

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR (VERMA)

ON THE 12th OF MAY, 2023

CRIMINAL REVISION No. 1440 OF 2022

BETWEEN:-

BHAGWANDAS S/O TILAKDHARI SHAH, AGED ABOUT 35 YEARS, OCCUPATION: LABOUR R/O VILL. DEVRA POST PANCHORE P.S. WAIDHAN DISTT. SINGRAULI M.P. (MADHYA PRADESH)

.....PETITIONER

(BY SHRI J.L. SONI - ADVOCATE)

AND

PANPATI SHAH W/O BHAGWANDAS SHAH, AGED ABOUT 27 YEARS, OCCUPATION: HOUSE WIFE R/O VILL. DEVRA POST PANCHORE P.S. WAIDHAN DISTT. SINGRAULI M.P. AT PRESENT R/O VILL. AMJHAR WARD NO. 25 UPVANWARD POST KACHANI P.S. NAWANAGAR TAH AND DISTT. SINGRAULI M.P. (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI ARVIND KUMAR PATHAK - ADVOCATE)

Reserved on : ***20.02.2023***

Pronounced on : ***12.05.2023***

This Criminal Revision having been heard and reserved for orders, coming on for pronouncement this day, *Hon'ble Shri Justice Rajendra Kumar (Verma)* delivered the following :

ORDER

This criminal Revision has been preferred by the petitioner being aggrieved by the impugned order dated 25.03.2022 passed by learned Principal Judge Family Court, Singrauli, in MJCR No. 120/2018 whereby the application under Section 125 Cr.P.C. filed by the respondent/wife has been partly allowed and the petitioner/husband has been directed to pay Rs.10,000/- per month to the respondent/wife from the date of application dated 27.09.2018.

2. The brief facts of the case are that the marriage of the petitioner/husband and respondent/wife has been solemnized on 29.03.2017 as per the Hindu rites and rituals at Amlori Shishu Mandir under the Mukhya Mantri Kanya Daan Yojana. Since the date of marriage, petitioner started to make pressure on the respondent to bring dowry from her parental home and when she denied, petitioner started to torture her and lastly he oust the respondent from his house on 11.08.2017. When no ground was left, respondent/wife file an application under Section 125 Cr.P.C. before the learned Principal Judge Family Court, Singrauli (M.P.) as MJCR No. 120/2018 which was partly allowed vide order dated 25.03.2022, directing the petitioner/husband to pay Rs.10,000/- per month to the respondent/wife. Being aggrieved by the aforesaid order, instant Criminal Revision has been preferred.

3. Learned counsel for the petitioner/husband submits that the marriage of the petitioner and respondent has been solemnized on 29.03.2017 as per the Hindu rites and rituals at Amlori Shishu Mandir under the scheme of Mukhya Mantri Kanya Daan Yojana. It is further submitted that the respondent/wife has filed an application under Section 125 Cr.P.C. before the Principal Judge, Family Court, Singrauli, stating therein that, from the date of marriage, respondent (petitioner

herein) used to misbehave with the applicant (respondent herein) for demand of dowry, she has been ousted on 11.08.2017 from her matrimonial house and since then, she is residing with her parents. Respondent is earning Rs.6,00,000/- from his agricultural business and also have a Pakka House and earning Rs.15,000/- per month on rent from that house and claiming Rs.25,000/- per month as maintenance alongwith litigation fee.

4. Petitioner appeared before the learned Family Court and submitted his reply stating therein that there was a settlement between the petitioner and respondent to get money and advantage of Rs.20,000/- from the scheme of Mukhya Mantri Kanya Daan Yojana which was being paid to the spouse who were intended to marry under the scheme. It is further submitted that the respondent has already married with one Sunil Kumar Gupta in the year, 2006-07 and after the lapse of 05-06 years, they both have been separated because of family dispute. Without taking divorce from the first husband, she cannot be said to be the legally wedded wife of the petitioner. On that basis alone, the application for maintenance is not maintainable.

