



\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 4391/2017 & CRL.M.A. 17609/2017**

AMIT KUMAR

.....Petitioner

Through: Mr. A.K. Vashishtha and Mr. R.K.
Singh, Advs.

versus

MEENA GUPTA

.....Respondent

Through: Mr. M.M. Aggarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

24.07.2024

%

1. This petition has been filed for quashing of criminal complaint filed by the respondent under Section 125 Cr.P.C. pending before the Family Court, Karkardooma Courts, Delhi.
2. The petition under Section 125 Cr.P.C. was filed by one Meena Gupta claiming that she was married to Late Sh. Rama Babu Gupta in 1986. She further stated that after the marriage she came to know from her husband that he had another wife to whom he was married in 1976, and a son named Amit Kumar was born out of that wedlock. The other wife, namely, Shashi Bala, mother of Amit Kumar, petitioner herein passed away on 20th April, 2014; her death certificate has been placed on record by the petitioner.
3. Respondent, however, stated in her Section 125 Cr.P.C. petition that Shashi Bala was a mentally challenged lady and left the house of her late husband Ram Babu without any information, and accordingly the respondent started to reside with Ram Babu Gupta and purportedly married



him in 1986. On this basis, she claims maintenance under Section 125 Cr.P.C. from the petitioner who was admittedly the son of Ram Babu Gupta and Shashi Bala. It is noted that Ram Babu also died intestate on 18th December, 2015.

4. Counsel for the petitioner states adverts to the judgment in ***Savitaben Somabhai Bhatiya v. State of Gujarat & Ors.***, (2005) 3 SCC 636 where the Court has held as under:

“8. There may be substance in the plea of learned counsel for the appellant that law operates harshly against the woman who unwittingly gets into relationship with a married man and Section 125 of the Code does not give protection to such woman. This may be an inadequacy in law, which only the legislature can undo. But as the position in law stands presently there is no escape from the conclusion that the expression 'wife' as per Section 125 of the Code refers to only legally married wife.

17. In Smt. Yamunabai's case (supra) plea similar to the one advanced in the present case that the appellant was not informed about the respondent's earlier marriage when she married him was held to be of no avail. The principle of estoppel cannot be pressed into service to defeat the provision of Section 125 of the Code.

18. It may be noted at this juncture that the legislature considered it necessary to include within the scope of the provision an illegitimate child but it has not done so with respect to woman not lawfully married. However, desirable it may be, as contended by learned counsel for the appellant to take note of the plight of the unfortunate woman, the legislative intent being clearly reflected in Section 125 of the Code, there is no scope for enlarging its scope by introducing any artificial definition to



include woman not lawfully married in the expression 'wife'."

(emphasis added)

5. The Apex Court has clearly stated that the expression “wife” under Section 125 Cr.P.C. refers to a legally wedded wife. In a situation when there was no divorce of the petitioner’s parents viz. Late Ram Babu Gupta and Late Shashi Bala in 1986, when the respondent contends that she was married to Ram Babu, the question of the respondent being the legally wedded wife does not arise.

6. Petitioner has also placed on record some family photographs along with his parents when he was young. In the rejoinder, it is also stated that his mother Shashi Bala was quite mentally active and was of sound mind and had duly attended all the marriages of the brothers and sisters of the late father as well as that of the sister-in-law of the brothers and sisters of the late father. These marriages happened in 1977, 1981, 1982 and the said photographs have been placed on record.

7. Besides, as per respondent, if the mother of the petitioner had left the father’s home in 1978, there is no evidence of any missing report having been lodged in order to give any sustenance to the plea of the respondent.

8. Counsel for respondent simpliciter relies upon the fact as stated in their Section 125 Cr.P.C. petition. There is no further evidence placed in that regard in support of the same.

9. Even otherwise, a perusal of Section 125(1)(d) Cr.P.C. which is extracted as under shows that a person is liable to maintain his father or mother:

“125. Order for maintenance of wives, children and parents.



(1) If any person having sufficient means neglects or refuses to maintain –
(a) his wife, unable to maintain herself, or
(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
(d) his father or mother, unable to maintain himself or herself”

The contention that this provision can be extended to a person who claims to be a legally wedded wife of the father, despite no evidence on record, is unmerited.

10. Accordingly, the petition is allowed and the complaint is quashed.
11. Petition is disposed of. Pending applications, if any, also stand disposed of as rendered infructuous.
12. Order be uploaded on the website of this Court.

ANISH DAYAL, J

JULY 24, 2024/MK