

Himachal Pradesh High Court

Raj Kumari And Others vs Bishamber Singh on 2 November, 2023

Bench: Virender Singh

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Revision No. 10 of 2022 Reserved on: 07.08.2023 Decided on: 2nd November, 2023 .

Raj Kumari and others

.....

Versus

Bishamber Singh
Coram

...Resp

The Hon'ble Mr. Justice Virender Singh, Judge. Whether approved for reporting?1 Yes. For the petitioners: Mr. Saurav Rattan, Advocate.

For the respondent: Mr. Sanjay Jaswal, Advocate.

Virender Singh, Judge.

Petitioners have filed the present revision petition, under Section 397 read with Section 401 of the Code of Criminal Procedure (hereinafter referred to as the 'Cr.P.C') against the judgment dated 30.12.2020, passed by learned Sessions Judge, Family Court, Kangra at Dharamshala, District Kangra, H.P. (hereinafter referred to as the 'learned trial Court'), in case No. 31-N/IV/20/2014, titled as Raj Kumari and others vs. Bishamber Singh.

2. Vide judgment dated 30.12.2020, the learned trial Court has partly allowed the petition filed by the petitioners under Section 125 Cr.P.C., awarding the following relief:-

Whether the reporters of Local Papers may be allowed to see the judgment? Yes.

"The respondent is ordered to pay the maintenance allowance to the petitioners No. 2 and 3 in the sum of Rs.2,500/- per month each, from the date of filing of this petition i.e. 02.06.2014, till the .

marriage of petitioner No.2 is solemnized and till the petitioner No.3 attains the age of majority.

3. Brief facts leading to the filing of the present petition, before this Court, may be summed up, as under:-

3.1. The petitioners have filed the petition under Section 125 Cr.P.C against the respondent with a prayer to grant maintenance allowance to the tune of Rs. 10,000/- per month to petitioner No.1 and Rs. 5,000/- each to petitioners No. 2 and 3. They have sought the above relief, on the ground, that the marriage between petitioner No.1 and respondent was solemnized about 17 years ago in a temple as per Hindu Rites and customs in the presence of the witnesses. After the marriage, petitioner No.1 had resided with the respondent at her matrimonial home at village Thora Bhalon, Tehsil Nurpur, District Kangra, H.P and they have been blessed with two children, i.e., petitioners No. 2 and 3.

3.2. It is their further case that petitioner No.1 remained with respondent at his matrimonial home and after sometime, he took separate accommodation, a rental house at Ward No. 7 Nurpur, where, petitioner No.1 had started living with the respondent. In the rented accommodation, petitioner No.1 had given birth to two children namely, Anjali, petitioner No.2 and Aditya Thakur, petitioner No.3. The .

petitioners were residing happily with the respondent till November, 2011, when, his attitude towards petitioners, all of a sudden, changed. He started consuming liquor in excess and under the influence of liquor, he used to beat the petitioners on trivial matters. He also used to taunt petitioner No.1 by saying that he has fed up from her and also said that he does not want to continue with her.

3.3. According to their stand, he has also proclaimed that "I thought your parents will accept you after the marriage and give dowry as per my status, but all rubbish. It was my mistake to marry with you beggars." According to the petitioners, respondent left the matrimonial home in the month of December, 2012 and refused to come back.

Petitioner No.1 came to know about the fact that respondent has married with some other lady at Jammu. The respondent is stated to be a Government Contractor and earning Rs.30,000/- per month.

3.4. Since, the respondent has failed to maintain the petitioners, as such, they have sought the relief, as claimed in the petition.

4. When put to notice, the petition has been contested by the respondent by filing reply.

4.1. In the reply, the respondent has taken the .

preliminary objections that the petition is not maintainable, petitioner No.1 is not his wife and petitioners No. 2 and 3 are not the children of the respondent. Elaborating his stand, he has taken the plea that he never solemnized marriage with petitioner No.1, in fact, he has married with Rama Jasrotia daughter of Sh. Chaggar Singh, resident of Heera Nagar, District Kathua, (J&K) on 03.05.1997 and the said marriage, according to him, has been registered with the Registrar Births, Deaths and marriages Block Nurpur on 12.01.1998.

Out of this wedlock, the respondent, as well as, Rama Jasrotia were blessed with two children namely, Abhishek Rana and Banshika Rana, who were born on 24.03.1998 and 15.09.2003, respectively.

4.2. Apart from this, the respondent has taken the plea with regard to the fact that the petitioners are not having any cause of action to file the present petition against the respondent, by denying their relationship as alleged by them.

According to the respondent, petitioner No.1 is wife of one Dev Raj son of Bachittar Singh, resident of village Panjahra, Tehsil Nurpur, District Kangra, H.P., as such, she can seek the maintenance from the said person. Lastly, the preliminary objection has been taken that the petitioners have not approached the Court with clean hands and the .

petition has been filed just to harass him.

4.3. On merits, the marital relationship, as alleged by the petitioners, has been denied by asserting the factual position with regard to his marriage with Rama Jasrotia.

Other allegations have also been denied. He has also denied that the petitioners lived with the respondent in a rented accommodation. According to him, he is residing with his wife Rama Jasrotia in his Village Thora Bhaloon, Tehsil Nurpur, District Kangra, H.P.

