

**HIGH COURT OF MADHYA PRADESH: BENCH AT**  
**INDORE**  
**BEFORE HON. SHRI JUSTICE ALOK VERMA,J**  
**Cr.R. No.874/2012**

1 **Aashiq Khan S/o Kayum Khan Mewati**  
**Aged 26 years, Occ: Agriculture & Milk Vendor**  
**R/o Village Ambada, Tehsil Kannod**  
**District Dewas (M.P.)**  
**..... Applicant**

**Vs.**

1 **Anisabai @ Annabee, W/o Aashiq Khan**  
**Age 23 years, Occ: Housewife**  
**R/o Ambada presently at Atwas,**  
**Tehsil Satwas, District Dewas (M.P.)**  
**..... Respondent**

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Shri J.K. Jain, learned counsel for the applicant.  
Shri S.K. Meena, learned counsel for the respondent.

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**ORDER**  
**(Delivered on 27/11/2014)**

**Per Alok Verma, J.**

This criminal revision is directed against the order passed by the learned Additional Sessions Judge, Kannod, District Dewas in Criminal Revision No.129/2011 dated 15.06.2012 which was in turn directed against the order passed by the learned Judicial Magistrate First Class, Khategaon District Dewas in M.Cr.C. No.39/2010 dated 27.07.2011 by which the learned Magistrate dismissed the application filed by the respondent Anisabai @

Annabee under Section 125 Cr.P.C. claiming maintenance from her husband/present applicant. The Revisional Court allowed the revision and set aside the order passed by the learned Magistrate and awarded monthly maintenance of Rs.2,000/- from the date of order i.e. 15.06.2012.

2. Being aggrieved by this order, the present revision is filed on the grounds that the Revisional Court erred in appreciating the evidence produced by the respondent. The Revisional Court misled and mis-appreciated the matter and the order is bad in law. On such grounds, the present applicant prays that the order of the Revisional Court dated 15.06.2012 be set aside.

3. It is undisputed that respondent was married to the present applicant five years prior to her filing the application under Section 125 Cr.P.C. before the Magistrate according to Muslims Customs. The respondent's case before the learned Magistrate was that after marriage, the present applicant and his family members including his parents Kayum Khan, Mariumbee and maternal uncle Gaffar Khan was started ill-treating her and committing cruelty on her with a view to obtaining more dowry from her family. They demanded Rs.50,000/- from the family of the respondent. She also lodged a complaint in Police Station Satwas, District Dewas which was registered as Crime No.69/2010 under Sections 498-A, 323 and 506/34 of Cr.P.C.

4. The case of the present applicant before the learned Magistrate was that they never committed any cruelty and never ill-treated the respondent. According to the present applicant immediately after marriage, the respondent expressed that she did not like the present applicant and did not want to live with him.

The applicant is even today ready and prepared to keep her with him, however, she refuses to live with him.

5. The learned Magistrate after recording the evidence inferred that no cogent and reasonable ground was shown by the respondent for her refusal to live with the present applicant and during her evidence, she stated that the present applicant married a second wife and, therefore, it was not possible to her to live with him. However, the learned Magistrate found that there was no pleadings of the respondent in her application under Section 125 Cr.P.C. that the present applicant married a second wife and, therefore, such a maintenance cannot be accepted.

6. However, when the matter travelled to the Revisional Court, the Revisional Court found that the proceedings under Section 125 Cr.P.C. is quasi criminal and quasi judicial and, therefore, strict interpretation of evidence should not be done. A human angle should be adopted while deciding the application under Section 125 of Cr.P.C.. Believing the certificate issued by Gram Panchayat Ambada dated 23.02.2011 (Ex.D/1), the Revisional Court reached to the conclusion that the present applicant married a second wife and was living with her whose name is Rehanabee.

7. On the basis of aforesaid grounds, the arguments of the learned counsel for applicant is that under the Muslims Law, the present applicant is entitled to keep more than one wife. Even if it is believed that he is living with a second wife, he is still ready to keep the respondent with him and both the wives can live together. However, the counsel for respondent argues that it may be true that under the Muslims Law, he can conduct more than one marriage. However, under Section 125 Cr.P.C. second marriage by husband

provides a valid ground to wife to leave company of her husband and live separately.

8. After going through the record, I find that there was no pleading by the present applicant in the application, she filed under Section 125 Cr.P.C. before the learned Judicial Magistrate First Class. The certificate issued by Gram Panchayat, Ambada which was signed by Sarpanch Akbar Khan and Secretary Mailash Markam was not proved properly as none of the signatories of the document were called from evidence before the Court by the present applicant. It is true that the proceedings under Section 125 Cr.P.C. are quasi criminal and quasi civil in nature. However, even if it may be assumed that principles of appreciation of evidence as applicable in civil cases are applied to the proceedings under Section 125 Cr.P.C., this document should have been properly proved before any interference can be drawn on the basis of the document. Otherwise, it would cause prejudice to the opposite party in the present case. There is variance in pleading and proved. Without any pleading, respondent adduced evidence in respect of second marriage by the present applicant. The document (Ex.D/1) was produced by the applicant during cross-examination of the present applicant which could have been produced earlier and proved according to the law. In fact, the present applicant was taken by surprised when the document was produced before him and he was not given any opportunity to rebut the same.

9. In such a situation, I find that the matter should be remanded back to the Court of Judicial Magistrate First Class.

10. Accordingly, this revision is allowed. The orders passed by the learned Revisional Court and the Judicial Magistrate First Class are set aside. The matter is remanded back to the Court of

Judicial Magistrate First Class with a direction that the Court should be given opportunity to the respondent to incorporate suitable amendment in the application under Section 125 Cr.P.C. She should be given opportunity to adduce proper evidence in respect of (Ex.D/1) and thereafter, the learned Judicial Magistrate First Class should pass an order afresh.

11. With that observations and directions, the revision stands disposed of.

**( ALOK VERMA )  
JUDGE**