# Smt. N.Usha Rani vs Moodududla Srinivas on 30 January, 2025

2025 INSC 129

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO (S). OF 2025
[Arising out of SLP (Crl.) No. 7660 of 2017]

SMT. N. USHA RANI AND ANR. ……. APPELLANTS

VERSUS

MOODUDULA SRINIVAS ……RESPONDENT

JUDGMENT

SATISH CHANDRA SHARMA, J.

1. Leave granted.

2. The present appeal is arising out of order dated 13.04.2017 passed in Criminal Revision No. 1587 of 2012 by the High Court of Judicature at Hyderabad for the State of Telangana and State of Andhra Pradesh.

3. The facts of the case reveal that Appellant No.1 before this Court – Smt. N. Usha Rani married one Nomula Srinivas on 30.08.1999 at Hyderabad. During the period of their wedlock, she 16:04:52 IST Reason:

> gave birth to a male child, namely, Sai Ganesh on 15.08.2000. The couple lived together until disputes arose between them. Following their return from the United States of America in February 2005, they began living separately. Eventually, on 25.11.2005, a Memorandum of Understanding ('MoU') was executed between the couple, dissolving their marriage.

Meanwhile, Appellant No. 1 got acquainted with her neighbour, the Respondent, and the couple got married on 27.11.2005.

4. The Respondent then preferred a petition u/s.12 of the Hindu Marriage Act, 1956 ('HMA') r/w.

Section 7 of the Family Courts Act, 1984 seeking dissolution of marriage dated 27.11.2005. The prayer was allowed by the Family Court, Hyderabad, in O.P. No. 29 of 2006 vide decree dated 01.02.2006 and the marriage between Appellant No. 1 and the Respondent was declared null and void.

5. On 14.02.2006, the Appellant No. 1 remarried the Respondent. This second marriage was registered and a certificate to that effect was issued by the Registrar of Marriage, Chikkadpally, Hyderabad on 11.09.2006. The couple was blessed with a daughter, Venkata Harshini i.e., Appellant No. 2 on 28.01.2008. However, differences arose between the couple and the Appellant No. 1 preferred a complaint against the Respondent and his family members for offences u/s. 498A, 406, 506, 420 of Indian Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act, 1961.

6. The Appellants then preferred an application for maintenance u/s. 125 CrPC before the Family Court. Vide order dated 26.07.2012, the Court awarded Rs. 3,500/- pm to the Appellant No.1 and Rs. 5,000/- pm to the Appellant No. 2. Aggrieved, Respondent preferred a criminal revision petition against the award of maintenance. Vide the impugned order, the High Court upheld the award of maintenance to the daughter i.e., Appellant No. 2 but set aside the award of maintenance to the Appellant No. 1. The Court held that the Appellant No. 1 could not be considered the legal wife of the Respondent as her first marriage with Nomula Srinivas was not dissolved through a legal decree.

7. Learned Counsel for the Appellants vehemently argued before this Court that as the Appellant No. 1 and the Respondent were de facto living as a married couple and raising a child together, the benefit of maintenance should be extended to Appellant No.1. Reliance is placed on judgement passed in Rameshchandra Rampratapji Daga Vs. Rameshwari Rameshchandra Daga (2005) 2 SCC 33 whereby a Division Bench of this Court upheld the grant of maintenance to a wife u/s. 25 of the HMA from her second husband while her first marriage was still subsisting. The Court considered that although there was no legal decree of divorce from the first husband, (i) the wife had given customary divorce i.e., chhor chitthhi and (ii) the factum of the first marriage was not concealed from the second husband.

8. Further reliance is placed on judgement passed in Chanmuniya vs. Virendra Kumar Singh Kushwaha and another (2011) 1 SCC 141 whereby a Division Bench of this Court noted that considering the social object of Sec. 125 CrPC, the term “wife” should be expansively interpreted to include live- in partners. While the question of law was referred to a larger bench, the Court took the view that men should not be permitted to benefit from legal loopholes by enjoying the advantages of a de facto marriage without undertaking its duties and obligations.

9. On the contrary, learned counsel for the Respondent opposes the grant of maintenance on grounds that the Appellant No. 1 cannot be considered a “wife” u/s. 125 CrPC. Reliance is placed on judgement passed by a Division Bench of this Court in Savitaben Somabhai Bhatiya Vs. State of Gujarat and others (2005) 3 SCC 636 whereby the claim of maintenance made by the second wife was dismissed as the first marriage of the husband was subsisting. The Court therein noted that even if the husband was treating the claimant as his wife or the fact of first marriage was suppressed from the claimant, legislative intention was clear-- there was no scope for extending the definition of

"wife" to include a woman not legally married. Learned Counsel contends that similarly, as Appellant No. 1 has a legally subsisting marriage with her first husband, she cannot be considered the wife of the Respondent and claim maintenance u/s. 125 CrPC.

10. We have heard learned counsels for the parties and perused the record. The short question before us is whether a woman is entitled to claim maintenance u/s. 125 CrPC from her second husband while her first marriage is allegedly legally subsisting.

