

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1027 of 2016

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

Dr. Shyam Sundar Prasad @ Madan Raj, Son of Rajendra Prasad Kushwaha,
resident of Thakha Mahuawa Tola Utri, P.S. Motihari Muffasil, District East
Champaran.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Sunita Devi, Daughter of Rameshwar Prasad, Resident of Mohalla Rajendra
Nagar, P.S. Chhatauni, District- East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Uma Shankar, Advocate. Mr. Rajesh Kumar, Advocate.
For the State	:	Mr. Ram Priya Saran Singh, A.P.P.
For the O.P. No.2	:	Mr. Dilip Kumar Tandon, Advocate. Mr. Prateek Tandon, Advocate. Mr. Rohit Ranjan, Advocate.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT

Date : 04-12-2025

1. Heard learned counsel for both the parties.

2. The instant Cr. Revision application is directed
against the order dated 05.09.2016 passed by learned Principal
Judge, Family Court, East Champaran at Motihari (hereinafter
referred to as the “Trial Court”) in Maintenance Case No. 448 of
2011, wherein the learned Trial Court allowed the maintenance
petition filed by the opposite party no.2 (hereinafter referred to
as “O.P. No.2”) under Section 125 of the Cr.P.C. and has
directed the petitioner to pay Rs. 5,000/- per month to the O.P.
No.2 for her maintenance by 15th day of every succeeding



month with effect from 1st September, 2016 and has also directed to pay lump sum amount of Rs. 10,000/- to the O.P. No.2 towards cost of litigation.

3. The facts of the case, in brief, is that the O.P. No.2 (Sunita Devi) instituted a proceeding under Section 125 of the Cr.P.C. on 16.11.2011 before the learned Trial Court seeking a monthly maintenance of Rs.20,000/- for herself and her minor daughter. It is her case that she was married to the petitioner on 05.05.2009 according to Hindu rites and customs, and thereafter commenced her matrimonial life with the petitioner at her matrimonial house, during which period a daughter was born from the wedlock. The O.P. No.2 has alleged that the matrimonial relationship deteriorated when, at instance of the petitioner's parents, siblings and other relatives, the petitioner developed an illicit relationship with one Babita Devi, resulting in her being compelled to live a deserted and neglected life along with her daughter. The O.P. No.2 further asserted that the petitioner, who is stated to be a medical practitioner runs a nursing home and also owns approximately 25 acres of agricultural land besides a tractor, thresher, and a large residential house, earns a substantial income both from his profession and agriculture, and is therefore fully capable of



maintaining her and the girl child from their wedlock. She claims that her own economic condition is extremely vulnerable. It is additionally alleged by the O.P. No.2 that she recently came to know of the petitioner's alleged further illicit relationship with another women, namely Chanda Devi, who is stated to have been kept by him in his residence. In such circumstances, it has become impossible for the O.P. No.2 to continue her matrimonial life with the petitioner, leaving her no alternative but to seek maintenance for herself and her child under Section 125 of the Cr.P.C.

4. The case of the petitioner is that O.P. No.2 is not wife of the petitioner. O.P. No.2 was married with Sumeshwar Kumar @ Sumesh on 16.05.2006 and from their marriage a daughter was born on 25.06.2007. She had filed complaint case *vide* C-195 of 2008 against her husband and his family members which was compromised and was withdrawn on 08.09.2008. She filed a Divorce Case No.40 of 2009 on compromise and permanent Bench of Lok Adalat granted divorced on 04.06.2009. The further case of petitioner is that he was married with Babita Devi on 18.05.1997 and from their wedlock he has been blessed with two daughters. He has never solemnized his marriage with O.P. No.2 and she falsely filed Complaint Case



vide C-1012 of 2012 on 30.04.2012 and the maintenance case to extort money from him.

5. The O.P. No.2 filed the Maintenance Case No. 448 of 2011 seeking Rs. 20,000/- monthly maintenance. In order to substantiate her case against the petitioner, O.P. No.2 has examined altogether four witnesses, as under:

P.W.s	Names
P.W.-1	Sunita Devi (O.P. No.2)
P.W.-2	Rameshwar Prasad (father of O.P. No.2)
P.W.-3	Rajan Kumar (brother of O.P. No.2)
P.W.-4	Binod Rai (independent witness)

Moreover, O.P. No.2 has produced photographs marked as X to X/17 and medical prescription of *Rajendra Sewa Sadan* marked as X/18 for identification wherein all the aforementioned documents are contested by the petitioner. The O.P. No.2 has also exhibited the photo copy of the C.C. of sale deed dated 02.07.2011 executed in favour of the petitioner which is marked as Ext.-1 and the photo copy of C.C. of order dated 22.02.2013 passed in A.B.P. No. 290 of 2013.

