

preferred on the ground that the applicant was not legally married wife of the petitioner. As per the case of the applicant, the said marriage was solemnized in a temple, but no certificate has been adduced into evidence on behalf of the applicant to show that the marriage was indeed performed.

6. On the contrary, the defence has adduced into evidence the certificate issued by the Management of the Committee of the said Temple which has been marked as 'Z' for identification, in which it has been stated that no such marriage was performed. Furthermore, the applicant had lodged Hazaribag (Muffasil) P.S. Case No.201 of 2022 under Section 498A of the Indian Penal Code and other Sections. Final form has been submitted by recording a finding that the petitioner was not legally married wife of the complainant.

7. It is argued that even if it is assumed that the petitioner was in live-in-relationship with the applicant/opposite party no.2, they cannot be treated as husband and wife, which is the basic ingredient for passing an order of maintenance under Section 125 of the Cr.P.C. The language of Section is crystal clear wherein a legally married wife is entitled to maintenance. There is no evidence of valid marriage. The applicant was earlier married to one Pappu Kumar and in support of it photo copy of the application for marriage under *Kanyadan* scheme to one Pappu Kumar has been filed.

8. On the quantum of maintenance awarded, it is submitted that without any proof of income, maintenance amount has been saddled on the petitioner, on the ground that he was holding Diploma in Elementary Education and the said degree had prospect of getting job in future.

9. Learned counsel on behalf of opposite party no.2 has defended the impugned order. It is submitted that Exhibit F cannot be relied as that is not an evidence of marriage, it is only an application for marriage, but there is no other material to show that applicant was married to Pappu Kumar. It is further submitted that copy of certificate (Exhibit-2) issued by Block Development Officer will go to show that the applicant had not derived any benefit under the *Kanyadan Yojana*.

10. A strict proof of marriage in a proceeding under Section 125 of the Cr.P.C, is not required, particularly when the evidence is on record that the Applicant was living with the opposite party as husband and wife. There is a presumption of marriage in such cases, which is however rebuttable. It has been held in *Badshah v. Urmila Badshah Godse, (2014) 1 SCC 188*

10. *Before we deal with the aforesaid submission, we would like to refer to two more judgments of this Court. The first case is known as Dwarika Prasad Satpathy v. Bidyut Prava Dixit [Dwarika Prasad Satpathy v. Bidyut Prava Dixit, (1999) 7 SCC 675 : 1999 SCC (Cri) 1345] . In this case it was held: (SCC pp. 679-80 & 682, paras 6 & 13)*

“6. ... the validity of the marriage for the purpose of summary proceedings under Section 125 CrPC is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceedings is not as strict as is required in a trial of offence under Section 494 IPC. If the claimant in proceedings under Section 125 of the Code succeeds in showing that she and the respondent have lived together as husband and wife, the court can presume that they are legally wedded spouses, and in such a situation, the party who denies the marital status can rebut the presumption. ... Once it is admitted that the marriage procedure was followed then it is not necessary to further probe into whether the said procedure was complete as per the Hindu rites in the proceedings under Section 125 CrPC.

13. ... from the evidence which is led if the Magistrate is prima facie satisfied with regard to the performance of marriage in proceedings under Section 125 CrPC which are of a summary nature, strict proof of performance of essential rites is not required.

It is further held: (Dwarika Prasad Satpathy case [Dwarika Prasad Satpathy v. Bidyut Prava Dixit, (1999) 7 SCC 675 : 1999 SCC (Cri) 1345] , SCC p. 681, para 9)

9. It is to be remembered that the order passed in an application under Section 125 CrPC does not finally determine the rights and obligations of the parties and the said section is enacted with a view to provide summary remedy for providing maintenance to a wife, children and parents. For the purpose of getting his rights determined, the appellant has also filed a civil suit, which is pending before the trial court. In such a situation, this Court in S. Sethurathinam Pillai v. Barbara [(1971) 3 SCC 923 : 1972 SCC (Cri) 171] observed that maintenance under Section 488 CrPC, 1898 (similar to Section 125 CrPC) cannot be denied where there was some evidence on which conclusion for grant of maintenance could be reached. It was held that order passed under Section 488 is a summary order which does not finally determine the rights and obligations of the parties; the decision of the criminal court that there was a valid marriage between the parties will not operate as decisive in any civil proceeding between the parties.”

No doubt, it is not a case of second marriage but deals with standard of proof under Section 125 CrPC by the applicant to prove her marriage with the respondent and was not a case of second marriage. However, at the same time, this reflects the approach which is to be adopted while considering the cases of maintenance under Section 125 CrPC which proceedings are in the nature of summary proceedings.

11. In the present case as per the application for maintenance, Applicant was married to the petitioner, _____ on 10.03.2013. There is no documentary evidence in support of the said marriage. On the contrary in the case filed by Complainant against the petitioner, under different Sections of the Indian Penal Code, final form has been submitted by the investigating agency holding that there did not exist any marital relationship.

