IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Rev.(FC) No. 21 of 2024

Decided on: 27.10.2026

Ajit Singh .....Petitioner

Versus

Satya Thakur ..... Respondent

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Hon'ble Mr. Justice Yogesh Jaswal, Judge

Whether approved for reporting?[1] *Yes*

For the Petitioner : Mr.Ravinder Singh Chandel, Advocate.

For the respondent : Ms. Reena Thakur, Advocate.

Ajay Mohan Goel, Judge *(Oral)*

By way of this petition, the petitioner has prayed for the following relief:-

> *"It is, therefore, most respectfully prayed that the present revision petition may kindly be allowed and the impugned judgment dated 19.07.2019 passed by the court below may kindly be set aside in the interest of justice. Any other order which this Hon'ble court may deem fit and proper be also passed in favour of the petitioner."*

2. The petitioner has challenged order dated 19.07.2019, passed by the learned Sessions Judge, Family Court, Shimla, in Petition No. 155/2019/16, titled Shri Ajit Singh Vs. Smt. Satya Devi, in terms whereof, the application filed by the present petitioner under Section 127 of the Code of Criminal Procedure for alteration of

[1] *Whether reporters of the local papers may be allowed to see the judgment?*

order of maintenance dated 12.12.2007 was dismissed.

3. Having heard learned Counsel for the parties and having perused the order under challenge as well as the others documents appended with the petition, including the orders which were passed by the learned Court below in the proceeding filed under Section 125 of the Criminal Procedure Code, we are of the considered view that there is no merit in the present petition.

4. In an application filed by Smt. Satya Thakur under Section 125 of the Criminal Procedure Code, learned Court below, vide order dated 12.12.2007, in Criminal Case No. 15-4 of 2004/03, awarded the monthly maintenance at the rate of Rs. 2,000/- per month from the date of the institution of the application. The order was passed by the learned Court by returning the following findings:-

> *"15. In view of the evidence on record as discussed above, it is established that the applicant has sufficient reasons to live separate from the respondent. It is established that Rs.19863/-. It applicant has no independent source of income to fulfill her day to day needs, whereas, is gainful employed as a respondent Drawing Teacher Government School and the his monthly salary is in a 15 moral the duty the respondent to provide maintenance to the applicant who has no source of income and remains ill. The object*

of this provision is to compel a man to perform moral obligation which he owes to society in respect of his wife and children so that they of society and, thereby, driven vagrancy, immorality and are not left beggared and destituted on scrapheap of society and, thereby, driven to lite of vagrancy, immorality and crime for their subsistence. As discussed above, the respondent has sufficient means to maintain the applicant and the applicant has no means to fulfill her day to day needs, as such, moral obligation has been casted upon the respondent. Hence, respondent been to maintain the the point No.1 is answered in affirmative in favour of the applicant and against the respondent and point No.2 answered negative in against the respondent and in favour of the applicant."

5. In terms of Annexure P-5, an application was filed by the present petitioner under Section 127 (1) of the Criminal Procedure Code for alteration of order of maintenance dated 12.12.2007 and the reasons assigned in the application, seeking the alteration of the order were as under:

"2. That the application for maintenance was decided by this Hon'ble Court on 12.12.2007 passed in Criminal Case No.15-4 of 2004/03 and the respondent was awarded maintenance @ Rs.2,000/-p.m. from the date of institution of the application. The respondent at of filing application for of maintenance the time grant concealed these material facts and also misrepresented the true facts. The respondent also filed one application under Section 12 of

Protection of Women from Domestic Violence Act, 2005, which application was registered as criminal case (RBT) No.52-3/15/09 and decided by the Ld. Judicial Magistrate Ist Class, Court No.3, Shimla. The application filed by non-applicant was dismissed by the Ld. JMIC (3), Shimla. During the course of trial of the application sufficient evidence was led by the applicant to prove that the respondent was recorded as wife of Shri Narsingh Dutt alias N.D. Sharma and the respondent also in the stayed Government accommodation allotted to him at Solan. The Ld. Court has also come to conclusion that non-applicant has been residing separately from the applicant since 1993 with her own Will and not resided with applicant. Copy of order is being filed with this application.

3. That as the respondent has been residing with Shri Narsingh Dutt Sharma alias N.D. Sharma after obtaining divorce from the applicant willingly, therefore, she is not entitled to any maintenance and the order dated 12.12.2007 passed by this Hon'ble Court is required to be cancelled."

6. The wife categorically denied that she was residing with someone else and in fact, she alleged that the petitioner himself was residing with one Smt.Manorama Devi and had ousted her (respondent) from the house.

7. Said application was rejected by the learned Court below in terms of the impugned order by, *inter alia*, returning the following findings:

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"13. Admittedly, the respondent is legally wedded wife of the applicant. Though the applicant has claimed that on 18.12.1993 a customary divorce was effected between the parties but led no evidence to substantiate so. The applicant has not sought any decree of divorce from any competent court of law, as such, the plea of the applicant regarding the customary divorce is not at all tenable. As per Hindu Marriage Act 1955, any marriage solemnized, whether before or after the commencement of this Act may, on a petition presented by either the husband or the wife, can be dissolved by a decree of divorce on the grounds specified in Section 13 of this Act. Apparently, the marriage between the parties has not been dissolved by a decree of divorce. Thus, the respondent is legally wedded wife of the respondent.

