

**IN THE HIGH COURT OF MADHYA
PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

CRIMINAL REVISION No. 382 of 2020

BETWEEN:-

**RAJKUMAR AGRAWAL S/O LATE
RAMSWAROOP, AGED ABOUT 52
YEARS, 383 VIDHYADHAR NAGAR
SECTOR 7 JAIPUR RAJASTHAN
(RAJASTHAN)**

.....PETITIONER

(BY SHRI MAHESH AGRAWAL, ADVOCATE)

AND

- 1. SARIKA W/O JAJKUMAR AGRAWAL,
AGED ABOUT 41 YEARS,
OCCUPATION: SERVICE 2861 SECTOR
E SUDAMA NAGAR INDORE
(MADHYA PRADESH)**
- 2. PRAKHAR MINOR THR. NATURAL
GUAREDIAN MOTHER SARIKA W/O
RAJKUMAR, AGED ABOUT 41 YEARS,
OCCUPATION: SERVICE R/O: 2861,
SECTOR E SUDAMA NAGAR, INDORE
(MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI KAMLESH KUMAR GURU, ADVOCATE)

Reserved on : 15.09.2023

Delivered on : 23.09.2023

This appeal coming on for orders this day, heard with the consent of parties and the Court passed the following:

ORDER

This criminal revision has been filed by the petitioner under Section 19(4) of the Code of Criminal Procedure, 1973 being crestfallen by the order dated 07.01.2020 passed by the learned Principal Judge, Family Court, Indore in M.J.C. No. 813/2017, whereby the learned Family Court has awarded the maintenance of Rs.27,000/- in favour of respondent/Sarika from the date of order i.e. 07.01.2020.

2. The facts in brief are that the marriage was solemnized between petitioner and respondent on 13.07.2013. Before this marriage, the respondent No. 1 had been married with one Manish Gupta at Khargone. Manish Gupta was a government servant. When respondent No. 1 got pregnant and told her husband Manish Gupta, he disclosed that he has already married, his wife name is Naveena Sutar, so the marriage between them is illicit. The respondent No. 1 gave birth a son namely Prakhar/respondent No. 2. Her husband Manish Gupta abandoned her saying that “*nothing is remained to be continued between us, I took marriage with her with my interest*”. Meanwhile, brother of the respondent No. 1, uploaded information regarding respondent No. 1/wife and respondent No. 2/Son on internet.

3. On that information, the petitioner and his family contacted respondent No. 1 and informed her that the petitioner's wife has expired and now, he has two unmarried daughters, he has one

house, in which one shop is situated, also a shop of jewellery in Sarafa "*Krishnafirm*", Rs.50,000/- to Rs.60,000/- earning is there from this shop. An apartment was also given on rent, from all sources, petitioner is earning Rs.1,50,000/- per month. The petitioner and his family was informed about marriage of respondent No. 1/wife that respondent No. 1/wife was married with one Manish Gupta, but as Manish Gupta was already married, the marriage was null and void, hence, divorce decree could not be taken and respondent No. 1/wife was residing at home for last 8 years. The condition was put before the petitioner that he has to give his name as father to the respondent No. 2. Thereafter, the petitioner and respondent No. 1 got married with each other on 13.07.2013. The respondent No. 1 started residing with petitioner alongwith petitioner's two daughters in Jaipur. The petitioner said to her, she has no need for any maintenance, so that, she could not attend the hearing of the case for recording her statement which was filed by her against Manish Gupta. The petitioner gave his name to respondent No. 2.

4. After 2-3 years of their marriage, two daughters of the petitioner, his brother and sister-in-law started cruelty with respondent No. 1 and demanded dowry and also did some black-magic activities. In the year 2016, marriage was finalized of one daughter of the petitioner namely Sheep, the petitioner demanded money from respondent No. 1/Wife. Petitioner got the abortion done of respondent N. 1 twice in the year 2016. The respondent No. 1 filed a report at Mahila Thana, Indore against him. It is stated that the respondent is not capable to maintain herself and

her son, the petitioner is a capable man but till date he did not maintain or pay expenses of respondents, therefore, the respondent has filed an application under Section 125 of Cr.P.C. for maintenance which has been allowed by awarding the maintenance of Rs.27,000/- to the respondent No.1 and rejected the application filed on behalf of respondent No. 2.