12. Altogether 4 witnesses have been examined on behalf of the Applicant.

A.W.01 is the mother of the Applicant. She states that Applicant was married to the Petitioner in the temple of Bhadrakali and more than six years have elapsed since the marriage. After the marriage, both were living together as husband and wife, and the Petitioner was paying the house rent. She has denied the suggestion that Applicant had married someone else before her marriage.

A.W.-02 is the Applicant. In Para 18 of the cross-examination, she has deposed that she was married in the temple on 10.10.2013. From the temple they had received original copy of the marriage. She has denied the suggestion that she was married to Ashok Karmali.

On the point of marriage, A.W.-3 has stated that the Applicant was married to the opposite party but she was unable to give the date of marriage of applicant _____. A.W.-4 has testified that Applicant was living in his neighbourhood with the opposite party as husband and wife.

13. Petitioner has been examined as O.P. No.1. He has denied that he was married to the Applicant. It is deposed by him that the Applicant had proposed to marry with him, but he had denied the proposal because she was married to Ashok Karmali. He claims that Applicant _____ and _____ were one and the same person. He has admitted one photograph with the Applicant which has been marked as Ext-1.

O.P.W.-02 is the father of the opposite party and has denied the marriage of his son to the applicant. It is deposed that she was earlier married to one Ashok Karmali. In para 19, he deposes that he had met Pappu Kumar, but could not give any detail regarding his parental home. After Pappu Kumar she was married to Ashok Karmali.

O.P.W.-03 is co-villager of the petitioner. In para 4, he has deposed that during the course of treatment _____ (O.P.) had stayed in the house of the Applicant. In para-6, he has deposed that Applicant was married

to one Saroj Kumar. O.P. No.3 has further deposed that Applicant was not married to Saroj Ram, but she had illicit relationship with him.

O.P.W.-4 has also denied the marriage of the Applicant with Opposite Party. In para-15, has deposed that he cannot say in which year Saroj Kumar who was his co-villager, had married the Applicant. He had heard about the marriage of the Applicant to Saroj Kumar, but cannot give the year of marriage.

14. On combined reading of the testimony of witnesses, it is apparent that witnesses on behalf of the applicant have consistently supported the testimony about the marriage, whereas the witnesses examined on behalf of the O.P. have denied the factum of marriage between the applicant and the opposite party. Some photographs have been adduced into evidence, which shows the photograph of the applicant with the petitioner, which has not been denied. Documentary evidence of marriage cannot be insisted in all cases, particularly in a proceeding under Section 125 Cr.P.C. If the parties live together as husband and wife, a presumption of marriage can be drawn. As per the oral evidence, marriage took place on 10.03.2013 in Bhadrakali temple. O.P.W. No.3 has admitted in a limited way that O.P. lived with the Applicant for some time during his treatment.

15. Opposite Party has taken shifting and conflicting stand regarding the marriage of the Applicant. Some of the witness say that she was married to one Pappu, with regard to whom application for kanyadan was filled up the by the Applicant. Another witness says that she was married to Ashok Karmali, whereas other says that she was married to both Ashok Karmali and one Saroj Kumar. As discussed above, presumption of marriage living together is a rebuttable presumption, but there should be some consistent material to rebut the said presumption. Main plank of defence is that Petitioner was not married to applicant as she was married since before the marriage. There is no consistent case, far less any cogent evidence, regarding the previous marriage of the applicant. In view of the contradictory evidence, presumption of marriage is not rebutted and the plea of earlier marriage of the Applicant cannot be accepted. I do not see any reason to differ with the finding of fact recorded by the learned Trial Court, only on the basis of a document purported to be issued by the temple management, which has not even been proved properly, and has been marked as Exhibit-Z for identification. Plea that Applicant was not married to the Petitioner is therefore rejected which hinges

merely on the finding recorded in investigation in a police case registered against the accused.

16. On the quantum of maintenance, Applicant is admittedly a handicapped person and as per the application for maintenance he was having a mobile repair business and was also having earning from real estate business from which he had a monthly income of Rs 25,000/- per month. No further detail of the business, regarding the place of the mobile repairing business, land transaction if any from which he had monthly income, has been furnished. It has been further averred that the Petitioner has secured Government job, but here too, further details are completely absent. Even the witnesses have not deposed about the department or post on which the Petitioner is working. Under the circumstance, income of the Petitioner can be estimated only on a fair assessment of his station of life. Going by that income assessment of Rs 20,000/- appears to be on the higher side. Income of Rs 10,000-12000 shall be a fair estimate. A maintenance of Rs.3000/- per month to be paid by the Petitioner to the Applicant shall be just and fair.

Under the circumstance, for the reasons discussed above, Revision petition stands rejected, with modification in the maintenance ordered.

(Gautam Kumar Choudhary, J.)