Bombay High Court
Bajirao Raghoba Tambre vs Tolanbai (Miss) D/O Bhagwan Toge ... on 1 March, 1979
Equivalent citations: 1980 CriLJ 473
Author: P Shah
Bench: P Shah, M Kanade
JUDGMENT P.S. Shah, J.

1. This petition file d by the petitioner husband under Articles 226 and 227 of the Constitution of India and also under section 462 of the Code of Criminal Procedure, 1973, raises a question of some importance. The question that arises for consideration is "whether the second wife whose marriage is void in view of the provisions of sections 5 and 11 of the Hindu Marriage Act, 1955 (Act No. 25 of 1955) is entitled to apply for maintenance under section 125 of the Code of Criminal Procedure, 1973".

2. The facts which are no longer in dispute before us are in a narrow compass. The petitioner is married to one Dwarkabai on July 4, 1961. During the subsistence of this marriage, the petitioner married the respondent No. 1 Tolanbai on September 5, 1966. On September 1, 1975. Tolanbai filed an application under section 125 of the Code alleging inter alia that the petitioner beat her and drove her out of the house and, therefore, she has been staying with her parents who are poor, and she has no means of livelihood. She claimed an amount of Rs. 500/- per month by way of maintenance. Apart from denying the allegations of the respondent, the petitioner contended in the trial Court that his marriage with the respondent even if proved was null and void and did not confer a status of the wife on her because this marriage was admittedly solemnised when his first wife Dwarkabai was living.

3. The trial Court held that the petitioner's marriage with Dwarkabai had taken place in the year 1961 while his marriage with the respondent had taken place in the year 1966. It also held that having regard to the fact that the necessary ceremonies for solemnisation of the marriage according to customary Hindu Law having been gone into, she must be deemed to be a legally wedded wife for the purposes of section 125 of the Code. On merits the trial Court accepted the case of the respondent and awarded maintenance at the rate of Rs. 60/- p.m. Aggrieved by this decision, both the petitioner and the respondent filed revision applications in the Sessions Court which came to be dismissed with the result that the order or maintenance passed by the trial Court was maintained. The petitioner has, therefore, preferred this present challenging the order of the courts below.

4. Mr. Sawant, the learned Counsel appearing for the petitioner husband raised only one contention. He submitted that the marriage of the respondent with the petitioner is null and void in view of the provisions of section 5 read with section 11 of the Hindu Marriage Act, and such a marriage, therefore, cannot confer the status of wife on the respondent which would entitle her to make an application for maintenance under section 125 of the Code of Criminal Procedure. He submitted that in order that a woman may be entitled to claim maintenance under the said provisions, she must satisfy the conditions laid down in that section, one of the conditions being that she is the wife of the person against whom maintenance is claimed. According to him, the word "wife" in section 125 must mean, and has all along been construed to mean under section 488 of the old Code of Criminal

Procedure, "a legally wedded wife", and as such a woman whose marriage contravenes the provisions of section 5 read with section 11 of the Hindu Marriage Act being void cannot claim the status of a wife. The mere fact that the necessary ceremonies of a marriage under the customary Hindu Law have been gone into cannot confer on her the status of "a legally wedded wife' which is a condition precedent for claiming maintenance under section 125 of the Code.

