

**HIGH COURT OF MADHYA PRADESH**  
**BENCH AT GWALIOR**  
**SINGLE BENCH**

**PRESENT:**

**HON'BLE MR. JUSTICE G.S. AHLUWALIA**

**Criminal Revision No. 348 OF 2006**

**Smt. Pushpa Pandey & Anr.**

**-Vs-**

**Suresh Pandey**

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Shri Praveen Mishra, counsel for the applicants.

None for the respondent.  
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**And**

**Criminal Revision No. 356 OF 2006**

**Suresh Pandey**

**-Vs-**

**Smt. Pushpa Pandey & Anr.**

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None for the applicant.

Shri Praveen Mishra, counsel for the respondents.  
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**O R D E R**  
**(24/11/2016)**

By this common order Criminal Revision No.348/2006 and Criminal Revision No. 356/2006 are being disposed of .

**2.** The applicant Smt. Pushpa Pandey by filing a Criminal Revision No. 348/2006 under Section 397, 401 of Cr.P.C. has challenged the correctness and validity of the order dated 10.03.2006 passed by Principal Judge, Family Court,

Gwalior in Case No.20/2004 by which her application filed under Section 125 of Cr.P.C. has been rejected.

**3.** The applicant Suresh Pandey by filing Criminal Revision No.356/2006 has challenged the later part of the order dated 10.03.2006 by which it has been directed that the applicant (Suresh Pandey) shall pay Rs. 1,000/- per month by way of maintenance to Master Abhay till he attains the majority.

**4.** The necessary facts for the disposal of these revisions are that the applicant and her minor son, Master Abhay had filed an application under Section 125 of Cr.P.C. against the respondent (Suresh Pandey) on the ground that she was married to him as per the Hindu Rites and Rituals on 20.04.1996 at Gwalior. Master Abhay was born out of the wedlock on 22.04.1997. It was alleged that the applicant resided along with the respondent for a period of one and half years and during that period the respondent started making the complaints that his in-laws have not given him the scooter and on this allegation he used to quarrel with her. On 21.11.1997 the applicant along with her child were turned out of the house and a report in this regard was lodged and since then she is residing alongwith her parents at Gwalior. The applicant has no independent source of income. Master Abhay is studying in Class-I and the parents of the applicant are somehow managing the maintenance of the applicant as well as her child. Earlier the respondent was working as a Constable in Madhya Pradesh S.A.F. and now he is doing business and is earning Rs. 20,000 to 25,000/- per month. Accordingly, a prayer for grant of maintenance @ Rs. 3,000/- per month each to both the applicants was made. Litigation expenses @ Rs. 3500/- was also claimed.

**5.** The respondent by filing his reply to the application denied that he was married to the applicant on 20.04.1996.

He also denied that Master Abhay was born out of the wedlock. He also denied the allegation of demand of scooter. It was further stated by him that the applicant had lodged a false report against him in which he has been acquitted. The applicant is not the legally married wife of the respondent. The respondent was earlier married to one Maya on 23.06.1991 and after the marriage, said Smt. Maya because of some personal reason went back to her parent's house. Thereafter, the respondent was living all alone and at that time the father of the applicant came to his house and had a talk about the marriage. The fact that the respondent is already married was made known to the father of the applicant and he was also informed that the respondent cannot marry the applicant but still if he wants to send her daughter with him then he can do so. It was further stated by the respondent that as the father of the applicant agreed for sending his daughter (applicant) without any dowry and, therefore, the respondent along with his some relatives went to the house of the applicant and brought her. Thereafter the applicant resided with the respondent only for two days. It was alleged that in connivance with the first wife of the respondent, the applicant had lodged a false report in which he has been acquitted. The applicant is not entitled for maintenance. It was further alleged that the respondent had lost his service because of the false report and now he is surviving on the pension of his mother who is old and infer person. He has no independent source of income. His mother is also not keeping well and he himself is suffering from various diseases and, therefore, he prayed for rejection of the application.