4.4. On the basis of above facts, a prayer has been made to dismiss the petition.

5. Both the parties were afforded opportunity, by the learned trial Court, to adduce evidence, in order to substantiate their stand and thereafter, the learned trial Court has partly allowed the petition by awarding the maintenance only to petitioners No. 2 and 3 and petition of petitioner No.1 has been dismissed.

6. Aggrieved from the said judgment, the present revision petition has been filed before this Court, assailing the order, by virtue of which, the petition has been partly allowed, on the ground that the order passed by the learned trial Court on 30.12.2020, impugned herein, is against the law and facts. The evidence of PW-1 and PW-2 is not stated to .

have been properly appreciated by the learned trial Court as these witnesses have deposed that petitioner No.1 and the respondent had resided together as husband and wife. The learned trial Court has not considered the fact that the proceedings under the provisions of 125 Cr.P.C are summary in nature. The documentary evidence has not been properly considered by the learned trial Court. The learned trial Court has not considered the fact that in the proceedings under Section 125 Cr.P.C, strict proof of marriage should not be a pre-condition. The amount of maintenance, which has been awarded, in favour of petitioners No. 2 and 3 is stated to be on lower side, as, the income of respondent is proved to be more than Rs.58,000/- per month.

7. On the basis of above facts, Mr. Saurav Rattan, learned counsel appearing for the petitioners has prayed that the revision petition may kindly be allowed and the order impugned herein, may kindly be set aside, by allowing the petition, as prayed for.

8. The prayer, so made, by the petitioners, has been opposed by Mr. Sanjay Jaswal, learned counsel appearing for the respondent on the ground that the learned trial Court has rightly considered the evidence adduced by the parties and the order impugned herein, does not require any interference .

by this Court.

9. In order to decide the controversy involved in the present petition, it would be just and appropriate for this Court, to discuss the evidence, so adduced by the parties before the learned trial Court.

10. In order to prove their case, the petitioners have examined three PWs, whereas, the respondent has examined two RWs, including himself.

11. Mr. Yashpal Soga, has appeared in the witness box as AW-1 and filed his affidavit in his examination-in-

chief, disclosing therein, that petitioner No.1 and respondent are known to him. The respondent came with petitioner No.1 and introduced her as his wife and requested him to help in obtaining the accommodation on rent, upon which, this witness helped him to get room on rent from Dayawanti, where, petitioner No.1 and respondent lived together as husband and wife. Both of them have been blessed with two children. The respondent has also got the name of petitioner No.1 registered in the ration card and he has also got admitted his children by mentioning his name as father's name. The respondent had proclaimed petitioner No.1 as his wife. Now, the respondent has started maltreating petitioner Raj Kumari. He is also not paying maintenance to her and in .

this regard, matter was also reported to the police where matter has been settled, in which, he has agreed to pay the maintenance. Petitioner No.1 has also got recorded this conversation so the respondent could not back out. The respondent has disclosed to this witness that he has solemnized marriage with petitioner Raj Kumari.

11.1. According to the cross-examination of this witness, he remained Deputy Chairman of Municipal Committee, Nurpur. The respondent came with petitioner No.1 to this witness about 10-11 years ago, from the date he appeared in the witness box on 01.05.2015. The accommodation was taken on rent from Dayawanti. This witness has feigned ignorance about the fact as to where the marriage of petitioner No.1 with the respondent was solemnized. He has not participated in the marriage, but, denied that their marriage has not been solemnized.

Voluntarily stated that in the ration card, name of petitioner was got recorded by this witness. One child was born in the year 1998, however, he could not disclose about the year of birth of the second child. When, the children were got admitted in the school, this witness had accompanied them.

Again stated that when the children were got admitted, certificate was obtained from him. They are residing in the .

accommodation of Dayawanti for the last 10-12 years.

Petitioner No.1 is still purchasing grocery items from the shop of this person.

12. PW-2 Dayawanti has filed her affidavit in his examination-in-chief. She has deposed that she is having her house in Ward No.6, Nurpur. Long time ago, petitioner Raj Kumari and her husband Bishamber had started residing in the house of this witness as tenant. The said accommodation was provided to them at the instance of Pradhan.

Respondent Bishamber used to introduce petitioner Raj Kumari as his wife. Both were residing as husband and wife in the rented accommodation. Both of them have been blessed with two children at Nurpur. The respondent got admitted his children in the school. In the ration card, as well as, in the card under 'Janani Suraksha Yojna, the name of respondent has been mentioned. Petitioner Raj Kumari is still residing in the same accommodation. The respondent, all of a sudden, had left them and had not paid the maintenance to them.

12.1. As per the cross-examination, the petitioner is residing in the house of this witness for the last 13 years.

When, the accommodation was taken on rent, respondent .

was with petitioner No.1 Raj Kumari. This witness has admitted that she had not witnessed the marriage of petitioner No.1 with respondent, but voluntarily stated that birth of their son had taken place in the rented accommodation. This witness was not present when the children were admitted in the school nor at the time when the ration card was prepared. The room rent is still being paid by petitioner No.1 Raj Kumari. Petitioner No.1 is doing the domestic chores. Petitioner Raj Kumari is working as Sweeper in the clinic of one Lal Chand.