5. Learned counsel for the petitioner has submitted that it is clearly mentioned in the impugned order as admitted fact that the respondent was married with one Manish Gupta in the year 2005 and from the wedlock, she born a child namely Prakhar. She also admitted that she had not obtained divorce decree from her earlier husband Manish Gupta because he has already been married due to which, marriage of respondent No. 1 with Manish Gupta was said to be null and void. These facts establish that the respondent No. 1 has not taken divorce of her first marriage. It is further submitted by learned counsel for the petitioner that the learned trial Court has rejected the application in respect of maintenance of respondent No.2/Prakhar as the respondent No. 2/Prakhar was born out of first marriage of the respondent No.1 and the respondent No. 1 is claiming maintenance from the petitioner without obtaining divorce decree from her first husband. Therefore, he prayed to set aside the impugned order.

6. On the contrary, learned counsel for the respondent has submitted that since the respondent is legal wife of petitioner, he is bound to deposit maintenance in this case. It is also remonstrated that the petitioner's petition under Section 11 of Hindu Marriage Act has been dismissed. Hence, the marriage of

petitioner and respondent is vindicated. As Such, the order of learned trial Court is correct in the eyes of law and facts. This petition, being devoid of merits, is accordingly liable to be dismissed.

7. Heard, learned counsel for the parties and perused the record.

8. So far as the entitlement of maintenance to the wife under Section 125 is concerned, this Court has recently having discussed on concerning legal provisions and also laws laid down by Hon'ble the Apex Court, in the case of *Bhagwandas S/o. Tilakdhari Shah vs. Panpati w/o. Bhagwandas Shah* reported as *2023 Lawsuit (MP) 223*, adumbrated in para-19 of the judgment as under :-

“19. Additionally, a "wife" under Section 125 Cr.P.C. would include a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. As discussed above, even if a woman does not have the legal status of a wife, she is brought within the inclusive definition of "wife" in order to maintain consistency with the object of the statutory provision. However, a second wife whose marriage is void on account of survival of the first marriage would not be a legally wedded wife, and therefore would not be entitled to maintenance under this provision in the case of *Vimala (K.) v. Veeraswamy (K.)*, (1991) 2 SCC 375, the Supreme Court held as follows:

3. Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. When an attempt is made by the

husband to negative the claim of the neglected wife depicting her as a kept-mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage. The term "wife" in Section 125 of the Code of Criminal Procedure, includes a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. The woman not having the legal status of a wife is thus brought within the inclusive definition of the term "wife" consistent with the objective. However, under the law a second wife whose marriage is void on account of the survival of the first marriage is not a legally wedded wife and is, therefore, not entitled to maintenance under this provision. Therefore, the law which disentitles the second wife from receiving maintenance from her husband under Section 125, CrPC, for the sole reason that the marriage ceremony though performed in the customary form lacks legal sanctity can be applied only when the husband satisfactorily proves the subsistence of a legal and valid marriage particularly when the provision in the Code is a measure of social justice intended to protect women and children. We are unable to find that the respondent herein has discharged the heavy burden by tendering strict proof of the fact in issue. The High Court failed to consider the standard of proof required and has proceeded on no evidence whatsoever in determining the question against the appellant. We are, therefore, unable to agree that the appellant is not entitled to maintenance.