- 6.** The Trial Court framed the following issues:-
- (i) Whether the applicant is the legally wedded wife of the respondent and applicant No.2 Master Abhay is their son?

(ii) Whether the applicants are entitled to get maintenance?

**7.** By order dated 10.03.2006, the Trial Court rejected the application of the applicant on the ground that the second marriage during the subsistence of first marriage is void and, therefore, it cannot be said that the applicant is a legally wedded wife of the respondent. Accordingly, it was held that the applicant is not entitled for maintenance. However, the application filed by Master Abhay was allowed and a maintenance of Rs. 1,000/- per month was awarded till he attains the majority.

**8.** Heard the learned counsel for the applicant, Smt. Pushpa Pandey. None appears for respondent Suresh Pandey.

**9.** In support of her claim under Section 125 of Cr.P.C. the applicant examined herself along with K.K. Mathur (AW-2), Shiv Kumar Chaturvedi (AW-3), and Smt. Shakuntala Bajpai (AW-4).

**10.** It was contended by the counsel for the applicant that even the trial court has come to a conclusion that the applicant was married to the respondent as per Hindu rites and rituals but has erroneously rejected the application on the ground that since the respondent was already married and, therefore, the applicant is not legally wedded wife of respondent.

**11.** The applicant in order to prove her marriage with the respondent had examined her father Shiv Kumar Chaturvedi (AW-3) who has specifically stated that the applicant was married to the respondent on 20.04.1996. The marriage card was filed as Ex.P/19. Photographs of the marriage and its negatives are Ex.P1 to P/18. He has further stated that the respondent was treating the applicant with cruelty due to non-fulfillment of his demand of scooter. The applicant was turned out of the house by the respondent on

21.11.1997 due to non-fulfillment of demand of scooter and thereafter she along with her child Master Abhay are residing with him. In cross-examination, this witness has specifically stated that the respondent had visited the house of his sister where he had informed him that he is serving in 10<sup>th</sup> Bn. and is interested to marry. Thereafter this witness went to the house of the respondent along with his son Mukesh. At the house of the respondent, this witness met with the mother and sister of the respondent with whom they had talks. On the basis of the talks, the marriage was fixed. Engagement ceremony was performed on 12.04.1996. Various gifts were given. Several persons had come in Barat. It was specifically stated by this witness that he was not aware of the fact that the respondent is already married and about a year after the marriage he came to know that the respondent was already married. It is important to mention here that no suggestion was given to this witness in his cross-examination that prior to marriage he was specifically informed about the fact that the respondent is already married and is having a living spouse. There is also no suggestion that even after knowing the fact that the respondent is already married, this witness agreed to send his daughter along with the respondent.

**12.** The applicant examined K.K. Mathur (AW-2) who has specifically stated that he was working as an outdoor photographer and he had taken the photographs of the marriage of the applicant and the respondent. He also stated that the applicant and the respondent are the same persons of whose marriage he had taken the photographs. This witness has also proved the positive and negative of the photographs of the marriage of the applicant and the respondent.

**13.** The applicant (AW-1) in her evidence has specifically stated that she was married to the respondent on 20.04.1996 as per the Hindu rites and rituals and one son

Master Abhay was born out of the wedlock on 24.04.1997 and because of non-fulfillment of demand of scooter and money, she was treated with cruelty by the respondent. It was further stated by her that she was turned out of her matrimonial house on 21.11.1997. It was stated by her that she has no independent source of income. Smt. Shakuntala Bajpai (AW-4) has also stated that the applicant was married to the respondent. Thus on the appreciation of the evidence and the documents which has been relied upon by the applicant it is held that the applicant was married to the respondent on 20.04.196 as per Hindu rites and rituals.

**14.** Here moot question for determination is that whether the applicant is the legally wedded wife of the respondent and whether she is entitled for maintenance or not?