13. Petitioner No.1 Raj Kumari appeared in the witness box as AW-3 and filed her affidavit in her examination-in-chief, which is based upon the assertions as made in the petition.

13.1. In the cross-examination, this witness could not disclose about the date of her marriage by stating that she does not remember the same, however, the marriage was solemnized in the temple. At the time of marriage, only this witness and Bishamber were present, even the priest was not present, but voluntarily stated that their relatives were aware about this marriage. The daughter was born on 26.08.1998 and son was born on 26.03.2003 at Nurpur. After the marriage, they had not resided in the native village of .

respondent. The respondent took her to Nurpur. After the marriage, on some occasions, she had visited the house of respondent. She does not know whether her name was entered in the Parivar register or not. The rented accommodation was obtained by the respondent. She has denied that she was married to Dev Raj. According to her, she was not married earlier. According to her, whatsoever she has mentioned about her earlier marriage, has been mentioned under the pressure of her family members. When suggestions were put to her with regard to her alleged marriage with Dev Raj, she has feigned her ignorance by stating that she does not remember that her marriage was solemnized with Dev Raj. Her marriage was dissolved by way of divorce from a Court at Dharamshala, however, she has not annexed any record by stating that the said record is with Bishamber. This witness is serving at Nurpur in Lal Singh's clinic, from where, she is getting Rs.2,500/- per month as salary.

14. To rebut this evidence, respondent has examined RW-1 Sh. Sameer, Panchayat Secretary, Thohra, Tehsil Nurpur. This witness, on the basis of record, deposed that as per marriage register, Bishamber Singh son of Sh. Bachitter Singh was married with Rama Jasrotia on 03.05.1997. The .

said factum was registered in the relevant register of G.P.

Thohra on 12.01.1998. He has proved the marriage registration certificate as Ext. RW-1/A. As per the birth register, Bishamber Singh and Rama Jasrotia were blessed with a son Abhishek Rana on 24.03.1998 and his name was entered in the relevant

register on 10.04.1998. He has proved the birth certificate of Abhishek Rana as Ext. RW-1/B.

Similarly, Bishamber Singh and Rama Jasrotia were blessed with a daughter Banshika on 15.09.2003 and her name was entered in relevant register on 05.10.2003. He has proved the birth certificate of Banshika as Ext. RW-1/C. He has proved the copy of parivar register as Ext. RW-1/D.

14.1. In the cross-examination, he has deposed that factum of marriage of Bishamber Singh was entered in the marriage register on 12.01.1998 at Serial No.7 of the register.

He has feigned ignorance that prior to the year 2005, time period for getting the marriage registered was 20 days.

According to him, he being the Secretary of Gram Panchayat could record the factum of marriage in the register upto 90 days and any member of the family can get the same recorded/registered in the relevant record. However, in this case, Bishamber Singh and Rama Jasrotia approached him to get their marriage registered.

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15. Respondent Bishamber Singh has appeared in the witness box as RW-2 and has filed his affidavit Ext. RW-2/A, which is almost based upon the stand as taken by him in the reply.

15.1. In the cross-examination, he has denied the suggestion that he was married with petitioner No.1 Raj Kumari about 17 years ago. Not only this, he has also denied the fact that his marriage with Raj Kumari was solemnized in a temple by stating that he was married with Rama. He has denied that he has committed fraud with Raj Kumari by solemnizing marriage with Rama. He has denied that out of the alleged wed-lock with Raj Kumari, she had given birth to two children. He has denied that after few days of marriage with Raj Kumari, they had started residing in Ward No.7 at Nurpur. He has also denied that name of petitioner No.1, as well as, her children were recorded in the ration card, as well as, in the record of the Committee. According to him, he has no relation whatsoever with petitioner Raj Kumari. This person is working in I&P.H. Department and he has admitted that his salary is Rs.36,000/- per month. Rest, he has denied all the suggestions, which were put to him by learned counsel appearing for the petitioners.

16. So far as the documentary evidence is concerned, .

Ext. A-1 is the matriculation certificate of petitioner No.2, A-2 is the birth certificate of petitioner No.2, A-3 is the birth certificate of petitioner No.3, RW-1/A is the

marriage registration certificate of Bishamber Singh and Rama Jasrotia, RW-1/B is the birth certificate of Abhishek Rana son of Bishamber Singh/Rama Jasrotia, RW-1/C is the birth certificate of Banshika daughter of Bishamber Singh/Rama Jasrotia and RW-1/D is the copy of parivar register.

17. This is the entire evidence on record.

18. The learned trial Court, in the present case, has declined the relief to petitioner No.1 on the ground that it will not be safe to believe that petitioner No.1 is the legally wedded wife of respondent, whereas, petitioners No. 2 and 3 were held entitled for the maintenance. The respondent has not challenged the order passed by the learned trial Court, by virtue of which, he has been directed to pay maintenance to petitioners No.2 and 3. Both, petitioners No. 2 and 3, have born out of the wed-lock of petitioner No.1 and respondent, as such, it can be said that the findings of the learned trial Court to that extent, qua petitioners No.2 and 3, have attained finality.

