

**HIGH COURT OF MADHYA PRADESH**  
**BENCH AT GWALIOR**  
**SINGLE BENCH**  
**BEFORE JUSTICE S.K.AWASTHI**  
**Criminal Revision No 888/2015**

Smt. Laxmi Yadav

**Versus**

Barelal Yadav

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Shri H.K.Shukla, Advocate for the applicant.  
Shri O.P.Mathur, Advocate for the respondent.  
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**O R D E R**  
**(28.06.2017)**

The applicant is before this Court for challenging the order dated 3.6.2015 passed in Misc. Cri.Case No.43/2015 by Principal Judge, Family Court, Shivpuri, whereby the Family Court has rejected the application under Section 125 of Criminal Procedure Code, 1973 (for short, the 'CrPC) on the ground that the applicant has failed to establish the matrimonial relations between the applicant and respondent.

2. The facts necessary for adjudication of the present revision application are that the applicant claims to be married with the respondent before the Public Notary on 14.3.2011. According to the applicant, the marriage is as per the tradition followed by the parties and the respondent, at the time of entering into the marriage with the applicant, assured her and her mother that he would keep the applicant as lawfully wedded wife and will take care of all her necessities but the respondent turned back

on his promise and started harassing the applicant and also took away the cattle (60 cows) worth Rs.6.00 lacs belonging to her mother without her consent. According to the applicant, after such misappropriation of property belonging to her mother, the respondent became more aggressive and started abusing her physically. Consequently, the applicant was expelled from the house of the respondent on the pretext that the applicant was not fulfilling the demand of money made by the respondent which, according to her, can only be fulfilled after selling the agricultural land belonging to her mother, thereafter the applicant has started residing with her mother and since the applicant was known as the wife of the respondent and they were residing for a considerable period of time as husband-wife, she moved an application under Section 125 of CrPC for grant of maintenance to enable the applicant to meet her expenses, as she cannot remain dependent on her mother.

**3.** The respondent was invited by Family Court to file his reply in which it was categorically stated that the applicant is not legally wedded wife of the respondent; in fact, the story of marriage which has been narrated by her, is false as the applicant has already married to one Mukesh and, therefore, without divorce with Mukesh she cannot enter into the second marriage. He further submitted that the applicant gained access to the house of the respondent on account of some common relative and started living there for some period but later on she

claimed to be wife of the respondent. According to him, the document which is notarised and has been placed on record was signed by the respondent under pressure of the applicant and common relative. He also submitted that the fact of the first marriage is clearly mentioned in the document produced by the applicant. Although it is indicated that the parties have served their matrimonial ties and that she is residing with her mother.

**4.** Based on the document filed by both the parties the Family Court pronounced the impugned order dated 3.6.2015 and rejected the application of the applicant under Section 125 of CrPC primarily on two grounds, firstly, the applicant has failed to establish the existence of marriage with the respondent and secondly she has sufficient source of income to maintain herself.

**5.** Learned counsel for the applicant has invited attention of this Court to the pleadings made by the respondent before the Court below which are at page 18 of the document. Learned counsel for the applicant submits that in paragraphs 2 and 3 the respondent has admitted the fact that he had executed the instrument dated 14.3.2011 before the Notary; however, the same was done because he got swayed away by the interaction with the applicant. Therefore, the applicant submitted that the existence of marriage is proved and that the applicant and respondent were residing together as husband-wife. It has been further pointed out that the Family Court lost sight of the fact that instrument which refers to

the marriage by following Hindu rituals on 7.3.2011 and the document was only for the purpose of reducing in writing the act of marriage. According to the learned counsel for the applicant, the Family Court erred in rejecting the application on the ground that the applicant is the only child of the mother, who has sufficient source of income from agricultural land. Therefore, she does not require any maintenance amount from the respondent.

**6.** Per Contra, learned counsel appearing on behalf of the respondent has submitted that the Family Court has rightly appreciated the crucial facts of the case and it is admitted by the applicant that she was married to Mukesh and, therefore, the second marriage is clearly illegal. Further, the document dated 14.3.2011 was executed in duress, therefore, the same cannot be held to be binding.