5. On the other hand, Mr. Gavneker, the learned Counsel appearing for the respondent sought to repeal these arguments of Mr. Sawant by contending that the provisions of section 125 should be liberally construed having regard to the social changes as well as the changes in the personal law of the party since independence. He submitted that although under the provisions of section 488 of the old Code which is in pari materia with the provisions of section 125 of the new Code, it has been consistently held that in order to be entitled to claim maintenance under section 488, the applicant must establish that she is the legally wedded wife. Such a narrow construction of the provisions will no longer be permissible having regard to the progressive measures to ameliorate the conditions of married women under the Hindu Marriage Act, 1955, and the Hindu Adoption and Maintenance Act, 1956, and the extension of rights of maintenance to additional categories of persons who did not have such a right under the old sections 488 of the Code. He submitted that it must be assumed that the Parliament did taken into consideration the changes in the personal law while enacting the provisions of section 125 of the new Code. According to him, the provisions contained in the Hindu Marriage Act for alimony even to such a wife must be presumed to have been taken note of while enacting section 125 of the Code. He further submitted that section 125 of the Code confers a statutory right on every wife irrespective of her marriage being legal or void and there is no valid reason restrict its application only to a legally wedded wife. It was submitted that the provisions of section 125 were a piece of beneficial and social legislation which must be liberally construed in the context of the social changes and the intention of the legislature to confer additional rights on woman and children. The Counsel further submitted that all that the respondent had to establish in this case is whether the marriage was performed by going through the necessary ceremonies as per the customary Hindu Law, and, once that is established, it would not make any difference whether her marriage with the petitioner contravenes the provisions of sections 5 & 11 of the Hindu Marriage Act. Lastly he submitted that in any event, having regard to the fact of this case, this Court should not exercise its discretionary powers under Article 227 of the Constitution.

6. It is not disputed before us that the requisite ceremonies for a valid marriage under the personal law of the parties have been gone into in this case, although the marriage is null and void by reason of the provisions of sections 5 and 11 of the Hindu Marriage Act, 1955. This Act was passed with the object of amending and modifying the law relating to marriages among Hindus. Under the customary law, there was no restriction for a male Hindu to marry more than one women. This right of the Hindu husband under the customary Hindu Law was curtailed for the first time in the then Bombay Province by enacting the Bombay Prevention of Hindu Bigamous Marriage Act, 1946, provisions whereof declared bigamy to be illegal. Under the provisions of the said Act and other similar laws enacted by other Provincial Legislatures, a second marriage by a Hindu person during the life time of the spouse was declared illegal and going through such a marriage was made penal. Consistent with the object of codifying the marriage laws amongst Hindus, all these State laws were repealed by the Hindu Marriage Act, 1955. Section 5 of the Hindu Marriage Act provides for the

conditions for solemnisation of marriage between any two Hindus. Section 11 declares that a marriage solemnised after the commencement of the Act shall be null and void if it contravenes any of conditions specified in Clause (i), (iv) and (v) of section 5. One of the conditions for a marriage as required by section 5 is that neither party has a spouse living at the time of the marriage, and this is condition No. (i) in section 5. Section 11 also gives a remedy to either party to the marriage to file a petition for a declaration by a decree of nullity of marriage on any one of the said three conditions of section 5 being shown to the have been contravened. Obviously, the second marriage in such circumstances being void, it cannot create a legal status of husband and wife between the parties. It is true that section 11 also gives a right to the parties to the marriage to file a petition for a declaration of nullity by a decree of the Court , but the filing of the petition or passing the decree is not a condition precedent for putting an end to the marriage. What ultimately is declared on such a petition is nothing but the status of the party as on the date of the marriage, and therefore, the marriage does not continue to remain valid until a decree is passed. What is null and void cannot be deemed to be in existence for any purposes whatsoever. Under the circumstances, if a marriage is solemnised in contravention of any of the said three conditions referred to in section 5(i), the woman cannot get the status of the wife nor the male gets the status of a husband qua her. The second marriage does not continue to be valid till the passing of the decree for a nullity. The position is also clear from the fact that bigamy is made penal by section 17 of the Hindu Marriage Act which provides that any marriage between two Hindu solemnised after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living and the provisions of sections 494 and 495 of the Indian Penal Code shall apply accordingly. The position is made further clear from the anxiety of the legislature to protect children of such a marriage by providing in section 16 that not withstanding that a marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976, and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act. However, the rights of such a child are somewhat curtailed in the matter of inheritance to the property, because sub-section (3) of section 16 says that a child of such a marriage would not be entitled to any rights in or to the property of any person other than the parents. Having regard to all these provisions, the marriage of the petitioner with the respondent was void ab initio and the respondent could not get the status of a legally wedded wife inspite of the solemnisation of the marriage under the Hindu Law having gone into. Indeed, Mr. Gavnekar did not dispute this legal position. He, however, contended that the provisions of section 25 of the Hindu Marriage Act conferred a right of maintenance on the second wife and the word "wife" in section 125 of the Code of Criminal Procedure will have to be given a wider meaning as including a Hindu wife whose marriage may be otherwise void.