19. Perusal of the record shows that on the .

application of petitioner Raj Kumari, DNA profiling has been done, in this case and report is on the file. The learned trial Court, while disentitling petitioner No.1 from the relief, as claimed by her in the petition, has held that she has failed to prove that she was married with the respondent as per Hindu rites and ceremonies. These findings have been assailed by the petitioners before this Court mainly on the ground that petitioner No.1 is also entitled for maintenance being the wife of respondent. The amount of maintenance, which has been awarded to petitioners No. 2 and 3 has also been assailed on the ground that the same is on the lower side.

20. The order passed by the learned trial Court has also been assailed on the ground that keeping in view the proved monthly salary of respondent Bishamber Singh, the amount of maintenance, which has been awarded to petitioners No. 2 and 3, is liable to be enhanced.

21. The petitioners have sought the relief under Section 125 Cr.P.C. The nature of the proceedings under Section 125 Cr.P.C has elaborately been explained by the Hon'ble Apex Court in *Badshah vs. Urmila Badshah Godse and another* (2014) 1 SCC 188. The relevant paragraphs 12 to 21 of the judgment are reproduced as under:-

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"12. No doubt, in *Chanmuniya* (supra), the Division Bench of this Court took the view that the matter needs to be considered with respect to Section 125, Cr.P.C., by larger bench and in para 41, three questions are formulated for determination by a larger bench which are as follows:

"1. Whether the living together of a man and woman as husband and wife for a considerable period of time would raise the presumption of a valid marriage between them and whether such a presumption would entitle the woman to maintenance under Section 125,Cr.P.C.?"

2. Whether strict proof of marriage is essential for a claim of maintenance under Section 125,Cr.P.C. hav-

ing regard to the provisions of the Domestic Violence Act, 2005?

3. Whether a marriage performed according to the customary rites and ceremonies, without strictly fulfilling the requisites of Section 7(1) of the Hindu Marriage Act, 1955, or any other personal law would entitle the woman to maintenance under Section 125,Cr.P.C.?"

13. On this basis, it was pleaded before us that this matter be also tagged along with the aforesaid case. However, in the facts of the present case, we do not deem it proper to do so as we find that the view taken by the courts below is perfectly justified. We are dealing with a situation where the marriage between the parties has been proved. However, the petitioner was already married. But he duped the respondent by suppressing the factum of alleged first marriage. On these facts, in our opinion, he cannot be permitted to deny the benefit of maintenance to the respondent, taking advantage of his own wrong. Our reasons for this course of action are stated hereinafter.

13.1. Firstly, in Chanmuniya case, 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,Cr.P.C. 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,Cr.P.C. On the other hand, in the present case, respondent No.1 has been able to prove, by cogent and strong evidence, that the petitioner and respondent No.1 had been married each other.

13.2. Secondly, as already discussed above, when the marriage between respondent No.1 and petitioner was solemnized, the petitioner had kept the respondent No.1 in dark about her first marriage. A false representation was given to respondent No.1 that he was single and was competent to enter into marital tie with respondent No.1. In such circumstances, can the petitioner be al-

lowed to take advantage of his own wrong and turn around to say that respondents are not entitled to maintenance by filing the petition under Section 125, Cr.P.C. as respondent No.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 Cr.P.C., respondent No.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* and *Savita*-

ben 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 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 harmonized.

13.3. Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125, Cr.P.C. While dealing with the application of destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalized 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. Preamble to the Constitution of India clearly signals that we have chosen the democratic path under rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achiev-

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ing their social justice. Therefore, it becomes the bounden duty of the Courts to advance the cause of the so-

cial justice. While giving interpretation to a particular provision, the Court is supposed to bridge the gap between the law and society.

14. Of late, in this very direction, it is emphasized that the Courts have to adopt different approaches in "social justice adjudication", which is also known as "social context adjudication" as mere "adversarial approach"

may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:

"It is, therefore, respectfully submitted that "social context judging" is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted

in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social- economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication."

15. Provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from "adversarial" litigation to social context adjudication is the need of the hour.

16. The law regulates relationships between people. It prescribes patterns of behavior. It reflects the values of society. The role of the Court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality .

changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both Constitutional and statutory interpretation, the Court is supposed to exercise direction in determining the proper relationship between the subjective and objective purpose of the law.

17. Cardozo acknowledges in his classic "....no system of *jus scriptum* has been able to escape the need of it", and he elaborates:

"It is true that Codes and Statutes do not render the Judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however, obscure and latent, had none the less a real and ascertainable pre-existence in the legislator's mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a judge's troubles in ascribing meaning to a statute."

Says Gray in his lecture:

"The fact is that the difficulties of so-called interpre-

tation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to determine that the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present."

18. The Court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonize results with justice through a method of free decision-- "libre recherche scientifique" i.e. "free Scientific research". We are of the opinion that there is a non-

rebuttable presumption that the Legislature while making a provision like Section 125 Cr.P.C., to fulfill its Constitutional duty in good faith, had always intended to give relief to the woman becoming "wife" under such circumstances. This approach is particularly needed.

while deciding the issues relating to gender justice. We already have examples of exemplary efforts in this re-

gard. Journey from Shah Bano[8] to Shabana Bano[9] guaranteeing maintenance rights to Muslim women is a classical example.

