

**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH****120****CRR-2377-2024(O&M)****Date of order: 28.11.2024****Sanjay****.....Petitioner(s)****Vs.****Shalu****.....Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Abhinay Sharma, Advocate
for the petitioner.

Nidhi Gupta, J.

Challenge in the present petition is to the order dated 11.09.2024 passed by the learned Additional District and Sessions Judge, Rohtak whereby the appeal filed against the order dated 22.11.2023 passed by the learned Additional Chief Judicial Magistrate, Rohtak allowing the application for interim maintenance, was dismissed. The petitioner was directed to pay Rs.7,000/- to respondent and Rs.2,500/- each to two minor children.

2. Learned counsel for the petitioner submits that the petitioner is not liable to pay maintenance to the respondent as she is not legally wedded wife of the petitioner. In fact, the petitioner never remained in a domestic relationship with the respondent. Even the paternity of the children was specifically denied by the petitioner on the ground that the father of the children born to the respondent was the previous husband of the respondent. Moreover, the children are stated to have been born on 13.01.2017 i.e. about six months after the marriage of the petitioner and

the respondent which makes the story of the respondent completely untrustworthy. It is accordingly prayed that the impugned orders be set aside as the said facts have not been properly considered by the Id. Courts below.

3. No other argument is made on behalf of the petitioner.

4. I have heard learned counsel for the petitioner and perused the case file in great detail.

5. Perusal of record of the case shows that Petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “the DV Act”) dated Nil along with an application for grant of interim maintenance (Annexure P1), was filed by the respondent. Vide order dated 22.11.2023 the learned Additional Chief Judicial Magistrate, Rohtak had allowed the application of the respondent and had granted interim maintenance of Rs.7,000/- to respondent and Rs.2,500/- each to two minor children. The said order was challenged by the petitioner before the Sessions Court. However, vide the second impugned order dated 11.09.2024 the learned Additional District and Sessions Judge, Rohtak has dismissed the appeal filed by the petitioner. Hence, present petition.

6. The respondent had pleaded before the learned Courts below that the petitioner and the respondent had developed relationship whereafter, they had solemnized marriage in the Arya Samaj Mandir on 19.07.2016. As per the respondent, twins were born out of the wedlock between the petitioner and the respondent on 13.01.2017. From the

record it is borne out that the respondent had produced a Panchayati Divorce dated 14.06.2015 before the learned trial Court to show that she was divorced from her previous husband namely Pawan Kumar.

7. The petitioner had duly appeared before the learned Magistrate and had filed reply dated Nil (Annexure P2) to the above said petition of the respondent under the DV Act, wherein he had admitted that the marriage between the petitioner and the respondent had been solemnized on 19.07.2016. In fact, it is the pleaded case of the petitioner even in Para 3 of the present petition that “...*The petitioner admitted the marriage between the parties in Arya Samaj Mandir however, it was specifically stated to be void being bigamous...*”. Thus, it is admitted by the petitioner that he had solemnised marriage with the respondent in the Arya Samaj Mandir on 19.07.2016. However, it is contended by the petitioner that the said marriage was not legally valid as the respondent was divorced from her previous husband Pawan only on 15.2.2018. It has accordingly been argued that the respondent, not being the legally wedded wife of the petitioner, is not entitled to maintenance. The petitioner has also questioned the paternity of the twins born to the respondent.

8. The contrary contentions and claims raised by both the parties are all matters of trial. The truth or otherwise of the allegations and counter-allegations made by the parties can only be determined upon leading of evidence. As such, it is neither desirable nor feasible for this Court to interfere at this stage, let alone return a finding in respect of the contrary assertions made by either of the parties.

9. However, prima facie the arguments raised by the petitioner are liable to be rejected in view of categorical pronouncement of the Hon'ble Supreme Court in "**Chanmuniya Vs. Virendra Kumar Kushwaha & Another**" (2011) 1 SCC 141, wherein it has been held that: -

"....a broad and expansive interpretation should be given to term "wife" to include even those cases where a man and woman who have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a precondition for maintenance under Section 125 Cr.P.C., so as to fulfill the true spirit and essence of the beneficial provision of maintenance under Section 125....."

24. Thus, in those cases where a man, who lived with a woman for a long time and even though they may not have undergone legal necessities of a valid marriage, should be made liable to pay the woman maintenance if he deserts her. The man should not be allowed to benefit from the legal loopholes by enjoying the advantages of a de facto marriage without undertaking the duties and obligations. Any other interpretation would lead the woman to vagrancy and destitution, which the provision of maintenance in Section 125 is meant to prevent.

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39. We are thus of the opinion that if the abovementioned monetary relief and compensation can be awarded in cases of live-in relationships under the Act of 2005, they should also be allowed in a proceedings under Section 125 Cr.P.C. It seems to us that the same view is confirmed by Section 26 of the said Act of 2005.

40. We believe that in the light of the constant change in social attitudes and values, which have been incorporated into the forward-looking Act of 2005, the same needs to be conserved

with respect to Section 125 Cr.P.C. and accordingly a broad interpretation of the same should be taken”.

10. In **“Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit” (1999) 7 SCC 675**, it has been held in Para 6 that *“...if the claimant in proceedings under Section 125 Cr.P.C. succeeds in showing that she and the respondent have lived together as husband and wife, the Court can presume that they are legally wedded spouses...”*.

11. Similar view has been taken by the High Court of Bombay in the case of **“X... Vs. State of Maharashtra & Another” Law Finder Doc ID # 2423971**. Even recently, it has been held by the Kerala High Court in **“XXX Vs. The State of Kerala” CRL.A No.847 of 2007 decided on 05.11.2024**, that *“women in marriages with ‘colour of legality’ are also protected...”*. The ratio laid down in the above said pronouncements would ipso facto apply to the facts of the present case as it is the admitted case of the petitioner himself that the petitioner and the respondent had solemnized marriage in Arya Samaj Mandir.

12. In view of the above noted factual and legal position, the present petition is **dismissed**.

13. Pending application(s) if any shall also stand(s) disposed of.

28.11.2024
Sunena

(Nidhi Gupta)
Judge

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