7. Before adverting to the consideration of section 125 of the new Code it would be of relevance to consider the legal position as it obtained prior to the enactment of the new code of 1973. Section 488 of the old Criminal Procedure Code inter alia provided that if any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the Magistrate could make an order against such a person to make monthly allowance for the maintenance of his wife or such child. Thus a right was conferred on the wife or a legitimate or

illegitimate child to claim maintenance, and the husband or the father as the case may be could be directed to pay an amount of maintenance not exceeding a particular limit as mentioned is the section. The object of the provisions of section 488 had been aptly described as a provision for preventing vagrancy or at least of preventing its consequences. The object of maintenance proceedings was not treated as a mode of punishing husband or parent for his past neglect but to prevent vagrancy by compelling those who can do so to support those who are unable to support themselves. The provisions of section 125 are also intended to achieve the same object. In short, the provisions of section 488 or of section 125 of the new Code have been enacted with the object of enabling the discarded wives, helpless and desisted children to secure some relief for their maintenance and livelihood. While section 488 restricted its operation to wives and children whether legitimate of illegitimate section 125 has brought into its fold the parents who are unable to maintain themselves. It has been the consistent view taken as seen from the catena of decisions under section 488 so far as claim for maintenance by a wife against her husband is concerned that it must be shown that the complainant is the wife of the defendant. Only a legally married woman was held to be entitled to maintenance. It was held that merely because a woman has lived with a man as his wife for 12 years or more and has also borne him a chile she was held not entitled to claim maintenance under section 488. Section 488 applied only to the abandoned wife and not to the abandoned mistress, however faithful she may have been to her paramour, and however badly she may have been treated by him. In other words, the condition precedent for claiming a right of maintenance under that section was the proof of relationship of husband and wife and there could be no such relationship unless it is shown that the complainant is a legally wedded wife of the defendant. Conversely, it was also held that once it is established that the complainant is the legally wedded wife, the fact that the personal law did not provide for such a maintenance was no bar to pass an order for maintenance under this section. For instance, a mutta wife was held entitled to maintenance under this section though she may be entitled under the Mohammedan Law. As long back as in the year 1891, this Court held in (In Re: Gulabdas Bhaidas), 16 Bom. 269, that before a Magistrate makes an order under section 488 of the Code of Criminal Procedure, be must find that the complainant is the wife of the person from whom she claims maintenance, and that he has either neglected or refused to maintain her. A similar interpretation was also made by the Madras High Court in (A.T. Lakshmi Ambalam s. Andiammal) A.I.R. 1938 Madras 66. The Court held that only legally wedded women were entitled to maintenance under section 488; and in case of a dispute, the Magistrate must record a definite finding that the complainant is the wife of the person ordered to pay the maintenance, because the provisions were that only wives were entitled to maintenance. Same interpretation was put on the word " wife" in section 488 in the case of Pwa Me v. San Hla, 16 Cri.L.J. 39. It was held that under section 488, a woman cannot be granted maintenance order against a man unless she proves herself to be his legal wife according to his personal law.

8. Section 488 remained on the statute book till the enactment of the new Code of 1973. It was in the year 1955 that a Union Legislation was enacted prohibiting bigamy and rendering a marriage null and void if such a marriage takes place when a spouse is living at the time of the marriage. It would be significant that in spite of the Hindu Marriage Act coming into force in the year 1956, no attempt was made to amend the provisions of section 488 to include the case of a woman whose marriage is void by reason of the provisions of sections 5 and 11 of the Hindu Marriage Act. The question as to whether a woman who has entered into a Marriage Act. The question as to whether a woman who

has entered into a marriage with a person in contravention of the provisions of sections 5 and 11 can apply for maintenance under section 488 arose for consideration of different High Courts.