19. In Rameshchandra Daga v. Rameshwari Daga[10], the right of another woman in a similar situation was upheld. Here the Court had accepted that Hindu marriages have continued to be bigamous despite the enactment of the Hindu Marriage Act in 1955. The Court had commented that though such marriages are illegal as per the provisions of the Act, they are not 'immoral' and hence a financially dependent woman cannot be denied maintenance on this ground.

20. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydon's Case[11] which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction ut res magis valeat quam pereat, in such cases i.e. where alternative constructions are possible the Court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125, Cr.P.C., such a woman is to be

treated as the legally wedded wife.

21. The principles of Hindu Personal Law have developed in an evolutionary way out of concern for all those subject to it so as to make fair provision against destitu-

tion. The manifest purpose is to achieve the social objectives for making bare minimum provision to sustain the members of relatively smaller social groups. Its foundation spring is humanistic. In its operation field all though, it lays down the permissible categories under .

its benefaction, which are so entitled either because of the tenets supported by clear public policy or because of the need to subserve the social and individual morality measured for maintenance.

22. Admittedly, there is no proof with regard to marriage of petitioner No.1 with the respondent. However, there are documents on the file to demonstrate that petitioners No. 2 and 3 are the children of the respondent. In this regard, reference can be made to the documents i.e. birth certificates issued by the competent authority in favour of petitioners No. 2 and 3.

23. Now, the next question, which arises for determination, before this Court, is about the fact, as to what type of proof is required in the proceedings under Section 125 Cr.P.C.

24. The requirement of strict proof of marriage has also been dispensed with by the Hon'ble Apex Court in Dwarika Prasad Satpathy vs. Bidyut Prava Dixit and another 1999(3) Civil Court Cases 394 (S.C.). The relevant paragraphs 6 to 13 of the judgment are reproduced as under:-

"6. Learned counsel for the appellant at the time of hearing had not disputed the paternity of the child.

Hence, the question is whether the marriage between the appellant and respondent no.1 was valid or invalid? In our view, validity of the marriage for the purpose of summary proceeding under Section 125 Cr.P.C. is to be determined on the basis of the evidence brought on .

record by the parties. The standard of proof of marriage in such proceeding is not as strict as is required in a trial of offence under section 494 of the I.P.C. If the claimant in proceedings under Section 125 of the Code succeeds in showing that she and the respondent have lived together as husband and wife, the Court can presume that they are legally wedded spouses, and in such a situation, the party who denies the marital status can rebut the presumption. Undisputedly, marriage procedure was followed in the temple, that too, in the presence of idol of Lord Jagannath, which is worshipped

by both the parties. Appellant contended before the learned Magistrate that the said marriage was performed under duress and at the point of knife, he was required to exchange garlands. That contention is not proved by leading necessary evidence.

Once it is admitted that the marriage procedure was followed then it is not necessary to further probe into whether the said procedure was complete as per the Hindu rites in the proceedings under Section 125 Cr.P.C.

7. Learned counsel for the appellant relied upon the decision of this Court in Smt. Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and another, {(1988) 2 S.C.R. 809} and submitted that even in a summary proceeding under Section 125 Cr.P.C., the Court is required to find out whether applicant wife was lawfully wedded wife or not. In the said case, the Court considered the point whether a Hindu Woman who has married after coming into force of the Hindu Marriage Act, 1955, with a man having a lawfully wedded wife, can maintain an application for maintenance under Section 125 Cr.P.C. In that case, the Court confirmed the judgment of the High Court and arrived at the conclusion that the Legislature decided to bestow the benefit of Section 125 Cr.P.C. even on an illegitimate child by expressed words but none are found to apply to a de facto wife where the marriage is void ab initio. The marriage was null and void because Section 5 inter alia provides that a marriage may be solemnised between any two Hindus if the conditions mentioned therein are fulfilled. One of the conditions is - neither party has a spouse living at the time of marriage. Under Section 11, such marriage is null and void. The Court held that marriage of a woman in accordance with Hindu rites with the man having a living spouse is complete nullity in the eye of law and she is not entitled to the benefit of Section 125 of the Code. In our view the said judgment has no bearing on the facts of the present case as it is not a case of de facto marriage nor can it be held that the marriage between the appellant and .

respondent no.1 was void ab initio. It is a case where it is contended that at the time of marriage essential ceremonies were not performed. Hence in the present case, we are not required to discuss the issue that unless declaratory decree of nullity of marriage on the ground of contravention of any one of the conditions specified in clauses (i), (iv) and (v) of Section 5 is obtained, it cannot be held in collateral proceedings that marriage was null and void. Nor it is required to be discussed that Legislature has not provided that if, some marriage ceremonies are not performed, marriage is a nullity under Section 11 or is voidable under Section 12 of the Hindu Marriage Act.

8. The learned counsel for the appellant next relied upon the case of B.S. Lokhande & another Vs. State of Maharashtra & another, {(1965) 2 S.C.R. 837} and contended that two ceremonies are essential to the validity of a Hindu marriage, i.e. invocation before the sacred fire and sapatapadi and are required to be established before holding that the marriage performed in the temple was valid one. In that case, the

Court arrived at the conclusion that the prosecution for the alleged offence under Section 494 I.P.C., had failed to establish that the marriage was performed in accordance with the customary rites as required under Section 7 of the Hindu Marriage Act; it was certainly not performed in accordance with the essential requirements for a valid marriage under Hindu law and, therefore, accused cannot be convicted under Section 494, IPC. In our view, in the said case the Court was considering the evidence which was led before the trial court in a criminal trial for the offence punishable under Section 494 IPC. In a prosecution for bigamy, the second marriage has to be proved as a fact. The said decision would have no bearing in the proceeding under Section 125 Cr.P.C., which is of summary nature.