11. At the risk of burdening this judgement, it is imperative to reiterate the objective of maintenance u/s. 125 CrPC as laid out by Justice Krishna Iyer in Captain Ramesh Chander Kaushal vs. Veena Kaushal and Others (1978) 4 SCC 70. While upholding an award of maintenance beyond the monetary limitation prescribed under the provision, the Court held:

> "9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advance the cause — the cause of the derelicts."

12. This purposive interpretation was pressed into service by a 3-Judge bench in Vimala (K) vs. Veeraswamy (K) (1991) 2 SCC 375 whereby maintenance was granted to the second wife as the Respondent husband was unable to conclusively establish his first marriage. The Court noted:

> "3. Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. When an attempt is made by the husband to negative the claim of the neglected wife depicting her as a kept-mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage. The term 'wife' in Section 125 of the Code of Criminal Procedure, includes a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. The woman not having the legal status of a wife is thus brought within the inclusive definition of the term 'wife' consistent with the objective. However, under the law a second wife whose marriage is void on account of the survival of the first marriage is not a legally wedded wife and is, therefore, not entitled to maintenance under this provision. Therefore, the law which disentitles the second wife from receiving maintenance from her husband under Section 125, CrPC, for the sole reason that the marriage ceremony though performed in the customary form lacks legal sanctity can be applied only when the husband satisfactorily proves the subsistence of a legal and valid marriage particularly when the provision in the Code is a measure of social justice intended to protect women and children. We are unable to find that the

> respondent herein has discharged the heavy burden by tendering strict proof of the fact in issue. The High Court failed to consider the standard of proof required and has proceeded on no evidence whatsoever in determining the question against the appellant. We are, therefore, unable to agree that the appellant is not entitled to maintenance."
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> 13. Similarly, this Court in Dwarika Prasad Satpathy vs. Bidyut Prava Dixit and Another (1999) 7 SCC 675 granted maintenance where proof of marriage was inconclusive. The Court noted that the standard of proof of marriage while claiming maintenance is not as strict as is required in a trial for offence u/s. 494 IPC. It held:
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> "10. After not disputing the paternity of the child and after accepting the fact that the marriage ceremony was performed, though not legally perfect as contended, it would hardly lie in the mouth of the appellant to contend in a proceeding under Section 125 CrPC that there was no valid marriage as essential rites were not performed at the time of the said marriage. The provision under Section 125 is not to be utilised for defeating the rights conferred by the legislature on the destitute women, children or parents who are victims of the social environment..."
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> 14. A different view was taken by this Court in Yamunabai Anantrao Adhav vs. Anantrao Shivram Adhav and Another (1988) 1 SCC 530 whereby maintenance was denied to a second wife during the subsistence of the husband's first marriage on a strict interpretation of the term "wife" u/s. 125 CrPC. The Court gave supremacy to the intention of the legislature which specifically included divorced women within the purview of Sec.

125 CrPC but did not mention de facto wives whose marriages are void ab initio. This view found favour in Bakulabai and Another vs. Gangaram and Another (1988) 1 SCC 537 where maintenance was similarly denied on the plea of previously subsisting marriage. The case relied on by the Respondent i.e., Savitaben (supra) comes on the heels of these decisions.

15. This divergence in judicial opinion has been noted by the Court in Chanmuniya (supra) and therefore the question of whether women in live-in relationships can claim maintenance u/s. 125 CrPC was referred to a larger bench. The discussion, to the extent relevant, is reproduced below:

> "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...
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> 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."

16. Most recently, in Badshah vs. Urmila Badshah Godse and Another (2014) 1 SCC 188, this Court granted maintenance to a second wife who was kept in the dark about her husband's first subsisting marriage. The Court noted:

> "13.3. Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125 CrPC. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society."

17. This encapsulates the full scope and gravity of considerations before this Court as we deliberate on the issue at hand. The present case does not concern a live-in relationship. The Family Court made a factual finding that Appellant No. 1 married the Respondent and that finding is not disputed by the Respondent. Instead, the Respondent seeks to defeat the right to maintenance by claiming that his marriage to Appellant No. 1 is void ab initio as her first marriage is still subsisting. Two other pertinent facts must be considered: firstly, it is not the case of the Respondent that the truth was concealed from him. In fact, the Family Court makes a specific finding that Respondent was fully aware of the first marriage of the Appellant No. 1. Therefore, Respondent knowingly entered into a marriage with Appellant No. 1 not once, but twice. Secondly, Appellant No. 1 places before this Court an MoU of separation with her first husband. While this is not a legal decree of divorce, it also emerges from this document and other evidence that the parties have dissolved their ties, they have

been living separately and Appellant No. 1 is not deriving maintenance from her first husband. Therefore, barring the absence of a legal decree, Appellant No. 1 is de facto separated from her first husband and is not deriving any rights and entitlements as a consequence of that marriage.