23. The *Chanmuniya* case (supra) also envisioned a factual matrix wherein both the parties were unmarried and their cohabitation as husband and wife led to the presumption of them being legally married. However, in the instant case, despite cohabitation as husband and wife, it is not legally tenable to raise a presumption of a valid marriage because both the Petitioner as well as the respondent are already married to their respective spouses and their marriages are subsisting. Therefore,

the Respondent cannot rely upon the Chanmuniya case in order to bring herself within the definition of the term "wife" as per the Explanation (b) in Section 125 Cr.P.C. so as to avail an order for maintenance, despite the social object of this statutory provision.

24. As this is a petition under Section 125 Cr.P.C. and the term "wife" under Section 125 Cr.P.C. does not envisage a situation wherein both the parties in the alleged marriage have living spouses, this Court is of the opinion that the Respondent herein cannot seek maintenance from the Petitioner under this provision. This Court finds it unfortunate that many women, specially those belonging to the poorer strata of society, are routinely exploited in this manner, and that legal loopholes allow the offending parties to slip away unscathed. In spite of the social justice factor embedded in Section 125 Cr.P.C., the objective of the provision is defeated as it fails to arrest the exploitation which it seeks to curb. In the instant case, while the Court sympathises with the position of the Respondent, it is constrained to deny her maintenance as per the law of the land which stands as of today. However, the Respondent has the liberty to avail other remedies that may be better suited to the facts and circumstances of this case, such as seeking of compensation under Section 22 of the DV Act. "

9. At this juncture, the relevant part of Section 125 of Cr.P.C is also worth referring hereunder:-

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,

10. It is unearthed from the aforesaid provision that an illegitimate child is entitled to get maintenance but an illegitimate wife is not entitled to get maintenance. The intention of legislature is obvious that maintenance can only be granted in favour of legally wedded wife.

11. The learned counsel for the respondent emphasized on the dismissal of petitioner's petition under Section 11 of Hindu Marriage Act for declaring the marriage between petitioner and respondent as null and void. Certainly, the petition of petitioner under Section 11 of Hindu Marriage Act was dismissed in default, but on this basis, sustainability of the first marriage of respondent can not be glossed over. In order to get maintenance from the petitioner, the respondent is duty bound to furnish a declaration of earlier marriage as null and void or a divorce decree of a competent Court from which it can be assumed that the earlier marriage of respondent with her first husband either has been declared null and void or broken down.

12. On this issue the law laid down by the full Bench in the case of *Savitaben Somabhai Bhatia vs. State of Gujarat and*

Ors. reported as **2005 Lawsuit(SC)466**, is also poignant to be pointed out here as under :-

"There may be substance in the plea of learned counsel for the appellant that law operates harshly against the woman who unwittingly gets into relationship with a married man and Section 125 of the Code does not give protection to such woman. This may be an inadequacy in law, which only the legislature can undo. But as the position in law stands presently there is no escape from the conclusion that the expression 'wife' as per Section 125 of the Code refers to only legally married wife."

13. In view of aforesaid settled propositions and provisions of law, it is crystal clear that the wife should be a "legally wedded wife" for claiming maintenance from her husband. A woman, having solemnized second marriage to another person is only entitled to get maintenance from that person, when the first marriage has been declared either null and void or she has obtained a divorce decree from her first husband. The aforesaid view has recently been endorsed by this Court in the case of ***Sangeeta Rathore W/o Naresh Rathore Vs. Naresh Rathore, 2023 LawSuit (MP) 470***. Since in the case at hand, as the respondent No. 1 could not file any prove of getting divorce from her earlier husband, she would not be entitled to get maintenance from her second husband/petitioner. Nevertheless, the respondent No. 1 of this case has the liberty to avail other remedies that may be better suited to the factual matrix of this case, as such seeking of compensation order enshrined under Section 22 of the Protection of Women from Domestic Violence Act, 2005.

14. In the result thereof, the order of the learned trial Court awarding the maintenance to the respondent No. 1 is found against the law and therefore, the impugned order is suffering from infirmity and illegality. Accordingly, the impugned order of the learned trial Court is set aside and this criminal revision is hereby allowed.

Certified copy as per Rules.

(PREM NARAYAN SINGH)

JUDGE

vindesh