**15.** Section 125 of Cr.P.C. reads as under:-

**"125.Order for maintenance of wives, children and parents.-** (1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or  
(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order

the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation.- For the purposes of this Chapter, -

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

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

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

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

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

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

**16.** The legislature has not included within the scope of Section 125 of Cr.P.C., a woman who is not a lawful wife. As per Section 5 of Hindu Marriage Act, one of the conditions for valid marriage is that neither party should have a spouse living at the time of the marriage and as per Section 11 of the Hindu Marriage Act any marriage solemnized in contravention of the condition specified in clause (i) of Section 5 of Hindu Marriage Act is a void marriage.

**17.** The Supreme Court in the case of **Savitaben Somabhai Bhatiya vs. State of Gujarat & Ors.** reported in **2005 AIR SCW 1601** has held that the scope of Section 125 of Cr.P.C. cannot be enlarged to include woman who is not



lawfully married. Even if the husband is treating the applicant as his wife is immaterial. It is the intention of the legislature which is relevant and not to the attitude of the party. Even the principle of estoppel cannot be pressed into service to defeat the provision of Section 125 of Cr.P.C. Thus, it is clear that if the lady is not a legally wedded wife then she is not entitled for maintenance under Section 125 of Cr.P.C. Where a lady is living in live-in-relationship with a man, knowing fully well that either he is already married or there is no possibility of marriage, then she is not entitled for maintenance under Section 125 of Cr.P.C. When there is no misrepresentation on the part of the man, and the lady is residing in live-in-relationship with him voluntarily, then she cannot claim the status of a wife for the purposes of claiming maintenance under Section 125 of Cr.P.C.

**18.** However, the next question for determination is that whether the respondent had succeeded in proving the factum of his first marriage or not and whether the respondent can take advantage of his own wrong for denying maintenance to the applicant. These would be decisive factors for deciding the rights of the applicant to claim maintenance under Section 125 of Cr.P.C.

**19.** The learned counsel for the applicant submitted that since the applicant and the respondent were residing together for a considerable period of time, therefore, it would raise the presumption of a valid marriage between them and such a presumption would entitle the woman to claim maintenance under Section 125 of Cr.P.C. It was further submitted by him that a strict proof of marriage is not essential for claiming maintenance under Section 125 of Cr.P.C.

**20.** The facts of this case are completely different. In the present case it has already been held that the applicant

was married to the respondent as per Hindu rites and rituals. It is not the case of the applicant that she was living in live-in-relationship with the respondent. In fact it is the case of the applicant that she was married to the respondent and only after she was turned out of her matrimonial house, she came to know that earlier the respondent was married to one Maya.

**21.** The Supreme Court in the case of **Pyla Mutyalamma @ Satyavathi Vs. Pyla Suri Demudu & Anr.** reported in **(2011) 12 SCC 189** has held as under:-

“14. In fact, we also find sufficient substance in the plea that the High Court in its revisional jurisdiction ought not to have entered into a scrutiny of the finding recorded by the Magistrate that the appellant was a married wife of the respondent, before allowing an application determining maintenance as it is well-settled that the revisional court can interfere only if there is any illegality in the order or there is any material irregularity in the procedure or there is an error of jurisdiction.  
15. The High Court under its revisional jurisdiction is not required to enter into reappraisal of evidence recorded in the order granting maintenance; at the most it could correct a patent error of jurisdiction. It has been laid down in a series of decisions including *Suresh Mandal vs. State of Jharkhand* (2006) 1 AIR Jhar R 153, that in a case where the learned Magistrate has granted maintenance holding that the wife had been neglected and the wife was entitled to maintenance, the scope of interference by the revisional court is very limited. The revisional court would not substitute its own finding and upset the maintenance order recorded by the Magistrate.  
16. In a revision against the maintenance order passed in proceedings under Section 125 Cr.P.C., the revisional court has no power to re-assess evidence and substitute its own findings. Under revisional jurisdiction, the questions whether the applicant is a married wife, the children are legitimate/illegitimate, being pre-eminently questions of fact, cannot be reopened and the revisional court cannot substitute its

