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

**BEFORE
HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA**

ON THE 3rd OF APRIL, 2024

CRIMINAL REVISION No. 2556 of 2022

BETWEEN:-

**SMT. KRISHNA W/O OMPRAKASH PACHOLI, AGED
ABOUT 58 YEARS, OCCUPATION: HOUSEWORK
SAMRATHDREAM GOMATGIRI INDORE (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI RATNESH KUMAR GUPTA, ADVOCATE.)

AND

**OMPRAKASH S/O HARINARAYAN PACHOLI, AGED
ABOUT 62 YEARS, OCCUPATION: VYAPAR 65
AMBIKAPURI MAIN AERODROME ROAD PANI KI
TANKI KE SAMNE INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(NONE FOR THE RESPONDENT)

*This revision having been heard and reserved for orders, coming on for
pronouncement this day, the Court*

ORDER

This revision petition has been filed by the petitioner/ wife u/s 19 (4) Family Court Act 1984 (hereinafter referred as Act 1984) against the order dated 23/04/2022 passed by IInd Additional Principal Judge, Family Court, Indore M.P. in Miscellaneous Criminal case No. 1258/2021, whereby the application u/S 125 of Cr.P.C. filed by the petitioner/ wife has been dismissed.

2. Facts giving rise to this case are that petitioner/ wife was already married and one daughter namely Rakhi was born from the wedlock of the petitioner and her first husband. The respondent was also married and his first

and second wives had died before. Therefore, around 25 years before the filing of maintenance application the respondent had married the petitioner, thus, the petitioner is legally wedded wife of the respondent. From the second wife of the respondent/ husband, two daughters and a son were born, who were looked after by the petitioner/ wife. The respondent/ husband had started to physically harass the petitioner/ wife after getting intoxicated and used to treat her as servant. On 18/08/2021, the respondent had got the petitioner out of his house after battering her, since then she has been living at Samarth Dream Gomat Giri, Indore and is living a dependant life. The petitioner is a 58 years old woman. She has no means to maintain herself. Respondent earns a sum of Rs.1,00,000/- per month from his businesses, hence, he is capable to maintain the petitioner. The petitioner sought a monthly maintenance of Rs. 25,000/- per month from the respondent in her maintenance application.

3. The respondent/ husband was *ex parte* before the trial court therefore, no reply was filed by him. The petitioner examined herself before the trial court. After completion of ex-parte evidence of the petitioner, the learned trial court passed the impugned order wherein it was found that the petitioner is not legally wedded wife of the respondent, therefore, she is not entitled for maintenance.

4. Learned counsel for the petitioner submits that, the petitioner had proved her marriage with the respondent. She lived with the respondent for a long time as a wife. The petitioner had also got his name written as father in records of Rakhi. The learned trial court has failed to appreciate the evidence adduced by the petitioner in the case. Therefore, it is prayed that the impugned order is liable to be set aside. He relied on **Dwarika Prasad Sathpati Vs. Vidyut Prava Dikshit And Anr. [AIR 1999 SC 3348]**.

5. I have heard learned counsel for the petitioner and perused the records.

6. In the instant case moot question for determination is that whether the petitioner is legally wedded wife of the respondent and whether she is entitled for maintenance?

7. Before moving ahead, it is apposite to reproduce here Section 125(1) of Cr.P.C., the verbatim of which 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 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.

8. Recently, in the case of **Bhagwandas Vs. Panpati [2023 SCC Online MP 1325]**, this court has discussed the maintenance entitlement of wife and has opined 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.) Vs. 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 28 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, Cr.P.C., 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. This court in the case of **Pradeep Vs. Smt. Manjulata [CRR no. 73/ 2020]**, has opined as under:-

"11. 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 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 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."

10. The Apex Court in *Dwarika Prasad Sathpati (Supra)* has opined as "hence, in our view from the evidence which is led if the magistrate is *prima facie* satisfied with regard to the performance of marriage in the proceedings under section 125 of Cr.P.C. which are of summary nature, strict proof of performance of essential rights is not required. Either of the parties aggrieved by the order of maintenance u/section 125, Cr.P.C. can approach the civil court for declaration of status as the order passed u/S 125 does not finally determine the right and obligations of the parties."यते

11. In the instant case, it appears from statement of petitioner Krishna Pancholi (PW/1) that she was already married with another person and one daughter named Rakhi was born from the wedlock of the petitioner and her first husband therefore, it is clear that the petitioner was already married but the petitioner has not stated anything that whether her first husband is alive or not, she also not stated that she got divorced from her first husband, therefore, it cannot be assumed that the petitioner is legally wedded wife of the respondent.

12. Though, the petitioner filed a photograph (Ex.P/ 1) and it has been stated by her that the aforementioned photograph is of petitioner and respondent at the time of marriage but during existence of first marriage, without

getting divorce in the same, the second marriage cannot be considered to be lawful. Thus, from the photograph (Ex.P/ 1) and legal notice (Ex.P/ 2) it cannot be said that the petitioner is legally married wife of the respondent/ husband.

13. So far as the submission of learned counsel for petitioner is concerned that the petitioner has been living together with the respondent/ husband for a long time as a wife, in this respect the petitioner has neither filed any document nor has produced any other witness in her support. Therefore, submission of the learned counsel is not acceptable. Hence, her sole statement is not reliable. The observation given by the Apex court in the case of **Dwarika Prasad Sathpati (Supra)** is based on different facts and circumstances of the case, hence, not applicable in the instant case.

14. In view of aforementioned discussion, it is clear that the petitioner had failed to establish that she is legally wedded wife of the respondent, therefore, she is not entitled for maintenance from him. The learned trial court has rightly appreciated the evidence adduced on record by the petitioner. The learned trial court has not committed any error to pass the impugned order. Therefore, impugned order is not interferable.

15. Resultantly, this petition is **dismissed** and impugned order is hereby affirmed.

(PRAKASH CHANDRA GUPTA)
JUDGE