9. In Savithramma v. Ramanarasimhalah, 1963(1) Cri.L.J. 131 the Court held that the complainant who was not a legally wedded wife or a lawful wife was not entitled to claim maintenance under section 488. The Court observed in para 5 as under,---

"The scope of section 488 of the Criminal Procedure Code is rather restricted. Its object is to prevent vagrancy of wife or of the legitimate or illegitimate children. It affords speedy remedy for the aggrieved party. But it does not determine the legal rights as a Civil Court does. Otherwise, it would usurp the jurisdiction of Matrimonial Court. What the section provides for is the maintenance to wife or her legitimate or illegitimate children. If the intention of the legislature was that provision is to be made for even the illegitimate wife just as in the case of children where the expression "legitimate" or "illegitimate" is used, similar expression would have been employed. That has not been done thereby indicating that the term "wife" includes only the legitimate wife and excludes any illegitimate one."

10. Even after the enactment of the Prevention of Bigamous Marriages Act and the Hindu Marriage Act of 1955, where the second wife (so called, because her marriage was null and void had applied for maintenance under section 488, it has been consistently held that she could not claim the status of a wife and was, therefore, not entitled to make an application for maintenance. Such a view on the interpretation of section 488 has been taken in (1) A.P.K. Narayanaswami Reddiar v. Padmanabhan, ; (2) Banshidhar Jha v. Chhabi Chatterjee, and Baj Bhanbal Mavji v. Kanbi Karshan Devraj, . It would, therefore, be clear that it has been consistently held, notwithstanding the enactment of the Hindu Marriage Act of 1955, that it is only a legally wedded wife who can maintain an action under section 488 of the old Code. If the marriage is not proved to be a valid marriage, whether under the personal law or being in contravention of the provisions of the Hindu Marriage Act, or such other laws, no application under section 488 by such an 'illegitimate' wife shall be held to be maintainable. It is significant to note that in spite of this consistent and long standing judicial interpretation of the word "wife" in section 488, the Legislature in its wisdom did not think it necessary to widen the scope of the provisions of section 488 while enacting the provisions of section 125 in the new Code. Undoubtedly, some more categories of persons have been specifically added in section 125, but as for as the wife is concerned, the only addition is that of a divorced wife. The case of divorced wife is obviously different, because till divorce, she continues to be a legally wedded wife. A woman whose marriage is void cannot get the legal status of a wife and, therefore, if the marriage is void by reason of contravention of section 5 read with section 11 of the Hindu Marriage Act, she is not competent to make an application under section 125 of the Code. That provision merely speak of a " wife "and its meaning cannot be extended to the case of a void marriage.

11. It is well settled principle of construction of a statutory provision that if an Act of Parliament uses the same language which was used in a former Act of Parliament referring to the same subject, and passed with the same purpose, and for the same object, the safe and well known rule of construction is to assume that the legislature when using well-known words upon which there have been well-known decisions use those words in the sense which the decisions have attached to them. (See

Maxwell on the Interpretation of statutes, Twelfth Edition, Page 71). It is true that this principle is not "a canon of construction of absolute obligation.", but merely "a presumption that Parliament intended that the language used by it in the subsequent statute should be given the meaning which in the meantime has been judicially attributed to it." There is nothing in the provisions of section 125 which would indicate that the Legislature intended to depart from the scope of the earlier section 488 so far as the rights of the wife to claim maintenance is concerned. There is no reason for us to assume that the Legislature intended to enlarge the scope of the original provisions so far as a wife is concerned, particularly when the courts even after the enactment of the Hindu Marriage Act without any exception took the view that it is only a legally wedded wife that can avail of the remedy under section 488. In this context, we may usefully refer to the observations of the Supreme Court in the Commissioner of Sales Tax, U.P. v. Person Tools & Plants, Kanpur, . The Court observed in para 12 as under :

" If the legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a causes omissus in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation by analogy or implication, something what it thinks to be a general principle of justice and equity. 'To do so' at p. 65 in Prem Nath L. Ganesh v. Prem Nath, , per Tekchand J.) ' would be entrenching upon the preserves of Legislature", the primary function of a Court of law being jus dicere and not jus dare. "

