

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.158 of 2023**

Arising Out of PS. Case No.- Year-0 Thana- District- Begusarai

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Kanchan Kumari S/O Sri Sujit Kumar, R/v- Rahua, P.S.- Sahebpur Kamal,
District- Begusarai

... .. Petitioner/s

Versus

Sujit Kumar S/O Dukh Haran Yadav, R/v- Rahua, P.S.- Sahebpur Kamal,
District- Begusarai Presently residing at Bank of Baroda, Metro Mumbai East
Regional Office, Dev Darshan Building, 1st Floor, Eving Pession Road,
Bhandpu, Mumbai (Maharastra)

... .. Respondent/s

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Appearance :

For the Petitioner/s : Ms. Surya Nilambari, Advocate

For the Opposite party : Mr. Ajay Thakur, Advocate

Mr. Sandip Kumar Gautam, Advocate

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**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT**

Date : 30-04-2025

The instant revision is directed against the impugned judgment and order dated 19th November, 2022 passed in Maintenance Case No. 124 of 2018 by the learned Principal Judge Family Court, Begusarai, whereby and whereunder, the application under Section 125 of the CrPC was rejected by the learned Principal Judge and as a consequence thereof, Maintenance Case No. 124/2018 was dismissed.

2. The petitioner is the wife in the Maintenance Case before this Court, challenging the impugned order dated 19th November 2022.

3. Marriage between the Petitioner and the Opposite Party was solemnized on 31.01.2016 as per Hindu rites and rituals,



at the maternal house of the Petitioner in Vishnupur (District Begusarai). The Bank of Baroda employed the Opposite Party and posted in Mumbai (Maharashtra). After the wedding ceremony on 31.01.2016, the petitioner and the opposite party stayed together at Vishnupur (maternal house of the Petitioner) for 4 days and consummated their marriage. Thereafter, the Opposite Party left the Petitioner at her maternal home and went to Mumbai on the pretext of joining his job. The Opposite Party promised the Petitioner that he would return after obtaining leave from his office and take her to her matrimonial house at Rahua (District -Begusarai) and then to Mumbai. For the next 4-5 months, the Opposite Party regularly talked to the Petitioner over phone and even transferred money into her bank account to maintain herself. The Opposite Party even visited the petitioner at her maternal home. However, the Opposite Party refused to take her either to her matrimonial house in Rahua or Mumbai.

4. Soon, the Opposite Party started demanding Rs. 10 Lakhs dowry from the Petitioner and her family and refused to keep the Petitioner as wife, if his demands were not met. Other family members of the Opposite Party i.e. his mother, father, and brother started calling the Petitioner, making demand for Rs. 10 Lakhs. The Petitioner along with her family members visited her



matrimonial house at Rahua but was ill-treated by her in-laws. The in-laws of the Petitioner insisted on meeting their illegal demand of Rs. 10 Lakhs.

5. In June 2018 the Petitioner came to know that the Opposite Party had remarried one Seema Kumari. The Petitioner went to Rahua and confronted the Opposite Party No. 2. The Petitioner was abused and assaulted by the Opposite Party No. 2 and his associates. The Petitioner approached Mukhiya, Sarpanch, and other renowned persons of the village, Rahua to intervene in the matter. Upon their intervention, the Opposite Party provided a room for the Petitioner and since June 2018, the Petitioner has been staying in her matrimonial house at Rahua. However, the Petitioner was dependent on the grains and money received from her maternal side to survive at Rahua. The Opposite Party never treated her as a wife and failed to maintain her.

6. During examination-in-chief and cross-examination, it came to light that the Petitioner had been living at her father's place for 3-4 months but had not been living with his father for the last two months. Dukh Haran Yadav, who is the father of the opposite party, states that the Petitioner was living with him till four months ago, but has not been staying with him for the last couple of months, whereas applicant witness no. 1. Kanchan



Kumari herself has admitted in cross examination that she has never gone to her in-laws' house. Opposite party witness no. 2 has said in his cross-examination that he is not married to the Petitioner and he does not even know or recognize the Petitioner, and the photograph produced to prove the marriage in the suit is false, and he has never been to the applicant's maternal home. Looking into the evidence, the Family Court below passed an order dated 19.11.2022 in Maintenance Case No. 124/2018 by the Learned Principal Judge, Family Court, Begusarai whereby and whereunder the maintenance case filed under Section 125 of Criminal Procedure Code, 1973 the Court came to the finding that the applicant is not the wife of the opponent or any relationship like the wife is not presented as evidence in the suit.

7. In the instant revision, it is contended on behalf of the petitioner that the learned trial judge failed to appreciate that the marriage of the petitioner was solemnized with the opposite party according to Hindu rites and ceremonies. The priest who presided over alleged marriage in the trial court and stated on oath that he gave marriage of petitioner with the O.P. Thirdly, the evidence on record suggested that the petitioner stayed in her matrimonial home for about 3/4 months. The learned Advocate for the



petitioner has raised a question as to why a lady would stay in the house of the opposite party without having any relation.

8. It is also submitted by the learned Advocate on behalf of the petitioner that admittedly, the opposite party sent some money for few months for maintenance of the petitioner. Thus, by allowing the petitioner to stay in the paternal home of the opposite party and sending her money for her maintenance, the opposite party admitted that the petitioner is legally married wife of the opposite party.

9. It is further submitted by the learned Advocate for the petitioner that an application under Section 125 of the CrPC is disposed of in a summary procedure. It is a trite law that strict proof of marriage in a proceeding under Section 125 of the CrPC is not necessary. In **Pyla Mutyalamma v. Pyla Suri Demudu**, reported in **(2011) 12 SCC 189**, the Hon'ble Supreme Court held that the law presumes in favour of the marriage against concubinage that a man and a woman have cohabited continuously for a long number of years and when they are proved to have lived together as a husband and the wife, the law will presume, unless the contrary is clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage.