6. The petitioner, on the other hand, examined altogether three witnesses in favour of his case, as under:

D.Ws.	Names
D.W.-1	Babita Devi (wife of petitioner)
D.W.-2	Shyam Sundar Prasad (petitioner)
D.W.-3	Rajendra Prasad (father of the petitioner)



The petitioner has exhibited documentary evidence in favour of his case as under:

Exts. Documents

- Ext.-A C.C. of order of Lok Adalat passed in Case No. 40 of 2009
- Ext.-B C.C. of divorce petition filed jointly by Sunita (O.P. No.2) and Sumeshwar Kumar before Lok Adalat
- Ext.-C Order of Lok Adalat passed in Case No. 40 of 2009
- Ext.-D C.C. of petition of Complaint Case No. C 2654 of 2010 filed by petitioner against O.P. No.2

Moreover, photocopy of voter list is marked Y for identification.

7. P.W.-1 Sunita Devi (O.P. No.2) in her deposition supported her case that her marriage was performed with the petitioner on 05.05.2009 in Hanuman Mandir at Motihari near Gandhi Sangrahalaya. She admitted that petitioner had full knowledge about her first marriage and she had no knowledge about the first marriage of the petitioner at the time of her marriage with the petitioner. She had admitted her first marriage with one Sumeshwar Prasad on 16.05.2006. P.W.-2 (Rameshwar Prasad), P.W.-3 (Rajan Kumar) & P.W.-4 (Binod Rai) also supported the case of O.P. No.2 in their deposition.

8. Petitioner, Shyam Sundar Prasad who is D.W.-2



deposed that his marriage was solemnized with Babita @ Sabita (D.W.-1) on 18.05.1997 and he further deposed that he has not performed marriage with O.P. No.2. The other witnesses on behalf of petitioner namely, D.W.-1 (Babita Devi @ Sabita) and D.W.-3 (Rajendra Prasad) have also supported the version of the petitioner.

9. The learned Trial Court on hearing the parties and considering the evidence on record convinced with the argument of O.P. No.2 *inter alia* observed that (i) the petitioner has performed second marriage with Sunita Devi (O.P. No.2) without giving knowledge of his first wife Babita Devi, and he was living with the O.P. No.2 as husband and wife; (ii) Sunita Devi (O.P. No.2) has no source of income and she has a valid reason to live separately from the petitioner; (iii) Dr. Shyam Sundar Prasad (petitioner) is not the father of the girl child of Sunita Devi as at the time of divorce with her first husband Sumeshwar Prasad she was living with the girl child who was born from the wedlock of Sumeshwar Prasad, thus not entitling her from maintenance by the petitioner; and (iv) The petitioner is able to maintain his second wife Sunita Devi, and held as under:

“...the respondent is directed to pay Rs. 5,000/- (Five Thousand) per month to the



petitioner wife for her maintenance by 15th Day of every succeeding month with effect from 1st September 2016. Further respondent is directed to pay a lump sum amount of Rs.10,000/- (Ten Thousand) to the petitioner wife towards cost of litigation. Further respondent is directed to pay ad interim maintenance of Rs.4,000/- per month to the petitioner wife vide order dt. 23.10.2013 till August 2016. He is directed to pay the arrear of ad-interim maintenance as early as possible. Failing which the serious action will be taken by the Court. ”

10. Being aggrieved by the said order of maintenance by the learned Trial Court in Maintenance Case No. 448 of 2011, the petitioner filed the present Revision.

11. Learned counsel for the petitioner submitted that the learned Trial Court has committed a grave error in passing the impugned order as the findings, save and except the finding that the minor girl child is the daughter of one Sumeshwar Prasad and therefore not entitled to maintenance, and the consequential direction for payment of maintenance are not sustainable and perverse in law as well as in facts. It is submitted that the learned Trial Court overlooked that O.P. No.2 was living with the petitioner during subsistence of her first valid marriage. It is further submitted that it is evident in the records of Lok Adalat in Case No. 40 of 2009 that divorce was granted to the O.P. No.2 from her first husband on 04.06.2009