12. According to the Concise Oxford Dictionary, "wife" means married woman esp. in relation to her husband". It is not possible to hold that even if the marriage is null and void and prohibited by law, she should still be considered as the wife. If such an interpretation of the word "wife" were to be accepted, it could as well be extended to cases where the necessary ceremonies under the personal law are not gone into, and what is pressed into service is a long co-habitation as husband and wife. Even a concubine or any woman living with the paramour and treating herself to be his wife could claim to be his wife for the purposes of section 125. For a valid marriage which alone can confer the state of a wife not only the ceremonies under the personal law must be gone into, but also must conform to the statutory requirements such as section 5 and 11 of the Hindu Marriage Act. Just as under the personal law, the ceremonies is a condition precedent for a valid marriage, similarly, the marriage should not contravene any of the conditions under the statutory provisions. In the absence of any clear indication in the provisions itself and having regard to the background in which the said provisions of section 125 were enacted, we do not think that a woman can claim maintenance unless she proves that she is a legally wedded wife of the defendant against whom she maintains an action.

13. Strong reliance was placed by Mr. Ganvekar on the provisions of section 25 of the Hindu Marriage Act, which according to him, must be borne in mind while interpreting the provisions of section 125 of the Code. Section 25 of the Hindu Marriage Act confers jurisdiction on the Court to grant permanent alimony and maintenance to a wife or a husband, and this jurisdiction could be exercised by the Court either at the time of passing the decree or at any time subsequent thereto. It was, therefore, contended that even a woman whose marriage is declared to be null and void under section 11 of that Act is entitled to get alimony and maintenance. This provision of law, according to the Counsel, clearly indicates that there was a clear departure from the personal law as it stood prior

to the Hindu Marriage Act and the legislature intended to confer a statutory right of maintenance and alimony even in cases where the marriage contravenes the conditions prescribed in section 5 and is declared to be null and void under section 11. Reliance was placed on a decision of a Single Judge of this Court in Govindrao Ranoji v. Anandibai Govindrao, 79 Bom.L.R. 73. The Court held that section 25(1) not only provides for a remedy but it also confers a right; and the words " wife" and " husband" used in section 25(1) of the Hindu Marriage Act include within their scope a woman and man professing the Hindu faith who have gone through a ceremony of marriage which would, in law, have conferred the status of a wife or husband on them but for the provisions of section 11 read with Clauses (i), (iv) and (v) of section 5 of the Act. On this decision, it was urged by the Counsel that there is no reason why the same meaning should not be given to the word " wife" in section 125 of the Code as has been given to the same word in section 25(1), of the Act of 1955. The Counsel also pointed out that a similar view on the interpretation of the word " wife" in section 25(1) has been expressed Dayal Singh v. Bhajan Kaur, ; and Arya Kumar v. Ila, . However, it appears that a contrary view has been taken by a Division Bench of the Madras High Court in A.P.K. Narayanaswami Reddiar v. Padmanabhan, . The Madras High Court has held that section 25 cannot be construed in such a manner as to hold that notwithstanding the nullity of the marriage, the wife retains her status for purposes of applying for alimony and maintenance; and the proper construction of section 25 would be that where a Marriage is admittedly a nullity, the section will have no application. They, however, held that where the question of nullity is in issue and is contentious, the Court has to proceed on the assumption until the contrary is proved, that the applicant is the wife. Mr. Sawant submitted that the view taken by Kania, J. in 79 Bom.L.R. 73, requires reconsideration. We do not, however, think it necessary to go into that question because in our view, even if we were to accept the correctness of the view taken by Kania, J. on the true construction of section 25(1), it will not have any hearing on the interpretation of the word " wife" in section 125 of the Code. We would therefore, proceed on the basis that the woman whose marriage is void by reason of section 5 read with section 11 of the Act is entitled to claim alimony in view of the provisions of section 25. In the first place, section 25(1) confers a statutory right on the wife and the husband and confers a jurisdiction on the Court to pass an order of maintenance or alimony in proceedings contemplated under the Act at any time after the decree is passed in such a proceeding. In order, therefore, that the wife or the husband could claim such a right, the conditions of section 25(1) will have to be satisfied. There must be a matrimonial petition filed under the Act; then in such a petition, a decree must be passed by the Court. It is only when a decree is passed that a right accrues to the wife or the husband or confers a jurisdiction on the Court to grant alimony, Till then, such a right does not take place. It is, therefore, difficult to accept the contention that the personal law regarding the maintenance of a woman who is not legally wedded wife stands changed by the provisions of section 25(1). In any case, the jurisdiction contemplated under section 25(1). In any case, the jurisdiction contemplated under section 25(1) under the Hindu Marriage Act and section 125 of the new Code are distinct and specific. While section 25(1) is intended for parties who are Hindus, section 125 is secular in character in the sense that it applies to persons belonging to all religions. It would, therefore, be not proper to introduce a concept arising out of the provisions of section 25(1) of the Hindu Marriage Act while construing the provisions of section 125 of the Code. The condition precedent for the applicability of section 125(1) is that the complainant must be the wife of the person against whom the maintenance is claimed. A wife, as we have mentioned above, must mean a legally wedded wife. A wife whose marriage is in contravention of sections 5 and 11 cannot under