10. On the same point, the learned Advocate for the petitioner refers to another decision of the Hon'ble Supreme Court in *Dwarika Prasad Satpathy v. Bidyut Prava Dixit*, reported in *(1999) 7 SCC 675*. It is held by the Hon'ble Supreme Court in the aforementioned decision that in a proceeding under Section 125 of the CrPC, standard of proof in respect of marriage is not as strict as is required in a trial for the offence of bigamy under Section 494 of the IPC. Once it is admitted that a marriage procedure was valid, it is not necessary to prove that procedure was complete as per religious rites. The husband denying validity of marriage claiming that he underwent ceremony under duress at knife point was not taken into consideration by the revision court and marriage of the petitioner was presumed to be solemnized and therefore, the revisional court held that the wife is entitled to get maintenance. The Hon'ble Supreme Court affirmed the order of the revisional court in the above-mentioned reported decision.

11. The learned Advocate on behalf of the petitioner draws my attention to the evidence adduced by the parties during trial of the maintenance proceeding. According to the petitioner, who deposed during trial as witness no. 1 stated that her marriage was solemnized on 31st January, 2016 according to Hindu rites and ceremonies. After marriage, her husband stayed in their house for



3/4 days and then went back to his place of work at Mumbai. The petitioner was not taken to her matrimonial house as per the rituals after marriage. It is also stated by the petitioner that in the month of June, 2018, the opposite party performed a second marriage with one Seema Kumari, daughter of one Vijay Yadav. The petitioner went to her matrimonial home subsequently, but she was tortured by her father-in-law, mother-in-law and brother-in-law. She was not offered with proper food and clothing, so she has filed the application under Section 125 of the CrPC. During her cross-examination, she clearly admitted in paragraph no. 18 of the cross-examination that she never stayed together with the opposite party. On 31st January 2016, the opposite party came to her house, married her and left his matrimonial home.

12. In view of such circumstances, this Court finds that the facts and circumstances of this case is not applicable with the facts in the case of ***Dwarika Prasad Satpathy (supra)***. The marital tie between the parties is presumed in the background of their staying together for a considerable period of time with cohabitation. In the instant case, the petitioner admits that she never stayed with the opposite party.

13. With regard to the performance of marriage according to Hindu rites and ceremonies, though, it is not



permissible for the revisional court to decide the question as to whether all the ceremonial rituals according to Hindu rites and ceremonies were performed in the alleged marriage between the petitioner and the opposite party, i.e., Sujit Kumar, the Court at least expects when the priest was examined as a witness on behalf of the petitioner that he would tell about the essential ceremonies which were performed in the alleged marriage between the petitioner and the opposite party.

14. The petitioner examined the priest who solemnized her marriage with the opposite party but the said priest in his evidence stated that he was not in a position to recollect the rituals performed in the said marriage of the petitioner and the opposite party. He failed to state as to whether *Saptapadi* was performed which is essential ritual of marriage.

15. In the case of disputed marriage, the burden of proof has been decided in the following case, namely, **Tulsa v. Durghatiya** reported in **(2008) 4 SCC 520**, where it is held by the Supreme Court that long cohabitation and public recognition can be strong evidence of a valid marriage unless clearly proven otherwise.

16. The Court emphasized the legal presumption that arises when a man and a woman live together for a long time as



husband and wife. In such cases, unless proven otherwise, the law presumes a valid marriage.

"Where a man and woman have cohabited continuously for several years and live as husband and wife, there is a strong presumption in favor of their marriage."

17. This presumption is based on Section 114 of the Indian Evidence Act, which allows courts to presume the existence of a fact that appears to be natural or probable in the given circumstances. In the instant case, the petitioner was not able to prove that she was cohabitating with the opposite party for long. Looking into the evidence, neither the Petitioner nor the opposite party made any statement that will show the long period of cohabitation between the parties. Petitioner while getting her statements recorded has mentioned that she has not gone to her matrimonial house which is in Rahua village nor has she been living with his husband at his place of work in Mumbai. Hence, the Court comes to the finding that there is no long cohabitation between the parties nor there is any public recognition of the parties in the society they live in. The Petitioner was not able to establish her valid marriage with the Opposite Party.

18. Thus, it appears from evidence on record that the petitioner failed to prove that she was allowed to stay in her



matrimonial home as the wife of the opposite party. On the other hand, it has come in evidence that she was allowed to stay in one room of the opposite party on being requested by the Mukhiya of the village for about 3/4 months. There is no evidence that during the said period, the opposite party stayed with her and the alleged marriage was consummated. The learned Advocate on behalf of the petitioner lays great stress on two photographs, jointly with the petitioner and the opposite party. The said photographs have not been proved in accordance with the requirement of the Evidence Act. However, on perusal of the photographs which the petitioner claimed to be the photograph of the marriage between her and the opposite party, i.e., Sujit Kumar, it is found that the petitioner dressed as a bride is sitting by the side of Sujit Kumar, who was wearing a normal shirt-pant and sweater. He was not wearing any traditional dress of the groom. Both the photographs, on naked eye, appeared to be morphed.

19. Considering the entire materials on record, this Court is of the opinion that the learned trial Judge did not commit any illegality, irregularity and rightly held that the petitioner failed to prove her marriage with the opposite party.

20. Since the petitioner failed to prove that she is the legally married wife of the opposite party, she is not entitled to get



any maintenance. Therefore, the order passed by the learned Principal Judge, Family Court in Maintenance Case No. 124 of 2018 is affirmed. The instant revision is accordingly, dismissed on contest. However, there shall be no order as to cost.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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