5. It is also submitted that respondent/wife has sufficient means of income and is earning sufficiently to maintain herself. She is blackmailing the petitioner/husband and is residing in her parental home. On the aforesaid grounds, learned counsel for the petitioner/husband prays for setting aside the impugned order dated 25.03.2022.

6. Learned counsel appearing for respondent has supported the impugned order and oppose the prayer of petitioner and prayed for its rejection.

7. I have heard the learned counsel for the parties at length and gone through the record.

8. Learned counsel for the petitioner submits that the impugned order is bad on facts, bad in law, perverse, contrary and liable to be set-aside. Learned trial Court has totally ignored the unavailability of fundamental elements and passed the emotional order providing the maintenance amount. It is also submitted that, the learned Family Court has failed to consider the evidence on record and also the reply submitted by the applicant. The respondent/wife is a married lady and she marry with one Sunil Kumar Gupta in the year, 2006-07 and after lapse of 05-06 years they both were separated. It is further submitted that there was a settlement as is proposed by the respondent/wife to get the advantage of Rs.20,000/- which was being paid to the spouse who were intended under the Mukhyamantri Kanyadan Yojana. It is also submitted that learned Family Court is failed to consider the fact that without taking divorce from the first husband, respondent/wife cannot be said to be the legally waded wife of the petitioner. Respondent/wife has sufficient means of income to maintain herself. She refused to live with the petitioner/husband. Learned Family Court without any documentary evidence, the huge amount of maintenance has been granted to the respondent/wife.

9. Learned counsel for petitioner relied on the judgment passed by this court in the case of *Rabbu V. Prembai* 1981 (11) MPWN SN 91

10. Learned counsel for the respondent submits that learned Family Court has rightly come to the conclusion that the respondent was married to petitioner as per Hindu Rites and Rituals therefore, respondent is legally wedded wife of petitioner.

11. Learned counsel for the respondent has place reliance on *Pushpa Pandey (Smt.) and another V. Suresh Pandey* 2017(1) JLJ 251

14. Here moot question for determination is that whether the respondent is the legally wedded wife of the petitioner and whether she is entitled for maintenance or not?

15. Section 125 of Cr.P.C. 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 not exceeding five hundred rupees in the whole, 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.

(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of

the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is a just ground for so doing.

Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

16. The legislature has not included within the scope of Section 125 of Cr.P.C., a woman who is not a lawful wife. As per Section 5 of Hindu Marriage Act, one of the conditions for valid marriage is that neither party should have a spouse living at the time of the marriage and as per Section 11 of the Hindu Marriage Act any marriage solemnized in contravention of the condition specified in clause (i) of Section 5 of Hindu Marriage Act is a void marriage.

17. The Supreme Court in the case of *Savitaben Somabhai Bhatiya vs. State of Gujarat & Ors.* reported in 2005 (II) MPWN 15=2005 AIR SCW 1601 has held that the scope of Section 125 of Cr.P.C. cannot be enlarged to include woman who is not lawfully married. Even if the husband is treating the applicant as his wife is immaterial. It is the intention of the

legislature which is relevant and not to the attitude of the party. Even the principle of estoppel cannot be pressed into service to defeat the provision of Section 125 of Cr.P.C. Thus, it is clear that if the lady is not a legally wedded wife then she is not entitled for maintenance under Section 125 of Cr.P.C. Where a lady is living in live-in-relationship with a man, knowing fully well that either he is already married or there is no possibility of marriage, then she is not entitled for maintenance under Section 125 of Cr.P.C. When there is no misrepresentation on the part of the man, and the lady is residing in live-in- relationship with him voluntarily, then she cannot claim the status of a wife for the purposes of claiming maintenance under Section 125 of Cr.P.C.

