



212 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR(F)-488-2017 (O&M)
Date of decision: 09.05.2024

RAVNEET SHARMA

...PETITIONER

V/S

KHUSHWINDERPAL JOSHI

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rohit Dhiman, Advocate for
Ms. Ritu Punj, Advocate
for the petitioner.

HARPREET SINGH BRAR J. (ORAL)

CRM-39181-2017

This is an application under Section 5 of Limitation Act, 1963 read with Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for condonation of delay of 10 days in filing the present revision petition.

For the reasons mentioned in the application, the same is allowed and the delay of 10 days in filing the instant revision petition is condoned.

CRR(F)-488-2017

1. The present revision petition has been preferred against the impugned order dated 22.08.2017 passed by the learned District Judge, Family Court, Barnala, vide which application filed by the petitioner under Section 125 Cr.P.C. of was dismissed.

2. The marriage between the petitioner and the respondent was solemnized on 27.09.2014 as per Hindu rites and rituals 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 duly solemnised on 27.09.2014, which has been duly admitted by the respondent while filing a petition under Section 11 of the Hindu Marriage Act, 1955. The respondent has also admitted that the marriage between the parties was consummated. The learned Family Court has fallen into grave error by holding that the petitioner is not entitled to maintenance under Section 125 Cr.P.C. as the parties were merely in a live-in relationship and not married. Reliance in this regard can be placed on ***Badshah v. Sou. Urmila Badshah Godse and another 2013(4) R.C.R. (Criminal) 764, Meharunnisa v. Syed Habeeb 2015(3) R.C.R.(Criminal) 449*** and ***Chanmuniya vs. Virendra Singh Kushwaha and another 2010(4) R.C.R. (Criminal) 704***. Finally, the respondent-husband cannot be allowed to take the plea that the petitioner had merely obtained a panchayati divorce from her first husband when he himself has divorced his first wife only vide panchayati divorce deed.

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 both the petitioner and the respondent. The petitioner had obtained a divorce from first her husband Umesh Kumar @ Toni vide a Panchayati divorce deed on 14.06.2011, while her marriage to the respondent was solemnised on 27.09.2014. The respondent, in the petition filed by him under Section 11 of the Hindu Marriage Act, 1955 has categorically admitted to the factum of their



marriage while claiming that the petitioner failed to disclosed the factum of her first marriage to him. However, the said petition was dismissed in default by the learned Family Court vide judgment dated 18.08.2017. In the absence of a finding to the contrary, this Court is of the considered opinion that a reasonable inference can be drawn to the extent that the parties were cohabitating as husband and wife, after performance of necessary marriage ceremonies, till at least 17.09.2015, when the respondent allegedly discovered that this was in fact the second marriage of the petitioner. As such, this Court is bound to draw a conclusion indicating existence of a relationship in the nature of marriage in view of ***Chanmuniya vs. Virendra Kumar Singh Kushwaha (supra)***.

5. Arguably, the marriage between the parties was solemnized during the subsistence of first marriage of both the petitioner and the respodnent respectively. Without commenting on the same, this Court is of the view that subsistence of first marriage does not disentitle the petitioner to claim maintenance under Section 125 Cr.P.C as she had been residing with the respondent as his wife. The wife is bestowed with certain inchoate rights by the virtue of marriage, notwithstanding the possibility of the same being void *ipso jure*. The term 'wife' must be given an expansive meaning to realize the social purpose behind it which is to avoid vagrancy and destitution.

6. A two Judge bench of the Hon'ble Supreme Court in ***Badshah vs. Urmila Badshah Godse and another (supra)*** 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 cohabitating peacefully in a domestic setting before marital 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. Reliance in this regard can also be placed upon the judgment rendered by this Court in **Shivdhan v. Manjeet Kaur** in CRR(F)-530-2024, decided on 18.04.2024. 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 District Judge, Family Court, Barnala to decide upon the quantum of maintenance and prescribe conditions, if required. The respondent is at liberty to seek his remedies, in accordance with law, qua adjudication on validity of the said



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

May 09, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No