**7.** Having considered the rival contentions put forth on behalf of the parties and perused the record, this Court is of the opinion that the Family Court has erred in rejecting the application moved by the applicant under Section 125 of CrPC on the ground that the applicant has failed to establish her marriage with the respondent. In order to arrive at this conclusion, this Court has taken note of the fact that in the reply filed by the respondent in response to the application under Section 125 of CrPC, he has categorically admitted execution of document dated 14.3.2011 before the Public Notary. However, the reason which is assigned to disown such document is that he got swayed away by the interaction with the

applicant and, therefore, signed such document. In the considered opinion of this Court, such justification cannot be taken as sufficient for holding that the document is not binding on the respondent, as the same could have been brushed aside if the respondent could have proved before the Family Court that the document was executed in coercion or by misrepresentation. Once the respondent has admitted his signature on the instrument then it obviously means that he also admits the contents mentioned therein. Perusal of the contents shows that the applicant fairly declared about the existence of earlier marriage with Mukesh and had categorically stated that such marriage is no longer in existence on account of divorce. Further, both the parties have declared that they have entered into the marriage by following the Hindu rituals.

**8.** The Supreme Court in the case of **Muddasani Venkata Narsaiah vs. Muddasani Sarojana (2016) 12 SCC 288**, has held that once the fact of execution of document is admitted by both the parties then there is no legal necessity for the plaintiff or the applicant to establish such document by leading evidence.

**9.** Taking into consideration the law laid down in **Muddasani Venkata Narsaiah (supra)**, it is safe to conclude that the parties have admitted the existence of marriage; however, the respondent may have taken a plea that execution of such document was on account of the fact that he got swayed away by the interaction with the applicant but this

justification cannot be taken as an act done in furtherance to coercion or by misrepresentation. Rather, the applicant has candidly declared her antecedent and the respondent after knowing fully well about the marriage status of the applicant has agreed to affix his signature on the said document, which also categorically improves the fact of marriage on 7.3.2011 by following Hindu rituals.

**10.** While taking this view of the matter this Court feels it necessary to deal with the instant case from another view point which proposes that the applicant and respondent did not enter into a valid marriage. In this regard, the basis of discussion is the law laid down in the case of **Badshah vs. Urmila Badshah Godse (2014) 1 SCC 188**, in which the Supreme Court has categorically observed that once the party started residing together for a considerable period of time as husband-wife whereas, the husband did not inform the wife about the existence of earlier marriage and lateron resisted the claim of the wife under Section 125 of CrPC on the ground that there is absence of valid marriage, proceeded to hold that such defence by the husband cannot be permitted because the same would amount to taking advantage of your own wrong.

**11.** In the light of such observation, if the facts of the present case are examined then it is clear that the respondent entered into the marriage with the applicant and started residing with her for a considerable period of time in the capacity of husband after having complete knowledge of the

existence of previous marriage of the applicant and when she made an application under Section 125 of CrPC, the respondent has taken a plea that there is no valid marriage existed between the parties which cannot be allowed as the same would amount to taking advantage of his own wrong and as they have resided as husband-wife for a considerable period of time, it is his legal obligation to maintain her. Therefore, the finding of the Family Court in this regard is set aside and it is held that the applicant is entitled to receive the maintenance from the respondent under Section 125 of CrPC.

**12.** While making such observation, this Court is not concluding that the parties have entered into the valid marriage but is only adjudicating on the issue that the applicant is entitled to maintenance under Section 125 of CrPC from the respondent which is clearly available to the applicant from the examination of the facts of the case by both the view points discussed above.

**13.** Upon cumulative consideration of the circumstances indicated above, the question which remains to be decided is in respect of quantum of maintenance. In this regard, the Family Court has recorded a finding in paragraphs 12 and 13 of the impugned order that mother of the applicant has sufficient income from which the mother is able to maintain the applicant also. This finding by the Family Court is perverse in the opinion of this Court, because what is to be examined is, whether the applicant has her own means to maintain herself.

Therefore, the Family Court has decided this issue incorrectly.

**14.** Thus, the present application is disposed of with the observation that the Family Court shall decide the application afresh in the light of the fact that this Court has held that the applicant is entitled to receive the maintenance from the respondent under Section 125 of CrPC and the Family Court shall proceed to decide the application on merits after duly considering the earning capacity of the respondent and the inability of the applicant to maintain herself.

**15.** It is further observed that this Court has not expressed any opinion with respect to the financial status of the applicant or as to her necessity for maintenance. The Family Court shall be at liberty to decide the application on merits in accordance with law regarding payment of maintenance to the applicant.

**16.** The parties are directed to appear before the Family Court on **17<sup>th</sup> July, 2017**.

A copy of this order be sent to the concerned Family Court for information and compliance.

(Yog)

**(S.K.Awasthi)**  
**Judge**