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**223-1 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRR(F)-701-2019****Reserved on: 14.08.2024****Pronounced on: 20.08.2024****Jitender Kumar****... Petitioner****Vs.****Seema Singh and another****... Respondents****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Lajpat Rai Sharma, Advocate
and Ms. Monika Khatri, Advocate
for Mr. Vivek Khattri, Advocate
for the petitioner.

Mr. Rajesh Khandelwal, Advocate
for respondents

*********HARPREET SINGH BRAR, J.**

1. The present revision petition has been preferred against the impugned order dated 03.09.2019 passed by the learned Principal District Judge, Family Court, Hisar whereby the application of the respondents under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') was allowed.

2. The marriage between the petitioner and respondent No.1 was solemnized on 13.11.2013 and respondent No.2 was born out of this wedlock. However, matrimonial dispute ensued between the couple and the respondents filed an application under Section 125 Cr.P.C. seeking

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maintenance which was allowed by the learned Family Court vide impugned order and respondent No.1 was awarded Rs. 20,000/- per month and respondent No.2 was granted Rs. 5,000/- per month as maintenance.

3. Learned counsel for the petitioner, *inter alia*, contends that the marriage between the parties was solemnised on 13.11.2013. However, the petitioner was not legally divorced from his first wife namely Jagwati. The petitioner and Jagwati had obtained a panchayati divorce but the divorce was only decreed by the concerned Court on 07.11.2017. As such, the marriage of the petitioner with respondent No.1 is void in nature. Learned counsel also submits that respondent No.1 was well aware about his marital status at the time of their marriage. Therefore, since she is not the legally wedded of the petitioner, respondent No.1 is not entitled to maintenance under Section 125 Cr.P.C.

4. *Per contra* learned counsel for the respondents contends that the petitioner and respondent No.1 were married at Hisar, in accordance with Hindu rites and ritual. Since then, the couple was residing together as husband and wife, and respondent No.2 was born out of the wedlock. Moreover, the petitioner is employed as ASI/Exe with CISF and draws a salary of Rs. 60,000/- per month, as such, the petitioner is legally and morally bound to maintain his wife and children.

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that this is the second

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marriage of the petitioner. The petitioner had obtained a divorce from his first wife Jagwati on 07.11.2017, while her marriage to respondent No.1 was solemnised on 13.11.2013. Respondent No.1 also placed their wedding photographs on the record (Ex. P-13 to Ex. P-18) to establish the factum of their marriage. In fact, the birth certificate of respondent No.2 depicts the petitioner as the father. As such, considering the fact that the parties were cohabitating 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 vs. Virendra Kumar Singh Kushwaha (2011) 1 SCC 141***.

6. While it is evident that the marriage between the parties was solemnised during the subsistence of first marriage of the petitioner, which inevitably makes it invalid, the same does not disentitle her to claim maintenance under Section 125 Cr.P.C. The term 'wife' must be given an expansive meaning to realise 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*.

7. 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



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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*



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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."

8. It appears that the parties were cohabitating peacefully before matrimonial discord ensued, therefore, 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. stands successfully breached. 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.

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9. Accordingly, the present petition is dismissed as the learned counsel for the petitioner has not been able to indicate any perversity in the impugned order. However, the petitioner is at liberty to seek remedies in accordance with law qua adjudication on validity of the said marriage in accordance with law.

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

(HARPREET SINGH BRAR)
JUDGE

20.08.2024*Ajay Goswami*

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No