own views. The High Court, therefore, is not required in revision to interfere with the positive finding in favour of the marriage and patronage of a child. But where finding is a negative one, the High Court would entertain the revision, re-evaluate the evidence and come to a conclusion whether the findings or conclusions reached by the Magistrate are legally sustainable or not as negative finding has evil consequences on the life of both child and the woman. This was the view expressed by the Supreme Court in Santosh vs. Naresh Pal (1998) 8 SCC 447, as also in Pravati Sahoo vs. Bishnupada Sahoo (2002) 10 SCC 510. Thus, the ratio decidendi which emerges out of a catena of authorities on the efficacy and value of the order passed by the Magistrate while determining maintenance under Section 125 Cr.P.C. is that it should not be disturbed while exercising revisional jurisdiction.

**22.** For the appreciation of the evidence available on record, it would be relevant to consider the pleadings and evidence of the parties. The respondent in his reply to the application under Section 125 of Cr.P.C. had stated that he had informed the father of the applicant that he is already married and during the subsistence of the first marriage, he cannot marry his daughter, however, even if so desire, the father of the applicant may send his daughter with him. As the father of the applicant agreed to that, therefore, he went to the house of the applicant along with some of his relatives and brought the applicant to his house.

**23.** If the above mentioned pleadings are considered in its true perspective, then it would mean that the father of the applicant allowed his daughter to live as a concubine of the respondent. No father on this earth would accept such a proposal. Furthermore, no such suggestion was given to father of the applicant, namely Shiv Kumar Chaturvedi (AW-3) in his cross-examination. No suggestion was given to him that even before the marriage, he was knowing that the respondent is

already married and his first wife is living and the marriage is still subsisting. On the contrary, Shiv Kumar Chaturvedi (AW-3) has merely stated that after the marriage, he came to know that the respondent was already married. This admission on the part of Shiv Kumar Chaturvedi (AW-3) would not mean that he was knowing that the respondent had a living spouse. If a person comes to know after the marriage of his daughter that his son-in-law was already married, then in fact he would feel himself ditched and would not mean that he had married his daughter knowing fully well that his would be son-in-law is already married and his first marriage is still subsisting. Even the admission on the part of the applicant (AW-1) that after the marriage she came to know about the fact that the respondent was already married would not mean, that the applicant had married the respondent, knowing fully well that the respondent is already married and is having a living spouse.

**24.** Further, the respondent except by examining himself, has not examined any witness to prove that his previous marriage was still subsisting and he had a living spouse on the date of marriage with the applicant. The burden to prove the first marriage is heavily on the applicant and he had failed to discharge the same. It is also evident from the pleadings of the respondent that his first wife had already left him and he was residing all alone for 3-4 years. Thus, it is clear that the respondent had got married to the applicant by suppressing the fact of his first marriage. The applicant cannot take advantage of his own wrong and cannot be allowed to take a defence that since, he was having a living spouse on the date of marriage, therefore, the applicant is not a legally wedded wife and is not entitled for maintenance under Section 125 of Cr.P.C. In fact the respondent had duped the applicant

by not revealing the fact of his first marriage. Where a woman knowingly enter into relationship with married male and cohabiting with him for a long time, the presumption of marriage in such situation, already stands destroyed due to prior knowledge of women about marital status of the man. But where the women is kept in dark about the first marriage, then it cannot be said that the woman is not entitled for maintenance under Section 125 of Cr.P.C. as she is not legally wedded wife. Under these circumstances, at least for the purposes of grant of maintenance under Section 125 of Cr.P.C., the applicant would be treated as a "Wife". The basic purpose of Section 125 of Cr.P.C. is to provide speedy remedy to the destitute women who is not having any independent source of income. Therefore, where a women has been ditched by a man by marrying her without disclosing the fact of his first marriage, then it would nothing but adding to her insult by refusing to award maintenance on the ground that although she may have married the man under a bonafide belief, that she is legally wedded wife, but because of fraud played by her husband, she is not entitled for maintenance.