21.The Supreme Court in the case of *PylaMutyalamma @ Satyavathi Vs. Pyla Suri Demudu & Another*, reported in (2011) 12 SCC 189 has held as under:-

"14. In fact, we also find sufficient substance in the plea that the High Court in its revisional jurisdiction ought not to have entered into a scrutiny of the finding recorded by the Magistrate that the appellant was a married wife of the respondent, before allowing an application determining maintenance as it is well-settled that the revisional court can interfere only if there is any illegality in the order or there is

any material irregularity in the procedure or there is an error of jurisdiction.

15. The High Court under its revisional jurisdiction is not required to enter into reappreciation of evidence recorded in the order granting maintenance; at the most it could correct a patent error of jurisdiction. It has been laid down in a series of decisions including *Suresh Mandal vs. State of Jharkhand* (2006) 1 AIR Jhar R 153, that in a case where the learned Magistrate has granted maintenance holding that the wife had been neglected and the wife was entitled to maintenance, the scope of interference by the revisional court is very limited. The revisional court would not substitute its own finding and upset the maintenance order recorded by the Magistrate.

16. In a revision against the maintenance order passed in proceedings under Section 125 Cr.P.C., the revisional court has no power to reassess evidence and substitute its own findings. Under revisional jurisdiction, the questions whether the applicant is a married wife, the children are legitimate/illegitimate, being preeminently questions of fact, cannot be reopened and the revisional court cannot substitute its own views. The High Court, therefore, is not

required in revision to interfere with the positive finding in favour of the marriage and patronage of a child. But where finding is a negative one, the High Court would entertain the revision, reevaluate the evidence and come to a conclusion whether the findings or conclusions reached by the Magistrate are legally sustainable or not as negative finding has evil consequences on the life of both child and the woman. This was the view expressed by the Supreme Court in *Santosh vs. Naresh Pal* (1998) 8 SCC 447, as also in *Pravati Sahoo vs. Bishnupada Sahoo* (2002) 10 SCC 510. Thus, the ratio decidendi which emerges out of a catena of authorities on the efficacy and value of the order passed by the Magistrate while determining maintenance under Section 125 Cr.P.C. is that it should not be disturbed while exercising revisional jurisdiction.

25. The Supreme Court in the case of *Badshah vs. Urmila Badshah Godse & Anr.* reported in (2014) 1 SCC 188 has held as under:-

"13. On this basis, it was pleaded before us that this matter be also tagged along with the aforesaid case. However, in the facts of the present case, we do not deem it proper to do so as we find that the view taken by the courts below is perfectly justified. We are dealing with

a situation where the marriage between the parties has been proved. However, the petitioner was already married. But he duped the respondent by suppressing the factum of alleged first marriage. On these facts, in our opinion, he cannot be permitted to deny the benefit of maintenance to the respondent, taking advantage of his own wrong. Our reasons for this course of action are stated hereinafter.

13.1. Firstly, in *Chanmuniya v. Virendra Kumar Singh Kushwah*, (2011) 1 SCC 141, the parties had been living together for a long time and on that basis question arose as to whether there would be a presumption of marriage between the two because of the said reason, thus, giving rise to claim of maintenance under Section 125 Cr.P.C. by interpreting the term "wife" widely. The Court has impressed that if man and woman have been living together for a long time even without a valid marriage, as in that case, term of valid marriage entitling such a woman to maintenance should be drawn and a woman in such a case should be entitled to maintain application under Section 125 Cr.P.C. On the other hand, in the present case, respondent No.1 has been able to prove, by cogent

and strong evidence, that the petitioner and respondent No.1 had been married to each other.