9. It is to be remembered that the order passed in an application under Section 125 Cr.P.C. does not finally determine the rights and obligations of the parties and the said section is enacted with a view to provide 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 alias Dolly Sethurthinam*, {1971 (3) SCC 923} observed that maintenance under Section 488 Cr.P.C., .

1898 (Similar to Section 125 Cr.P.C.) 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.

10. After not disputing the paternity of the child and after accepting the fact that marriage ceremony was performed, though not legally perfect as contended, it would hardly lie in the mouth of the appellant to contend in proceeding under Section 125 Cr.P.C. that there was no valid marriage as essential rites were not performed at the time of said marriage. The provision under Section 125 is not to be utilized for defeating the rights conferred by the Legislature to the destitute women, children or parents who are victims of social environment. In *Ramesh Chander Kaushal v. Mrs. Veena Kaushal and others*, (AIR 1978 SC 1807) Krishna Iyer, J dealing with interpretation of Section 125 Cr.P.C. observed (at Para 9) thus:-

"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 advances the cause the cause of the derelicts."

11. In *Vimala (K.) Vs. Veeraswamy (K.)*, (1991) 2 SCC 375, dealing with the contention of husband that the second marriage with the applicant wife was void on the ground that her first marriage was subsisting, this Court held that Section 125 Cr.P.C. is meant to achieve a social purpose and, therefore, the law which disentitles the second wife from receiving maintenance from her husband 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; the object to prevent vagrancy and destitution; it provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife and observed thus:-

"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."

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

"In a proceeding for maintenance under Section 125 Cr.P.C. 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 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 Cr.P.C. which are of 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, Cr.P.C. 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.

25. This view has again been reiterated by the Hon'ble Apex Court in a recent decision in *Kamala and others vs. M.R. Mohan Kumar* (2019) 11 SCC 491. The relevant paragraphs 10 to 22 of the judgment are reproduced as under:-

"10. To prove the marriage and her claim, appellant No.1 .

marked exhibits P1 to P20. Exts.P1 to P3 are the photos of the appellants and the respondent; Exts.P7-P8 are the birth certificates of the appellants No.2 and 3 namely the daughter and son and Exts.P9 and P11 are the copies of the complaint given to the police; other exhibits are the receipts acknowledging the maintenance amount given by the respondent; and other documents.

11. Exts.P-7 and P-8 are the birth certificates of the appellants No.2 and 3 - the daughter and son showing that out of the wedlock, a girl and a boy were born on 09.05.2001 and 18.07.2003 respectively. In Exts.P7 and P8, father's name is stated as "Mohan Kumar M.R." and mother's name is stated as "Kamala". The birth certificates of the children clearly show that appellant No.1 and the respondent are the husband and wife and appellants No.2 and 3 are their children. The family court recorded a finding of fact that the respondent has admitted that Exts.P1 to P3 are their photos. As rightly observed by the family court, Exts.P1 to P3 does not look like brother-

sister relationship or simple neighbours relationship and the said photos lead to an inference that respondent and appellant No.1 were living as husband and wife. As pointed out earlier, appellant No.1 gave Ext.-P9-complaint and the police settled the matter between the parties and asked the respondent to pay maintenance of Rs.3,000/-

per month to appellant No.1. Exts. P13 to P17 are the receipts showing that the respondent has been paying money regularly to appellant No.1. Unless the respondent was the husband of appellant No.1, why should he pay the amount to appellant No.1 every month. As rightly observed by the family court, there is no merit in the explanation of the respondent that appellant No.1 was his neighbour and therefore, he used to help her. The evidence of PW-1 coupled with the documents raise a strong presumption of a valid marriage.

12. Appellant No.1 has also examined K.R. Narayan Iyengar (PW-2) who has stated that he was working as Manager in Samruddhi Finance where appellant No.1 was also working with him. In his evidence, PW-2 further stated that the respondent used to drop and pick up appellant No.1 and that he used to talk to respondent whenever he had time and have coffee with him. PW-2 further stated that the respondent and appellant No.1 were living happily as husband and wife and were leading a happy married life.

13. House owner (PW-3) has also stated that appellant .

No.1 and the respondent were living in his house on rent during 2005 and they took the house on rent by informing him that they were husband and wife. PW-3 further stated that appellant No.1 and the respondent stayed till April, 2006 and that when they came to his house, they had two children and appellant No.1 and respondent were leading a happy married life.

14. Based on the evidence of PW-1 and the number of documents in particular, the birth certificates of the children (Exts.P7-P8) and the photos (Exts.P1 to P3), the family court rightly held that appellant No.1 has proved valid marriage between her and the respondent. From the evidence of PW-2 and PW-3, it is established that appellant No.1 and the respondent were cohabitated as husband and wife and that the people around them treated them as husband and wife and the family court rightly held that appellant No.1 being a wife and appellants No.2 and 3 being their children are entitled to claim maintenance under Section 125 Cr.P.C.