**25.** The Supreme Court in the case of **Badshah vs. Urmila Badshah Godse & Anr.** reported in **(2014) 1 SCC 188** has held as under:-

"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 v. Virendra Kumar Singh Kushwah*, (2011) 1 SCC 141, 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 to 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 his first marriage. A false representation was given to respondent No.1 that he was single and was competent to enter into martial tie with respondent No.1. In such circumstances, can the petitioner be allowed 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 *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav*, (1988) 1 SCC 530 and *Savitaben Somabhai Bhatiya v. State of Gujarat*, (2005) 3 SCC 636, 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 achieving their social justice. Therefore, it becomes the bounden duty of the Courts to advance the cause of the social justice. While giving interpretation to a particular provision, the Court is supposed to bridge the gap between the law and society.

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15. The 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 discretion in determining the proper relationship between the subjective and objective purposes 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 nonetheless 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 interpretation 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 recherché 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 regard. Journey from Shah Bano to Shabana Bano guaranteeing maintenance rights to Muslim women is a classical example.

19. In *Rameshchandra Rampratapji Daga v. Rameshwari Rameshchandra Daga*, (2005) 2 SCC 33, 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* which became the historical source of purposive interpretation. The court would also invoke the legal maxim of 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 destitution. 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. In taking the aforesaid view, we are also encouraged by the following observations of this Court in Capt.Ramesh Chander Kaushal vs. Veena Kaushal, (1978) 4 SCC 70:

“9..... 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.”

**26.** Thus, considering the fact that the respondent had married the applicant by keeping her in dark about his first marriage and at the time of the marriage, the applicant was not aware of the fact that the respondent is already married and is having living spouse, it is held that the applicant would be a “Wife” for the purposes of grant of maintenance under

Section 125 of Cr.P.C.

**27.** So far as the Criminal Revision No. 356/2006 filed by Suresh Pandey against the order granting maintenance to Master Abhay @ Rs. 1000/- per month is concerned, none has appeared to challenge the same order. It is submitted by learned counsel for the respondents (Smt. Pushpa Pandey and another) that it is a well settled principle of law that the child whether legitimate or illegitimate is entitled for maintenance from his father. This Court does not find any perversity or illegality in the later part of the order by which the Trial Court had awarded the maintenance to Master Abhay (respondent No.2).

**28.** Accordingly, the Criminal Revision No.356/2006 filed by Suresh Pandey is dismissed being devoid of merits. The Criminal Revision No.348/2006 filed by Smt. Pushpa Pandey against the rejection of her application for grant of maintenance under Section 125 of Cr.P.C. is hereby allowed. The order of the Trial Court to the extent of rejecting the application of the applicant filed under Section 125 of Cr.P.C. for grant of maintenance is set aside.

**29.** Now the question is that what would be the maintenance amount and from which date the applicant would be entitled. It is the duty of the husband to provide maintenance to his wife. Maintenance is granted for the sustenance of the wife. The wife is entitled for the maintenance amount so she may lead the life in the similar manner as she would have lived in the house of her husband. It is the duty of the husband to provide financial help to his wife. The applicant has specifically stated that the respondent is carrying on business and is earning Rs. 20,000/- to 25,000/- per month. Although the respondent has denied the said assertion and has stated that he is jobless and is

dependent on the pension of his mother and is also suffering from various diseases, but neither he has filed any document, nor has examined any witness to support his contention. Even if the husband is not doing any job, he cannot escape from his liability to pay maintenance amount to his wife. In absence of any proof with regard to the monthly income of the respondent, even if the notional income of the respondent at the rate of Rs. 500/- per day is assessed, then he must be earning Rs. 15,000/- per month. Under these circumstances, the applicant is entitled for maintenance at the rate of Rs. 2000/- per month from the date of the order of the Family Court.

**30.** Accordingly, Criminal Revision No. 348/2006 is allowed and Criminal Revision No.356/2006 is dismissed.

**(G.S. AHLUWALIA)**  
**Judge**  
**(24.11.2016)**

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