13.2. Secondly, as already discussed above, when the marriage between respondent No.1 and petitioner was solemnized, the petitioner had kept the respondent No.1 in dark about his first marriage. A false representation was given to respondent No.1 that he was single and was competent to enter into martial tie with respondent No.1. In such circumstances, can the petitioner be allowed to take advantage of his own wrong and turn around to say that respondents are not entitled to maintenance by filing the petition under Section 125 Cr.P.C. as respondent No.1 is not legally wedded "wife" of the petitioner? Our answer is in the negative. We are of the view that at least for the purpose of Section 125 Cr.P.C., respondent No.1 would be treated as the wife of the petitioner, going by the spirit of the two judgments we have reproduced above. For this reason, we are of the opinion that the judgments of this Court in *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav*, (1988) 1 SCC 530 and *Savitaben Somabhai Bhatiya v. State of Gujarat*, (2005) 3 SCC 636, cases would apply only in those circumstances where a woman married a man with

full knowledge of the first subsisting marriage. In such cases, she should know that second marriage with such a person is impermissible and there is an embargo under the Hindu Marriage Act and therefore she has to suffer the consequences thereof. The said judgment would not apply to those cases where a man marries second time by keeping that lady in dark about the first surviving marriage. That is the only way two sets of judgments can be reconciled and harmonized.

13.3.Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125 Cr.P.C. While dealing with the application of destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalized sections of the society. The purpose is to achieve "social justice" which is the Constitutional vision, enshrined in the Preamble of the Constitution of India. Preamble to the Constitution of India clearly signals that we have chosen the democratic path under rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the Courts to advance the cause of the social

justice. While giving interpretation to a particular provision, the Court is supposed to bridge the gap between the law and society.

14.....

15. The provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from "adversarial" litigation to social context adjudication is the need of the hour.

16. The law regulates relationships between people. It prescribes patterns of behavior. It reflects the values of society. The role of the Court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that

the history of law is the history of adapting the law to 'society' changing needs. In both Constitutional and statutory interpretation, the Court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law.

17. Cardozo acknowledges in his classic "...no system of jus scriptum has been able to escape the need of it", and he elaborates:

It is true that Codes and Statutes do not render the Judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled.... There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however, obscure and latent, had nonetheless a real and ascertainable preexistence in the legislator's mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a judge's troubles in ascribing meaning to a statute...."

Says Gray in his lecture:

"The fact is that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges

have to do is, not to determine that the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present."

18. The Court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonize results with justice through a method of free decision --'libre recherche scientifique' i.e. "free Scientific research". We are of the opinion that there is a non-rebuttable presumption that the Legislature while making a provision like Section 125 Cr.P.C., to fulfill its Constitutional duty in good faith, had always intended to give relief to the woman becoming "wife" under such circumstances. This approach is particularly needed while deciding the issues relating to gender justice. We already have examples of exemplary efforts in this regard. Journey from Shah Bano to Shabana Bano guaranteeing maintenance rights to Muslim women is a classical example.

19. In *Rameshchandra Rampratapji Daga v. Rameshwari Rameshchandra Daga*, [(2005) 2 SCC 33], the right of another woman in a similar situation was upheld. Here the Court had accepted that Hindu marriages have continued to be bigamous despite the

enactment of the Hindu Marriage Act in 1955. The Court had commented that though such marriages are illegal as per the provisions of the Act, they are not 'immoral' and hence a financially dependent woman cannot be denied maintenance on this ground.

20. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydon's Case which became the historical source of purposive interpretation. The court would also invoke the legal maxim of construction *ut res magis valeat quam pereat*, in such cases i.e. where alternative constructions are possible the Court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would

amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125, Cr.P.C., such a woman is to be treated as the legally wedded wife.

21. The principles of Hindu Personal Law have developed in an evolutionary way out of concern for all those subject to it so as to make fair provision against destitution. The manifest purpose is to achieve the social objectives for making bare minimum provision to sustain the members of relatively smaller social groups. Its foundation spring is humanistic. In its operation field all though, it lays down the permissible categories under its benefaction, which are so entitled either because of the tenets supported by clear public policy or because of the need to subserve the social and individual morality measured for maintenance.