any circumstances be treated as a legally wedded wife. The provisions of sections 5 and 11 are explicit and admit of no ambiguity. The marriage in contravention of conditions laid down in sections 5 and 11 is no marriage at all in the eye of law, because section 11 clearly states that it is null and void. Merely because section 11 permits the presentation of a petition for a decree of nullity on grounds of breach of conditions laid down in section 5, it cannot mean that till such a declaration is made by the Court and a decree is passed to that effect, she continues to be the legally wedded wife. That the legislature has made a clear distinction between void and voidable marriages is seen from the various proceedings contemplated by the Hindu Marriage Act. While section 11 in terms says that the any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in Clauses (i), (iv) and (v) of section 5. Section 12 postulates that certain marriages voidable. Under sub-section (1) of section 12, any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the grounds, viz. (a) that the marriage has not been consummated owing to the importance of the respondent; or (b) that the marriage is in contravention of the condition specified in Clause (ii) of section 5; (c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner is required under section 5, the consent of such guardian was obtained by force, or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent; (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner. It would, therefore, be clear that till the annulment by a decree, the marriage continues to be valid. Being a voidable marriage, a party to the marriage must exercise its option to get it annulled by a decree. Section 11, however, stands on a different footing. The marriage is ipso facto null and void although a petition can be filed by either party to the marriage. The decree passed in proceedings under section 11 is a declaration of nullity while a decree contemplated under section 12 is a decree of annulment which means that the marriage continues to be valid till it is annulled or nullified by a decree. Same is the position with regard to the provisions of section 13 relating to proceedings for divorce. It is only on a decree of divorce that the marriage is dissolved. Till then the parties to the marriage continue to be locked in a legal marital relationship. Section 125 has taken note of such provisions regarding divorce in Hindu Marriage Act which applies to the case of Hindus and other enactment and personal laws relating to divorce and has provided for granting maintenance even to a divorced wife. Provisions of section 125 are not restricted to Hindus alone but apply to persons belonging to all communities and religions. It is not possible to assign different meaning to the word " wife" for persons belonging to different communities or religions or governed by different personal laws. To construe the word "wife" as including a woman whose marriage is void and illegal would lead to anomalous results, because the same extended meaning will have to be given to the word in the case of woman of all religions and communities. This does not seem to be the intention of the Legislature because it could have expressed such an intention clearly particularly having regard to the long standing judicial interpretation of the word "wife" in section 488 of the old Code. We do not think that the interpretation of section 25(1) of the Hindu Marriage Act can be of assistance in construing section 125 of the Code. We have no hesitation in concluding that the marriage of the respondent with the petitioner which admittedly contravenes conditions in Clause (i), of section 5 is null and void in its inception and it does not confer the status of a legally wedded wife to enable her to make an application under section 125.

