



2024:DHC:9197



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 25th November, 2024

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CRL.REV.P. 1310/2024**KESHAV DEV**

.....Petitioner

Through: Mr. Neeraj Anand, Adv.
(through VC)

versus

KAMLESH & ANR.

.....Respondent

Through:

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)****CRL.M.A. 35177/2024 (for exemption)**

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.REV.P. 1310/2024 & CRL.M.A. 35176/2024 (for stay)

3. By way of the present petition, the petitioner challenges the judgment dated 11.09.2024 (hereafter '**the impugned judgment**') in MT No. 287/2018 passed by the learned Family Courts, Saket Courts, Delhi.
4. The learned Family Court, by the impugned judgment, directed the petitioner to pay a sum of ₹5,000/- per month to Respondent No. 1 and ₹7,000/- per month to Respondent No. 2.
5. The learned counsel for the petitioner submits that the impugned judgment is bad in law, contrary to facts and circumstances and hence, liable to be set aside.
6. He submits that the petitioner was never married to Respondent No. 1 and, hence, petition under Section 125 of the Code of Criminal Procedure, 1973, (**CrPC**) was not maintainable.

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7. He submits that no material had been placed by Respondent No.1 before the learned Family Court to establish that the marriage between them was ever solemnized.

8. It is the case of the petitioner that Respondent No. 1 was kept for taking care of his mother and they never solemnized any wedding. The petitioner, however, does not dispute that Respondent No. 2 was born after the petitioner and Respondent No. 1 mutually cohabited.

9. In the present matter, it has been vehemently argued by the learned counsel for the petitioner that the petitioner had never been married to Respondent No. 1 and that the learned Family Court had committed grave error in granting maintenance in favour of the respondents towards whom there exists no obligation of maintenance.

10. One of the key considerations for the Court when dealing with a case under Section 125 of the CrPC is determining whether the parties share a domestic relationship and/or are legally married. Under Section 125 of the CrPC, the Court must be *prima facie* satisfied that a lawful domestic relationship exists, which establishes the obligations and duties to maintain family members. The responsibility to prove the existence of a marital relationship lies with the party claiming such a marriage, and this must be demonstrated in accordance with the applicable statutory or personal law. However, the requirement of proof is limited to *prima facie* evidence, and there is no necessity to establish it with strict or beyond-reasonable-doubt standards.

11. A Coordinate Bench of this Court has dealt with the issue

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of marital status in maintenance matter in the case of **Nasir Khan v. Sarphina George : (2019) SCC Online Del 8467**, wherein it was held as under :

“15. As held by the Supreme Court in Kamala v. M.R Mohan Kumar unlike matrimonial proceedings where strict proof of marriage is essential, in the proceedings under section 125 Cr. P.C., such strict standard of proof is not necessary as it is summary in nature meant to prevent vagrancy. An order passed in an application under section 125 does not really determine the rights and obligations of the parties as the section is enacted with a view to provide a summary remedy to neglected wives to obtain maintenance. Further it was held that when the parties live together as husband and wife, there is a presumption that they are legally married couple for claim of maintenance of wife under Section 125 Cr. P.C.

16. It is fairly well settled that law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for a number of years.

17. Supreme Court has further held that when the family court has held that there was a valid marriage, the High Court being the Revisional Court has no power to reassess the evidence and substitute its views on findings of fact.

18. In the present case, the Trial Court has extensively considered the material on record and found that the parties have resided together as husband and wife for 20 years and there is a presumption of marriage. In view of the same I find no infirmity in the view taken by the Trial Court that the respondent has been able to establish that she is married to the Petitioner.”

12. Thus, to preserve the social intent of Section 125 of the CrPC, the Magistrate can render the *prima facie* finding about the factum of marriage, which will not be a conclusive finding for any other purpose apart from the order on maintenance. Any other interpretation would defeat the social intent of the legislation and must be avoided.