which is subsequent to the O.P. No.2 alleged marriage with the petitioner dated 05.05.2009, rendering the latter marriage null and void and dis-entitling her from claiming the status as a 'wife' under Section 125 Cr.P.C. Learned counsel further submitted that mere cohabitation or assertion of living as husband and wife with the petitioner does not confer upon any legal status entitling O.P. No.2 to maintenance. It is submitted that the learned Trial Court erred in relying upon the photographs which were produced without their negatives. Also, the reliance of learned Trial Court on the order passed in A.B.P. No.290 of 2013 is not justifiable and appropriate. It is next submitted that the benefit of Section 125 Cr.P.C. extends only to a legally wedded wife and not to a woman who stands merely in the position of concubine or mistress. The marriage of a woman with a man having a living spouse is a nullity and the woman would not be entitled to the benefit of Section 125 Cr.P.C. The expression 'Wife' cannot include a woman who is not legally married wife. In support of his contention, he relied upon the decision of the Hon'ble Apex Court in the case of *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and Anr.* reported in (1998) 1 SCC 530 and *Savitaben Somabha Bhatiya v. State of Gujarat and Others* reported in (2005) 3 SCC 636.



Therefore, the petition filed by O.P. No.2 under Section 125 Cr.P.C. ought to have been rejected outrightly and the impugned order is liable to be quashed in its entirety.

12. Per contra, learned counsel for the O.P. No.2 favored the impugned order passed by the learned Trial Court and submitted that the maintenance proceeding was instituted on the basis of clear, consistent and credible assertion that O.P. No.2 was married to the petitioner on 05.05.2009 according to Hindu rites and thereafter lived with him as his wife and the petitioner having ample financial resources wilfully neglected and refused to maintain her. It is submitted that regardless of the controversy surrounding the validity of divorce decree, the fact remains that the O.P. No.2 lived with the petitioner in a domestic relationship resembling marriage, which evident from the materials on record. Learned counsel submitted that in maintenance proceedings under Section 125 Cr.P.C., the Court is required only to ascertain whether the woman was neglected by the man with whom she lived in a marital or marriage-like relationship. It is further submitted that the petitioner cannot evade his obligation by raising technical objections regarding the existence of a former marriage. Moreover, it is submitted that the allegation of illicit relationship raised by the O.P. No.2



coupled with the established financial capacity of the petitioner, demonstrates willful neglect on his part. It is, therefore, submitted that the learned Trial Court has rightly appreciated the evidence, correctly applied the settled principles governing Section 125 Cr.P.C., and committed no illegality in directing payment of maintenance and litigation cost. Hence, the impugned order warrants no interference by this Court.

13. This Court has considered the submission canvassed by the learned counsel for both the parties and perused the materials available on record.

14. In the instant revision, the petitioner has sought for setting aside the judgment of the learned Trial Court mainly on the ground that O.P. No.2 is not his legally wedded wife and accordingly she is not entitled for any maintenance from the petitioner under Section 125 Cr.P.C.. At this stage, it is relevant to analyze *“whether the impugned order of the learned Trial Court suffers from any material irregularity, illegality or perversity warranting interference in revisional jurisdiction and whether the question relating to the marital status of the opposite party could have been appropriately examined and decided within the limited scope of proceedings under Section 125 of the Cr.P.C.?”*



15. At this stage, it is apposite to reproduce Section 125 of the Cr.P.C., which embodies the summary and social-welfare oriented remedy for maintenance, and which forms the statutory foundation of the proceeding in the instant case. The provision, in its relevant part, reads as under:

“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, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate [* * *] [The words "not exceeding five hundred rupees in the whole" omitted by Act 50 of 2001, w.e.f. 24.9.2001.], as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct

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(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole



or any part of each month's [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] [Substituted by Act 50 of 2001, Section 2 for "allowance" (w.e.f. 24-9-2001).] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made :

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. - *If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.*

(4) *No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] [Substituted by Act 50 of 2001, Section 2 for "allowance" (w.e.f. 24-9-2001).] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.*

(5) *On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual*



consent, the Magistrate shall cancel the order.”

16. On bare perusal of the aforesaid provision it is explicit that the welfare-oriented remedy under Section 125 Cr.P.C. is intended to prevent destitution and vagrancy. The provision casts a statutory obligation upon individuals having sufficient means to maintain their wife, children and parents who are not capable to maintain themselves.

17. The jurisdiction of Section 125 Cr.P.C. being of a social justice character, the inquiry conducted therein is summary in nature, and the Court is not required to render a definitive adjudication on complex matrimonial status/issues. It is well-settled that what is required to be seen while deciding a maintenance petition is whether the claimant *prima facie* establishes marital relationship sufficient to grant interim or final maintenance, without entering into a detail determination of the validity or subsistence of marriage as would fall within the ambit of civil proceedings.