14. It would be useful to refer to the observations of the Supreme Court regarding the scope of section 488 in relation to section 23 of the Hindu Adoptions and Maintenance Act. In Bhagwan Dutt v. Kamala Devi, , the Supreme Court observed---

" The question there resolves itself into the issue whether there is anything in sections 488 which is consistent with section 23 or any other provisions of the Act ? This matter is no longer res integra. In Nanak Chand v. Chandra Kishore Agarwal, this Court held that there is no inconsistency between Act 78 of 1956 and section 488, Criminal Procedure Code. Both could stand together. The Act of 1956 is an Act to amend and codify the law relating to adoption and maintenance among Hindus. The law substantially similar before when it was never, suggested that there was any inconsistency with section 488, Criminal P.C. The scope of the laws is different. Section 488, provides a summary remedy and is applicable to all persons belonging to all religions and has no relationship with the personal law of the parties."

The above observations would indicate that it would not be proper to give an extend meaning to the word "wife" in section 125 on the basis of the provisions of section 25 of the Hindu Marriage Act.

15. It was urged by Mr. Gavnekar that the narrow construction put on the word "wife" in section 125 would injustice and grave hardship and led to manifest contradictions particularly in view of the attempts of the Legislature to improve the lot of discarded married women and the well known fact most such women are helpless do not have any source of income. He contended that it would be permissible to modify the meaning given to the word "wife" by judicial decisions, while interpreting the provisions of section 488 of the old Code. In support of his contention, he relied on the following passage on page 218 of Maxwell on the Interpretation of Statues :---

"Where the language of a Statue, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structures of the sentence."

We do not think that the principle can be of any assistance in this case, particularly having regard to the secular character of the provisions and the plain grammatical meaning of the word coupled with the long standing judicial interpretation put by the courts on the word "wife" in section 488. On the other hand, if the wider meaning as suggested by the learned Counsel is given, it is likely to lead to manifest contradictions and absurdities, because the same extended meaning will have to be given in the case of parties governed by other religions and personal laws.

16. The argument of Mr. Gavnekar is solely based on the provisions of section 25(1) of the Hindu Marriage Act. We have indicated above that the scope of section 25(1) is entirely different. The maintenance or alimony can, if at all, be awarded only on satisfaction of the conditions laid down in that section, and on a termination of the proceeding by a decree passed under the Act. Section 125 of the Code which applies to persons of all religions and which has no relationship with the personal law of the parties cannot be constructed by reference to section 25 of the Hindu Marriage Act.

17. We are also unable to accept the contention of Mr. Gavnekar that we should not exercise the discretionary powers under Articles 226 and 227 of the Constitution having regard to the facts of this case. The question raised is a pure question of law goes to the root of the matter. Unless and until the complaint (respondent No. 1 herein) proves that she is the legally wedded wife of the petitioner, the Magistrate will have no jurisdiction to pass an order of maintenance in her favour. It is an admitted fact this is case that the marriage of the respondent is in contravention of the condition (i) in section 5 and is therefore, null and void as provided in section 11 of the Hindu Marriage Act. There is thus a clear error on the face of the record which requires to be rectified. This is a fit case where the powers under Article 277 of the Constitution must be exercised as, in our view refusal to exercise these powers would result in totally ignoring the mandatory provisions of law and maintaining an order which on the face of it is illegal and without jurisdiction. As indicated above, swe have not finally decided the question about the correctness or otherwise of the view taken by Kania, J. In Govindrao Ranoji v. Anandibai Govindrao, 79 Bom.L.R. 73, referred to above, regarding the interpretation of section 25(1). The remedy under section 125 being a summary remedy, the respondent would be at liberty to take any other action if advised and if available to her any other provisions of law for seeking maintenance from the petitioner.

18. In the result, the petition must succeed.

19. The petition is allowed; the impugned order dated October 11, 1977 passed by the Judicial Magistrate, First Class, Barsi, and the order dated August 23, 1978, passed by the Sessions Judge, Sholapur, dismissing the revision application of the petitioner, are quashed and set aside, and the respondent No. 1's application for maintenance stands rejected. Rule made absolute. No order as to cost.