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13. The Hon'ble Apex Court in ***Pyla Mutyalamma v. Pyla Suri Demudu*** : (2011) 12 SCC 189 has laid down the standards of revisional jurisdiction to be exercised by the High Courts in maintenance proceedings under Section 125 of the CrPC and observed as under :

“16. In a revision against the maintenance order passed in proceedings under Section 125 CrPC, the Revisional Court has no power to reassess evidence and substitute its own findings. Under revisional jurisdiction, the questions whether the applicant is a married wife, the children are legitimate/illegitimate, being pre-eminently questions of fact, cannot be reopened and the Revisional Court cannot substitute its own views. The High Court, therefore, is not required in revision to interfere with the positive finding in favour of the marriage and patronage of a child. But where finding is a negative one, the High Court would entertain the revision, re-evaluate the evidence and come to a conclusion whether the findings or conclusions reached by the Magistrate are legally sustainable or not as negative finding has evil consequences on the life of both the child and the woman. This was the view expressed by the Supreme Court in Santosh v. Naresh Pal [(1998) 8 SCC 447] , as also in Pravati Rani Sahoo v. Bishnupada Sahoo [(2002) 10 SCC 510 : 2004 SCC (Cri) 1140] . Thus, the ratio decidendi which emerges out of a catena of authorities on the efficacy and value of the order passed by the Magistrate while determining maintenance under Section 125 CrPC is that it should not be disturbed while exercising revisional jurisdiction.”

14. To prevent sufferings and vagaries of woman and children, the Hon'ble Apex Court has held that in cases where the Trial Court has delivered a positive finding regarding the marital relationship between the parties, the High Court, in its revisional jurisdiction, should not override or substitute its views on such factual determination.



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15. In the present case, Respondent No. 1 claimed that she was married to petitioner on 21.11.2007 at her paternal house. She further alleged cruelty and neglect, claiming that the Petitioner expressed dissatisfaction with the dowry provided and subsequently began to neglect her.

16. In support of her contentions, Respondent No.1 produced her various documentary evidence, including her ration card, Aadhaar card, the birth certificate of Respondent No. 2, fee challan of Respondent No. 2, and a gas connection bill. Additionally, the testimony of PW2, the sister of Respondent No. 1, corroborated her assertions. PW2 testified that she had witnessed the marriage between the Petitioner and Respondent No. 1 and confirmed that after the marriage, the couple shifted to the Petitioner's flat in Pushp Vihar, Saket, New Delhi.

17. It is significant to note that the Petitioner did not contest his relationship with Respondent No. 2, as acknowledged by the Learned Family Court. The birth certificate of Respondent No. 2 explicitly lists the Petitioner as the father, and the ration card produced by Respondent No. 1 identifies the Petitioner as her husband and the head of the family. These documents, coupled with the oral evidence, provided strong prima facie evidence of the marital relationship and familial obligations, as rightly noted by the Trial Court. The learned Family Court rightly placed the reliance on *Lieutenant C.W. Campbell V. John A. G. Campbel : (1867) Law reporter 2 HC 269* also known as the Breadalbale case, wherein the house of Lords held that cohabitation, with the required repute, as husband and wife, was proof that the parties



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between themselves had mutually contracted the matrimonial relation. A relationship which may be adulterous at the beginning may become matrimonial by consent. This may be evidenced by habit and repute.

18. In the present case, the learned Family Court relied on documentary evidence, including ration cards, and testimonies of witnesses, to establish a presumption of a valid marital relationship. These documents demonstrated that the parties cohabited as husband and wife for a considerable period. The petitioner failed to produce convincing evidence to rebut this presumption. The learned Family Court rightly held that for the purpose of maintenance under Section 125 of the CrPC, the existence of a *de facto* marital relationship is sufficient.

19. After taking into consideration all the facts and circumstances of this case, the law laid down, the precedents analyzed, arguments advanced as well as the perusal of pleadings, this Court does not find any gross illegality or impropriety in the findings and analysis of the learned Family Court in upholding the existence of a marital relationship between the petitioner and Respondent No.1 and accordingly, awarding maintenance to the respondents.

20. In view of the above, this revision petition is dismissed as being devoid of any merit.

AMIT MAHAJAN, J

NOVEMBER 25, 2024

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