18. The Hon’ble Supreme Court while determining the scope of Section 125 of Cr.P.C., in the case of ***Dwarika Prasad Satpathy v. Bidyut Prava Dixit and Anr.*** reported in ***(1999) 7 SCC 675*** held as under:

“9. It is to be remembered that the



order passed in an application under Section 125 CrPC does not finally determine the rights and obligations of the parties and the said section is enacted with a view to provide a summary remedy for providing maintenance to a wife, children and parents. For the purpose of getting his rights determined, the appellant has also filed a civil suit, which is pending before the trial court. In such a situation, this Court in *S. Sethurathinam Pillai v. Barbara* [(1971) 3 SCC 923 : 1972 SCC (Cri) 171] observed that maintenance under Section 488 CrPC 1898 (similar to Section 125 CrPC) cannot be denied where there was some evidence on which conclusion for grant of maintenance could be reached. It was held that order passed under Section 488 is a summary order which does not finally determine the rights and obligations of the parties; the decision of the criminal court that there was a valid marriage between the parties will not operate as decisive in any civil proceeding between the parties.

12. Similarly, in *Santosh v. Naresh Pal* [(1998) 8 SCC 447] dealing with the contention that the wife had not proved that she was a legally married wife because her first husband was living and there was no dissolution of her marriage, this Court held thus: (SCC p. 448, para 2)

“In a proceeding for maintenance under Section 125 CrPC the learned Magistrate was expected to pass appropriate orders after being *prima facie* satisfied about the marital status of parties. It is obvious that the said decision will be a tentative decision



subject to final order in any civil proceedings, if the parties are so advised to adopt.”

13. Hence, in our view from the evidence which is led if the Magistrate is prima facie satisfied with regard to the performance of marriage in proceedings under Section 125 CrPC which are of a summary nature, strict proof of performance of essential rites is not required. Either of the parties aggrieved by the order of maintenance under Section 125 CrPC can approach the civil court for declaration of status as the order passed under Section 125 does not finally determine the rights and obligations of the parties.”

(Emphasis supplied)

19. In context thereto, it is pertinent to note the settled position of law that proceeding under Section 125 Cr.P.C. are not intended to conclusively determine the validity of marriage. The Hon'ble Supreme Court in ***Chanmuniya v. Birendra Kumar Singh Kushwaha and Anr.*** reported in ***(2011) 1 SCC 141*** has observed that strict proof of marriage is not a pre-condition for granting maintenance and that the provision must receive a purposive interpretation to advance the object of preventing destitution. The relevant paragraphs can be read as under:

“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.

25. The Committee on Reforms of Criminal Justice System, headed by Dr. Justice V.S. Malimath, in its Report of 2003 opined that evidence regarding a man and woman living together for a reasonably long period should be sufficient to draw the presumption that the marriage was performed according to the customary rites of the parties. Thus, it recommended that the word “wife” in Section 125 CrPC should be amended to include a woman who was living with the man like his wife for a reasonably long period.”

20. Now, it is relevant to analyze the word “wife” within the scope of Section 125 Cr.P.C. The Hon’ble Supreme Court in ***Chanmuniya (supra)***, referred to divergence of judicial opinion on the interpretation of the word ‘Wife’ in Section 125 Cr.P.C. which includes the judgment in the case of ***Yamunabai Anantrao Adhav (supra)*** and subsequent judgment in the case of ***Savitaben Somabha Bhatiya (supra)***, formulated three



questions and referred the matter to the larger Bench. However, after discussing various provisions of the Cr.P.C., Hon'ble Supreme Court held that a broad and extensive interpretation should be given to the term 'Wife' under Section 125 Cr.P.C. and has extensively explained the meaning of word 'Wife' as under:-

“42. We are of the opinion that a broad and expansive interpretation should be given to the term “wife” to include even those cases where a man and woman 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 CrPC, so as to fulfil the true spirit and essence of the beneficial provision of maintenance under Section 125. We also believe that such an interpretation would be a just application of the principles enshrined in the Preamble to our Constitution, namely, social justice and upholding the dignity of the individual.”

