No. 2-Sargun was upheld.

2.2 Learned counsel for the petitioner submitted that the revisional Court has wrongly relied upon the document dated 06.05.2003 (Annexure P-11), while holding that there was no marriage subsisting between petitioner No. 1-Parupkar Kaur alias Upkaar and the respondent, as such, the petitioner is not entitled to the maintenance. Despite there being an ample proof on record by way of the photographs (Annexure P-12) and the documents submitted by the respondent himself while filing an application to the passport authorities declaring petitioner No. 1-Parupkar Kaur alias Upkaar as his wife in the said documents.

3. On the other hand, learned counsel appearing on behalf of the respondent submitted that the factum of marriage alleged by the petitioner is not proved. Petitioner No. 1-Parupkar Kaur alias Upkaar and the respondent have never resided together as husband and wife. There was no relationship *inter se* the parties after the year 2003.

3.1 It is further contended that the execution of the document dated 06.05.2003 is proved on record and the said document has never been challenged by petitioner No. 1-Parupkar Kaur alias Upkaar for a period of

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15 years. In such circumstances, the revisional Court has rightly declined to grant the relief of interim maintenance to petitioner No. 1-Parupkar Kaur alias Upkaar.

4. I have heard learned counsel for the parties and perused the record. The Court of learned Additional Sessions Judge while accepting the revision had though observed that petitioner No.2-Sargun is admittedly born from the union of the parties, i.e. petitioner No. 1-Parupkar Kaur alias Upkaar and the respondent-Sarabjit Singh alias Sarabjit Sagar as they were having 'Live-in' relationship, however, declined to grant the interim maintenance to petitioner No. 1-Parupkar Kaur alias Upkaar, on the ground that the parties were though having 'Live-in' relationship but they have parted their ways. The parties were not having any relationship since April 2002. The document, dated 06.05.2003 was also relied upon and it was held that petitioner No. 1 remained silent for a period of 13 years and she did not claim any maintenance which indicates that she was capable of maintaining herself as well as the minor daughter. It was further observed that it is a matter of heavy debate as to whether petitioner No. 1-Parupkar Kaur alias Upkaar is legally wedded wife of the respondent or not. She has not explained how she has been maintaining herself and the minor daughter for 13 years together, which means she has concealed material fact regarding her sources of income.

5. The observations made by the Revisional Court are contrary to the factual position on record. Petitioner No. 1-Parupkar Kaur alias Upkaar has filed a complaint under 420 and 494 of the IPC read with Section 120-B thereof against the respondent dated 07.09.2018 (Annexure P-2), upon

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which summoning order dated 06.09.2019 (Annexure P-3) was also passed by the Area Magistrate. Apart from this, it has been observed that by relying upon the document dated 06.05.2003 (Annexure P-11), which has been set up by the respondent himself, it is an admitted fact that the respondent has also admitted the relationship *inter se* petitioner No.1 and the respondent. Apart from this, there is a child also out of the said relationship and the said relationship is further strengthened from the photographs (Annexure P-12), as well as, the documents Annexures P-13 and P-14. Annexure P-13 is an application submitted by the respondent at the time of issuance of the passport wherein he has written the name of his spouse as Perupkar-petitioner No. 1. Annexure P-14 is the Index card of the respondent wherein the name of his spouse has also been written as Perupkar-petitioner No. 1. All these documents have been ignored by the Additional Sessions Judge while upholding the order passed by the Area Magistrate.

6. It is well settled that the proceedings under Section 125 Cr.P.C. are summary in nature and the said provisions have to enumerate the agony, anguish, as well as the financial suffering of a woman who had left her matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the minor children. The observations by Hon'ble the Apex Court in Rajnesh vs. Neha and another [2021 (2) SCC 32] reads as under:-

“Proceedings under Section 125 of the Cr.P.C. are summary in nature. In Bhuvan Mohan Singh v Meena & Ors.⁸ this Court held that Section 125 of the Cr.P.C. was conceived to ameliorate the



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agony, anguish, financial suffering of a woman who had left her matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children. Since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, the husband was required to earn money even by physical labour, if he is able-bodied, and could not avoid his obligation, except on any legally permissible ground mentioned in the statute.”

7. So far as the issue as to the presumption of a marriage arises and parties are in a ‘Live-in’ relationship for a long period is concerned, the said question was considered by determining a view in a petition under Section 125 Cr.P.C. by the Hon’ble Apex Court in Chanmuniya vs. Virendra Kumar Singh Kushwaha and another (2011) 1 SCC 141. The said judgment has been further reiterated by the Hon’ble Apex Court in the aforesaid Rajnesh’s case (*supra*). The observations by the Hon’ble Apex Court in the aforesaid Rajnesh’s case (*supra*) read as under:-

“The issue whether presumption of marriage arises when parties are in a live-in relationship for a long period of time, which would give rise to a claim u/S. 125 Cr.P.C. came up for consideration in Chanmuniya v Virendra Kumar Singh Kushwaha & Anr. 9 before the Supreme Court. It was held that where a man and a woman have cohabited for a long period of time, in the absence of legal necessities of a valid marriage, such a woman would be entitled to maintenance. A man should not be allowed to benefit from legal loopholes, by enjoying the advantages of a de facto marriage, without undertaking the duties and obligations of such marriage. A broad and expansive interpretation must



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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. Strict proof of marriage should not be a pre-condition for grant of maintenance u/S. 125 Cr.P.C. The Court relied on the Malimath Committee Report on Reforms of Criminal Justice System published in 2003, which recommended that evidence regarding a man and woman living together for a reasonably long period, should be sufficient to draw the presumption of marriage.

The law presumes in favour of marriage, and against concubinage, when a man and woman cohabit continuously for a number of years. Unlike matrimonial proceedings where strict proof of marriage is essential, in proceedings u/S. 125 Cr.P.C. such strict standard of proof is not necessary.”

8. Keeping in view the fact that the allegations and the counter-allegations are yet to be proved and in view of the ratio of the aforesaid decision that law presumes in favour of marriage and against concubinage, when a man and woman cohabit continuously for a number of years, at this stage, there are sufficient documents on record from which presumption could be drawn in favour of the marriage between petitioner No. 1 and the respondent.

9. In view of the aforesaid facts and circumstances, the order dated 16.12.2019 (Annexure P-10) whereby the Additional Sessions Judge declined the relief of interim maintenance to petitioner No. 1 is factually not correct and also legally un-sustainable.

10. Consequently, the present petition is allowed and the order dated 16.12.2019 (Annexure P-10) passed by Additional Sessions Judge,



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Hoshiarpur, is set aside and the order dated 13.07.2018 passed by the Area Magistrate, (Annexure P-8) is upheld.

11. The aforesaid observations are only regarding the decision of the question related to grant of interim maintenance. The Family Court/trial Court/Area Magistrate shall not be influenced by the aforesaid observations while deciding the petition on merits.

12. Pending miscellaneous applications, if any, also stand disposed of.

(HARPREET KAUR JEEWAN)
JUDGE

November 06, 2024
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Whether Speaking	Yes/No
Whether Reportable	Yes/No