



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

CRIMINAL REVISION No. 3359 of 2022

MANJUBAI AND OTHERS

Versus

PADAMSINGH

.....
Appearance:

Shri Shankar Lalwani, learned counsel for the petitioner.

Shri Priyesh Ghosh, learned counsel for the respondent.
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Heard on : 23.10.2024

Delivered on : 29.11.2024
.....

ORDER

1. This criminal revision has been filed by the petitioner under Section 19(4) Family Court Act, 1984 read with Section 397/401 of the Code of Criminal Procedure, 1973 being crestfallen by the order dated 05.08.2022 passed by the learned Principal Judge, Family Court, Neemuch in M.J.C. No. 52/2018, whereby the learned Family Court has rejected the application filed under Section 125 of Cr.P.C on the ground that applicant/wife has failed to prove that she being the legal wife of the respondent/husband is liable to receive the maintenance and awarded the maintenance of Rs.5000/- per month to daughter Nisha till the attaining the age of majority or till her marriage.

2. The fact in brief are that the petitioner filed an application under Section 125 of Cr.P.C. for grant of maintenance and pleaded that in the year



2005, marriage of the petitioner was solemnized with respondent according to Hindu rites and rituals. Out of their wedlock, they were blessed with one daughter Nisha. Thereafter the respondent and his family members started harassing her for not fulfilling their demand of dowry also tortured by giving taunts for giving birth a daughter as they were expecting a son. The respondent has agricultural land, business of opium and business of property sell-purchase from which he earns Rs.50,000/- per month. The applicant is only a homemaker and is an unemployed person, therefore, she has filed application under Section 125 of Cr.P.C for maintenance which has been dismissed by the Family Court, therefore, this revision has been filed by the applicant.

3. Learned counsel for the petitioners has submitted that the trial Court has not considered all aspects of the case and not appreciated the evidence available on record. The petitioner No. 1 is an uneducated lady. From the year 2019, she was residing at her mother's house. He also submits that the petitioner No. 1 is liable to get maintenance from respondent, being a wife and as she is compelled by respondent to live separately because of mental and physical cruelty. The respondent has agricultural land, business of opium and business of property sell-purchase from which he earns Rs.50,000/- per month. It is further expostulated that since petitioner No. 1 has not known someone named Mohansingh, she cannot be treated as illegitimate wife of respondent. As such, the second marriage of Manjubai with respondent/Padamsingh Singh cannot be treated as illegitimate marriage. In this way, she cannot be precluded to get maintenance from respondent.



Hence, learned counsel has prayed to set aside the impugned order and revision may kindly be allowed and order of family Court be set aside by awarding maintenance to the petitioner/wife.

4. Learned counsel for the respondent has opposed the prayer made by the applicant and submitted that the trial Court has rightly dismissed the application filed under Section 125 of Cr.P.C. It is further submitted that since the petitioner is already married to another person, she cannot claim maintenance from person with whom she lived for some time. Hence prayed for rejection of this revision petition.

5. Heard learned counsel for the parties and perused the record.

6. From the record it is evident that learned Additional Session Judge has passed this order on the ground that since the petitioner is not a legally wedded wife of the respondent, she is not entitled for the claim of maintenance. Learned counsel for the applicant has relied upon the leave granted by Hon'ble Supreme Court in the case of *Santosh (Smt) vs. Naresh Pal* reported as *1999(8) 8 SCC 447*, however, in the said judgment the wife has got divorce from her earlier husband whereas, in the present case, the wife has not got divorce from her earlier husband and she has entered into second marriage, hence, the petitioner can't any claim parity with the case of *Santosh (Smt) Supra*.

7. In this regard, according to police report (Ex. D-1), the statement of petitioner/wife was recorded wherein she stated that earlier she married with one Mohansingh S/o Bapusingh. Further, she stated that since her husband got paralyzed, she has broken her relationship with him but with this regard



no divorce decree has been filed. That means, petitioner has done second marriage with present respondent/Padamsingh without getting divorce from her earlier husband. Certainly, in Court statement, she has tried to deny her first marriage, however, the respondent has also deposed in his Court statement that he came to know the fact in the year 2016 that the petitioner was already married with one Mohansingh and without getting divorce, she again married with him. His statement has not been rebutted in his cross-examination.

8. On this aspect in the case of *Bhagwandas S/o. Tilakdhari Shah vs. Panpati w/o. Bhagwandas Shah* reported as *2023(2) Lawsuit (MP)223* this High Court has recently having discussed on concerning legal provisions and also the laws laid down by Hon'ble Supreme Court, adumbrated in para-19 of the judgment as under:-

"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. 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 her:

"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."



12. 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 cases of *Sangeeta Rathore W/o Naresh Rathore Vs. Naresh Rathore, 2023 LawSuit (MP) 470* and *Kewal Singh Vs. Durgabai, 2024 LawSuit (MP) 179*.

13. In conspectus of the aforesaid settled proposition, in this petition filed under Section 125 Cr.P.C., the term "wife" under Section 125 Cr.P.C. envisages a situation wherein she, having a living spouse, cannot seek maintenance from her second husband without getting divorce from her earlier husband. Nevertheless, 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 and unquestioned. In spite of the social justice factor embedded in Section 125 Cr.P.C., the objective of the provision is frustrated as it fails to arrest the exploitation which it seeks to curb. In the instant case, while the Court sympathizes 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 D.V. Act.

14. In the result thereof, the order of the learned Family Court by not awarding the maintenance to the petitioner is found correct and is not suffering from infirmity and illegality.

15. *Ex-consequencia*, this criminal revision being devoid of merits is dismissed and the impugned order of learned Family Court is hereby affirmed.

Certified copy as per Rules.

(PREM NARAYAN SINGH)
JUDGE

Vindesh