(Emphasis supplied)

21. Furthermore, in the case of **Badshah v. Urmila Badshah Godse** reported in **(2014) 1 SCC 188**, the Hon'ble Supreme Court in paragraphs 13.1 and 13.2 held as follows:-

“13.1. Firstly, in Chanmuniya case [Chanmuniya v. Virendra Kumar Singh Kushwaha, (2011) 1 SCC 141 : (2011) 1 SCC (Civ) 53 : (2011) 2 SCC (Cri) 666] , the parties had been living together for a long time and on



that basis question arose as to whether there would be a presumption of marriage between the two because of the said reason, thus, giving rise to claim of maintenance under Section 125 CrPC by interpreting the term “wife” widely. The Court has impressed that if man and woman have been living together for a long time even without a valid marriage, as in that case, term of valid marriage entitling such a woman to maintenance should be drawn and a woman in such a case should be entitled to maintain application under Section 125 CrPC. On the other hand, in the present case, Respondent 1 has been able to prove, by cogent and strong evidence, that the petitioner and Respondent 1 had been married to each other.

13.2. Secondly, as already discussed above, when the marriage between Respondent 1 and the petitioner was solemnised, the petitioner had kept Respondent 1 in dark about his first marriage. A false representation was given to Respondent 1 that he was single and was competent to enter into marital tie with Respondent 1. In such circumstances, can the petitioner be allowed to take advantage of his own wrong and turn around to say that the respondents are not entitled to maintenance by filing the petition under Section 125 CrPC as Respondent 1 is not “legally wedded wife” of the petitioner? Our answer is in the negative. We are of the view that at least for the purpose of Section 125 CrPC, Respondent 1 would be treated as the wife of the petitioner, going by the spirit of the two judgments we have reproduced above. For this



reason, we are of the opinion that the judgments of this Court in Adhav [Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav, (1988) 1 SCC 530 : 1988 SCC (Cri) 182] and Savitaben [Savitaben Somabhai Bhatiya v. State of Gujarat, (2005) 3 SCC 636 : 2005 SCC (Cri) 787] cases would apply only in those circumstances where a woman married a man with full knowledge of the first subsisting marriage. In such cases, she should know that second marriage with such a person is impermissible and there is an embargo under the Hindu Marriage Act and therefore she has to suffer the consequences thereof. The said judgment would not apply to those cases where a man marries a second time by keeping that lady in dark about the first surviving marriage. That is the only way two sets of judgments can be reconciled and harmonised.”

22. The judgment of Hon’ble Supreme Court in ***Chanmuniya (supra)*** was also followed by the Hon’ble Supreme Court in the case of ***Kamala and Others v. M.R. Mohan Kumar*** reported in ***(2019) 11 SCC 491***.

23. On a comprehensive reconsideration of the materials on record, and testing on the anvil of aforesaid principles, this Court finds no infirmity in the appreciation of evidence or application of legal principles by the learned Trial Court. The O.P. No.2 consistently established that she lived with the petitioner in a marital or marriage-like domestic relationship



and that she, along with her minor daughter, was wilfully neglected despite the petitioner's undisputed financial capacity. In proceedings under Section 125 Cr.P.C., strict proof of marriage is not indispensable, and the inquiry is confined to whether the claimant has been left without means of subsistence by a man with whom she lived in such relationship. The objections regarding the alleged subsistence of the O.P. No.2 earlier marriage do not, in the circumstances of this case, displace the *prima facie* proof of cohabitation and neglect. Acceptance to make payment to O.P. No.2 as wife in anticipatory bail proceedings or pleadings may be considered as one of the circumstances to show the conduct of the petitioner but the same cannot be treated as conclusive admissions.

24. This Court further finds that the submissions based on the validity of the Lok Adalat divorce decree or the alleged fraud in its procurement were rightly treated by the learned Trial Court as issues not germane to defeat a maintenance claim under Section 125 Cr.P.C., which is a social-welfare provision enacted to prevent destitution. Whether the divorce decree is void, voidable or otherwise challengeable is a matter for appropriate proceedings before a competent court, and does not *ipso facto* warrant denial of maintenance when



cohabitation and neglect stand proved on a preponderance of probabilities. The findings regarding the petitioner’s means and the O.P. No.2 indigence have also been correctly reached on the basis of reliable material. In absence of any perversity, jurisdictional error, or misdirection in law, the impugned order directing payment of maintenance, arrears and litigation cost suffers from no defect warranting interference in revisional jurisdiction. Accordingly, the reasoning and the impugned order of the learned Trial Court is affirmed.

25. In view of the aforesaid discussions, the present revision fails. Accordingly, the same is dismissed.

(Sunil Dutta Mishra, J)

Ritik/-

AFR/NAFR	AFR
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