15. Unlike matrimonial proceedings where strict proof of marriage is essential, in the proceedings under Section 125 Cr.P.C., such strict standard of proof is not necessary as it is summary in nature meant to prevent vagrancy. In *Dwarika Prasad Satpathy v. Bidyut Prava Dixit* (1999) 7 SCC 675, this Court held that:

"the standard of proof of marriage in a Section 125 proceeding is not as strict as is required in a trial for an offence under Section 494 IPC. The learned Judges explained the reason for the aforesaid finding by holding that an order passed in an application under Section 125 does not really determine the rights and obligations of the parties as the section is enacted with a view to provide a summary remedy to neglected wives to obtain maintenance. The learned Judges held that maintenance cannot be denied where there was some evidence on which conclusions of living together could be reached."

When the parties live together as husband and wife, there is a presumption that they are legally married couple for claim of maintenance of wife under Section 125 Cr.P.C. Applying the well-settled principles, in the case in hand, appellant No.1 and the respondent were living together as husband and wife and also begotten two children. Appellant No.1 being the wife of the respondent, she and the children appellants No.2 and 3 would be entitled to maintenance under Section 125 Cr.P.C.

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16. It is fairly well settled that the law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for a number of years. After referring to various judgments, in *Chanmuniya v. Virendra Kumar Singh Kushwaha* (2011) 1 SCC 141, this Court held as under:-

"11. Again, in *Sastry Velaider Aronegary v. Sembecutty Vaigalie* (1881) 6 AC 364, it was held that where a man and woman are proved to have lived together as man and 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.

12. In India, the same principles have been followed in *Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy*, in which the Privy Council laid down the

general proposition that where a man and woman are proved to have lived together as man and 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.

13. In *Mohabbat Ali Khan v. Mohd. Ibrahim Khan* AIR 1929 PC 135 the Privy Council has laid down that the law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for number of years.

14. In *Gokal Chand v. Parvin Kumari* AIR 1952 SC 231, this Court held that continuous cohabitation of man and woman as husband and wife may raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them.

15. Further, in *Badri Prasad v. Director of Consolidation* (1978) 3 SCC 527, the Supreme Court held that a strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin.

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16. Again, in *Tulsa v. Durghatiya* (2008) 4 SCC 520, this Court held that where the partners lived together for a long spell as husband and wife, a presumption would arise in favour of a valid wedlock."

17. This Court in *Chanmuniya* case further held 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."

18. *Chanmuniya* case referred to divergence of judicial opinion on the interpretation of the word "wife" in Section 125 Cr.P.C. In paras (28) and (29) of *Chanmuniya* case, this Court referred to other judgments which struck a difficult note as under:-

"28. However, striking a different note, in *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav* (1988) 1 SCC 530, a two-Judge Bench of this Court held that an attempt to exclude altogether personal law of the parties in proceedings under

Section 125 is improper (see para 6). The learned Judges also held (paras 4 and 8) that the expression "wife" in Section 125 of the Code should be interpreted to mean only a legally wedded wife.

29. Again, in a subsequent decision of this Court in *Savitaben Somabhai Bhatiya v. State of Gujarat* (2005) 3 SCC 636, this Court held that however desirable it may be to take note of plight of an unfortunate woman, who unwittingly enters into wedlock with a married man, there is no scope to include a woman not lawfully married within the expression of "wife". The Bench held that this inadequacy in law can be amended only by the legislature. While coming to the aforesaid finding, the learned Judges relied on the decision in *Yamunabai* case (1988) 1 SCC 530."

19. After referring to the divergence of judicial opinion on .

the interpretation of the word "wife" in Section 125 Cr.P.C., speaking for the Bench A.K. Ganguly J. held that the Bench is inclined to take a broad view of the definition of "wife", having regard to the social object of Section 125 Cr.P.C.

20. In *Chanmuniya* case, this Court formulated three questions and referred the matter to the larger Bench. However, after discussing various provisions of the Criminal Procedure Code, this Court held that a broad and extensive interpretation should be given to the term "wife" under Section 125 Cr.P.C. and held 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."

21. On the basis of the evidence of appellant No.1 (PW-

1), birth certificates of appellant Nos.2 and 3 (Exts. P7- P8 dated 25.05.2001 and 06.08.2003), other documentary evidence, oral evidence of PW-2 who was co-worker of appellant No.1 and PW-3-landlord, the family court held that appellant No.1 and the respondent were living together as husband and wife and there is sufficient proof of marriage. The family court rightly drew the presumption of valid marriage between appellant No.1 and the respondent and that they are legally married couple for claiming maintenance by the wife under Section 125 Cr.P.C. which is summary in nature. The evidence of PW-1 coupled with the birth certificates of appellants No.2 and 3 and other evidences clearly establish the factum of marriage.

22. Based upon oral and documentary evidence, when the family court held that there was a valid marriage, the High Court being the revisional court has no power reassessing the evidence and substitute its views on findings of fact. The High Court did not keep in view that .

in the proceedings under Section 125 Cr.P.C., strict proof of marriage is not necessary. The findings recorded by the family court as to the existence of a valid marriage ought not to have been interfered with by the High Court.