18. In the opinion of this Court, when the social justice objective of maintenance u/s. 125CrPC is considered against the particular facts and circumstances of this case, we cannot, in good conscience, deny maintenance to Appellant No. 1. It is settled law that social welfare provisions must be subjected to an expansive and beneficial construction and this understanding has been extended to maintenance since Ramesh Chander (supra). An alternate interpretation would not only explicitly defeat the purpose of the provision by permitting vagrancy and destitution, but would also give legal sanction to the actions of the Respondent in knowingly entering into a marriage with Appellant No.1, availing its privileges but escaping its consequent duties and obligations. The only conceivable mischief that could arise in permitting a beneficial interpretation is that the Appellant No.1 could claim dual maintenance--however, that is not the case under the present facts. We are aware that this Court has previously denied maintenance in cases of subsisting marriages (See Yamunabai (supra) and Bakulabai (supra)). However, a plea of separation from the first marriage was not made in those cases and hence, they are factually distinguishable. It must be borne in mind that the right to maintenance u/s. 125 CrPC is not a benefit received by a wife but rather a legal and moral duty owed by the husband. A recent landmark judgement of this Court in Mohd. Abdul Samad vs. State of Telangana and Another (2024) SCC OnLine SC 1686 has shed greater light on this duty in the Indian context:

> "43. In this context, I would like to advert to the vulnerability of married women in India who do not have an independent source of income or who do not have access to monetary resources in their households particularly for their personal expenses. In Indian society, it is an established practice that once a daughter is married, she resides with her husband and/or his family unless due to exigency of career or such other reason she has to reside elsewhere. In the case of a woman who has an independent source of income, she may be financially endowed and may not be totally dependent on her husband and his family. But what is the position of a married woman who is often referred to as a "homemaker" and who does not have an independent source of income, whatsoever, and is totally dependent for her financial resources on her husband and on his family? It is well-known that such an Indian homemaker tries to save as much money as possible from the monthly household budget, not only to augment the financial resources of the family but possibly to also save a small portion for her personal expenses. Such a practice is followed in order to avoid making a request to the husband or his family for her personal expenses. Most married men in India do not realise this aspect of the predicament such Indian homemakers face as any request made for expenses may be bluntly turned down by the husband and/or his family.
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> Some husbands are not conscious of the fact that the wife who has no independent source of finance is dependent on them not only emotionally but also financially. On the other hand, a wife who is referred to as a homemaker is working throughout the

day for the welfare of the family without expecting anything in return except possibly love and affection, a sense of comfort and respect from her husband and his family which are towards her emotional security. This may also be lacking in certain households.

44. While the contributions of such a homemaker get judicial recognition upon her unfortunate death while computing compensation in cases under the Motor Vehicles Act, 1988 vide Kirti vs. Oriental Insurance Co. Ltd., (2021) 2 SCC 166, the services and sacrifices of homemakers for the economic well- being of the family, and the economy of the nation, remain uncompensated in large sections of our society.

45. Therefore, I observe that an Indian married man must become conscious of the fact that he would have to financially empower and provide for his wife, who does not have an independent source of income, by making available financial resources particularly towards her personal needs; in other words, giving access to his financial resources. Such financial empowerment would place such a vulnerable wife in a more secure position in the family. Those Indian married men who are conscious of this aspect and who make available their financial resources for their spouse towards their personal expenses, apart from household expenditure, possibly by having a joint bank account or via an ATM card, must be acknowledged.

46. Another aspect of vulnerability of a married Indian woman is regarding her security of residence in her matrimonial home. In this context in the case of Prabha Tyagi vs. Kamlesh Devi, (2022) 8 SCC 90, this Court while considering Section 17 along with other provisions of the Domestic Violence Act, 2005 opined as under:

“60. In our view, the question raised about a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed must be interpreted in a broad and expansive way, so as to encompass not only a subsisting domestic relationship in praesenti but also a past domestic relationship. Therefore, Parliament has intentionally used the expression “domestic relationship” to mean a relationship between two persons who not only live together in the shared household but also between two persons who “have at any point of time lived together” in a shared household.”

47. Thus, both ‘financial security’ as well as ‘security of residence’ of Indian women have to be protected and enhanced. That would truly empower such Indian women who are referred to as ‘homemakers’ and who are the strength and backbone of an Indian family which is the fundamental unit of the Indian society which has to be maintained and strengthened. It goes without saying that a stable family which is emotionally connected and secure gives stability to the society for, it is within the family that precious values of life are learnt and built. It is these moral and ethical values which are inherited by a succeeding generation which would go a long way in building a strong Indian society which is the need of the hour. It is needless to

> observe that a strong Indian family and society would ultimately lead to a stronger nation. But, for that to happen, women in the family have to be respected and empowered!

19. In light of the aforesaid, the appeal is allowed and the maintenance award granted by the Family Court vide order dated 26.07.2012 is restored.

……J. [B. V. NAGARATHNA] ……J. [SATISH CHANDRA SHARMA] NEW DELHI JANUARY 30, 2025