14. Coming to the first ground, the applicant has not led any cogent and convincing evidence to construe that the respondent is legally wedded wife of Sh. N.D.Sharma. Even the order dated 28.09.2015 Ext.AW-1/A which has been relied upon by the applicant for seeking cancellation of the maintenance order dated 12.12.2007 is absolutely silent to construe that the learned Judicial Magistrate has expressed any finding that the respondent is living with Sh. N.D.Sharma as his wife. Another document Ext.PX-2 has not been proved as per the requirement of law, as such, cannot be looked into. The applicant is a retired Government servant and has sufficient means to pay the maintenance ordered vide order dated 12.12.2007. Thus both the grounds alleged by the

applicant for cancellation of maintenance order dated 12.12.2007 are not at all tenable and the present application is not maintainable being without cause of action Hence, all these issues are answered against the applicant."

8. In terms of the documents appended with the petition, in an application that was filed by Smt.Satya Devi under Section 125 of the Criminal Procedure Code, order was passed by the learned Court granting Rs. 2,000/- as compensation is dated 12.12.2007. There is another order on record, Annexure P-4, dated 24.04.2012, which again decides an application under Section 125 filed by Smt.Satya Devi and in terms of this order also, an amount of Rs. 2,000/- was awarded by the learned Court as monthly maintenance from the date of the institution of the application.

9. Learned Counsel for the petitioner informs the Court that the earlier order passed in the proceedings filed under Section 125 of the Criminal Procedure Code was assailed by the husband before the appellate Court. In the appeal, the matter was remanded back and order dated 24.04.2012 is the subsequent order passed by the learned Court below post remand. Qua these facts, there is no dispute intra the parties.

10. Despite the fact that the earlier order of maintenance dated 12.12.2007 after remand merged in the subsequent order that

was passed post remand by the learned Court below on the application filed under Section 125 of the Cr.P.C. which was decided on 24.04.2012, we find that in terms of the application filed under Section 127 of the Criminal Procedure Code by the present petitioner, the petitioner assailed order dated 12.12.2007 and no challenge was raised to order dated 24.04.2012 which was passed by the learned Court, post remand.

11. On account of this fact alone, in our considered view, the application filed by the present petitioner under Section 127 was liable to be rejected as not maintainable. In light of the fact that the earlier order was set aside in appeal and thereafter, a fresh order was passed by the learned Court on 24.04.2012, the application filed under Section 127 of the Criminal Procedure Code by the petitioner against a non-existing order was liable to be rejected on this ground.

12. However, in the interest of justice, construing the said application to be one preferred against the subsequent order passed by the learned Court, then also, we do not find any infirmity in the impugned order passed by the learned Court below while rejecting the application.

13. The contents of the application filed under Section 127

of the Cr.P.C. have already been quoted by us herein above. In terms of the averments mentioned therein, the contention of the petitioner for seeking recall of the order primarily was that the respondent was the recorded wife of Shri Narsingh Dutt Sharma alias N.D. Sharma and that the respondent has been residing with said Narsingh Dutt Sharma.

14. Section 127 of the Criminal Procedure Code reads as under:

> *"127. **Alteration in allowance**.—1 [(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.]*
>
> *(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.*

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that—

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,—

(i) in the case where such sum was paid before such order, from the date on which such order was made;

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to 1 [maintenance or interim maintenance, as the case may be,] after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a [monthly allowance for the maintenance and interim maintenance or

any of them has been ordered] to be paid under section 125, the Civil Court shall take into account the sum which has been paid to, or recovered by, such person [as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of] the said order."

15. In the present case, the petitioner has not been able to substantiate that the respondent, had married Shri N.D. Sharma, or for that matter, any other person. In fact, a perusal of para-13 of the order passed by the learned Court below demonstrates that learned Court took note of the fact that the petitioner had claimed that on 18.12.1993, a customary divorce was effected between the parties, yet he had led no evidence to substantiate the same and no decree of divorce from any competent Court of law was placed on record to demonstrate that there was a valid divorce between the petitioner and the respondent. Learned Court thus returned the finding that the marriage between the parties was still subsisting and had not been dissolved by a decree of divorce. It could not be demonstrated during the course of the hearing of this petition that said finding returned by the learned Court below was perverse and not borne out from the records.

16. In fact, in light of the fact that the relationship between

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the petitioner and respondent has not been dissolved by any legally recognized mechanism or a decree of divorce as per the provisions of the Hindu Marriage Act, the filing of the application under Section 127 of the Criminal Procedure Code was totally misconceived, as even the benefit of sub-Section (3) of Section 127 was not available to the present petitioner as there was nothing on record to demonstrate that the marriage between him and the respondent had been dissolved by way of a decree of divorce.

Accordingly, in light of the above discussions, as we do not find any infirmity in the order under challenge, the present petition is dismissed. Though, we were inclined to impose cost on the petitioner, however, on the request of learned Counsel for the petitioner, we are not imposing any cost. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

(Yogesh Jaswal)
Judge

October 27, 2026
(*narender*)