26. Judging the facts and circumstances of the present case, in the light of decisions of the Hon'ble Apex Court, as referred to above, the stand, as taken by the respondent, is not liable to be accepted as the respondent remained in denial mode in his examination-in-chief, as well as, in the cross-examination. Whatsoever deposed by RW-1, who is the Panchayat Secretary of the village of respondent, is too short to discard the evidence adduced by the petitioners, in this case. From the evidence of RW-1, at the best, it can be said that the respondent was married with one Rama Jasrotia and out of the said wed-lock, respondent and Rama Jasrotia were blessed with two children, whereas, the petitioners by producing the birth certificates of petitioners No. 2 and 3 have proved the fact that in the birth certificates Ext. A-2 and A-3, name of parents of petitioners No.2 and 3 have been recorded as Bishamber Singh/Raj Kumari. In both the certificates, the place of birth has been mentioned as Nurpur.

In the matriculation certificate of petitioner No.2 Anjali, name of respondent has been recorded in the column of father, whereas, in the column of mother, name of petitioner No.1 Raj Kumari has been recorded.

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27. Apart from the documentary evidence, the petitioners have examined the witnesses to prove the fact that petitioner No.1 and respondent were residing together as husband and wife. PW-1 Yashpal Soga, who was the Vice-

president of the Municipal Council, Nurpur has categorically stated that respondent has approached him along-with petitioner No.1, who has been introduced as his wife and this witness has helped them in getting the rented accommodation from Dayawanti. He has also deposed that both of them had resided in the said accommodation as husband and wife and out of their wed-lock, two children were born. No doubt, PW-

1 has admitted that marriage of petitioner No.1 and respondent was not solemnized in his presence, but, at the same time, he has also not denied that they were not married.

Petitioner No.1 has also stated that they resided in the house of Dayawanti for about 10-12 years. Similar type of deposition has been made by PW-2, in whose house petitioner Raj Kumari and respondent Bishamber Singh had resided as husband and wife.

28. From the deposition of PW-1 and PW-2, petitioner No.1 has probalilized her case, according to which, both, petitioner No.1 and respondent, were residing together as .

husband and wife and out of this wed-lock, they have been blessed with two children i.e. petitioners No. 2 and 3.

29. On the basis of stray sentences deposed by petitioner No.1 in the cross-examination, according to which, she does not know whether her family members had solemnized her marriage with Dev Raj son of Bachitter Singh, it cannot be inferred that petitioner No.1 was married somewhere else.

30. Considering the low legal literacy of the Indian masses, as well as, considering the fact that the witnesses are being cross-examined in the Court in a charged atmosphere, much importance should not be given to the stray sentences deposed by the witnesses. If the oral evidence of the petitioners is considered in the light of the documentary evidence, then, it can be said that the respondent could not rebut the presumption of relationship as husband and wife between petitioner No.1 and respondent.

31. At the cost of repetition, if the evidence of respondent is seen, he has denied each and every suggestion, which has been put to him by the learned counsel for the petitioners, without giving any explanation.

32. Section 125 Cr.P.C, is a measure of social justice .

and enacted by the legislature, in its wisdom, to protect the vulnerable sections of the society i.e. women, minor children and infirm parents. This provision is within the scope of Article 15(3) and Section 39 of the Constitution of India. In these proceedings, past is not to be dissected, but, its true object is to protect the rights of the persons as mentioned in Section 125 Cr.P.C. If the findings of the learned trial Court, which have been recorded against petitioner No.1, are seen in the light of true object of Section 125. Cr.P.C., then, this Court is of the view that the learned trial Court had fallen into an error by disentitling petitioner No.1 from the maintenance.

As such findings of the learned trial Court, by virtue of which, the claim of petitioner No.1 has been declined, are ordered to be set aside and the matter is ordered to be remanded back to the learned trial Court, with a direction to decide the quantum of maintenance, for which, petitioner No.1 is entitled from the respondent.

33. The matter has been remanded back, in view of the fact that in case, the quantum is being decided by this Court, any party aggrieved from the said order, will lose one Forum to challenge the said order on the point of quantum of maintenance. The learned trial Court to decide this quantum within one month from the date of appearance of the parties .

before the Court. No further evidence is required to be adduced and the matter will be decided on the basis of evidence already on the record.

34. So far as the maintenance, which has been awarded to petitioners No. 2 and 3 is concerned, the salary of the respondent has been proved to be Rs. 58,177/-. In such situation, the amount of maintenance, which has been ordered to be paid to petitioners No. 2 and 3, in the considered opinion of this Court, is on the lower side and the same is required to be enhanced. Consequently, the maintenance amount, as awarded by the learned trial Court, is ordered to be enhanced from Rs.2500/- per month each to Rs.5,000/- per month and petitioners No. 2 and 3 are held entitled to Rs. 5000/- per month each, as maintenance, from the date of filing of this petition. Petitioner No. 2 will be entitled to maintenance till solemnization of her marriage and the right of petitioner No.3 to get the maintenance from respondent will co-terminus with his majority. The said amount has been awarded keeping in view the fact that respondent is having two children from his marriage with Rama Jasrotia.

35. With these observations, the revision petition .

stands disposed of.

36. The parties, through their learned counsel, are directed to appear before the learned trial Court on 21.11.2023.

37. Record be sent back.

November 02, 2023
(naveen)

(Virender Singh)
Judge