22. In taking the aforesaid view, we are also encouraged by the following observations of this Court in Capt.Ramesh Chander Kaushal vs. Veena Kaushal, (1978) 4 SCC 70:

"9..... The brooding presence of the Constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be

selective in picking out that interpretation out of two alternatives which advances the cause -" the cause of the derelicts."

12. Section 125 Cr.P.C. is a tool for social justice enacted to ensure that women and children are protected from a life of potential vagrancy and destitution. The Supreme Court has consistently upheld that the conceptualisation of Section 125 was meant to ameliorate the financial suffering of a woman who had left her matrimonial home; it is a means to secure the woman's sustenance, along with that of the children, if any. The statutory provision entails that if the husband has sufficient means, he is obligated to maintain his wife and children, and not shirk away from his moral and familial responsibilities.

13. In Bhuwan Mohan Singh v. Meena & Ors., (2015) 6 SCC 353, the Supreme Court examined the underlying purpose as well as social context of Section 125 of the Code, and observed as follows:

"2. Be it ingeminated that Section 125 of the Code of Criminal Procedure was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar

manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created where under she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds."

14. Therefore, while adjudicating matters pertaining to this statutory provision, it must be borne in mind that the same was enumerated to further the cause of social justice and that the interpretation of this Section should be done in a manner to prevent a situation wherein the wife or children are inadvertently nudged into vagrancy and destitution. It is meant to provide a speedy remedy for the supply of food, clothing and shelter to the deserted wife.

15. However, for Section 125 Cr.P.C. to be applicable to a case, one needs to fall under the ambit of "wife" as envisaged in the statutory provision. The Supreme Court has differed many a times in its interpretation of the term "wife" for the purpose of seeking maintenance under Section 125 Cr.P.C. In cases such as Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556, and Dwarika Prasad Satpathy v. Bidyut Prava Dixit, (1999) 7 SCC 675, the Supreme Court held that liability imposed by Section 125 to maintain close relatives, who are indigent, is founded upon the individual's obligation to the society to prevent vagrancy and destitution. Therefore, with regard to the social object of the provision, a broad interpretation is to be given to the term "wife" and that a strict proof of marriage for the purpose of granting maintenance under Section 125 is not required. On the other hand, the Supreme Court in Yamunabhai Anantrao Adhav v. Anantrao Shivram Adhav, (1988) 1 SCC 530 and Savitaben Somabhai Bhatiya v. State of Gujarat, (2005) 3 SCC 636, held that the inadequacy in this law could only be corrected by the legislature, and that in the meanwhile, the term "wife" in Section 125 Cr.P.C. could only be interpreted to mean a "legally wedded" "wife".

16. The dichotomy in the interpretation of the term "wife" was consequently addressed in Chanmuniya v. Virender Kumar Singh Kushwaha, (supra). In this case, the Supreme Court, while giving an expansive interpretation to the term "wife", also considered the interpretation given to "domestic relationship" under Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 (*hereinafter*, "Act"). It noted that this interpretation had taken such a relationship outside the confines of a marital relationship so as to include live-in relationships, and therefore, reliefs available under the DV Act had also become applicable to women in such relationships. In this vein, the Supreme Court

stated that such broad interpretations, as done in the DV Act, had to be considered with respect to Section 125 Cr.P.C. Accordingly, it referred to a larger Bench, *inter alia*, the question as to whether the living together of a man and woman as husband and wife for a considerable period of time would raise the presumption of valid marriage for the purpose of being entitled to maintenance under Section 125 Cr.P.C. The section of the Judgement delineating the same has been reproduced as follows:

"40. We believe that in the light of the constant change in social attitudes and values, which have been incorporated into the forward-looking Act of 2005, the same needs to be considered with respect to Section 125 Cr.P.C. and accordingly, a broad interpretation of the same should be taken.

41. We, therefore, request the Hon'ble Chief Justice to refer the following, amongst other, questions to be decided by a larger Bench. According to us, the questions are:

1. Whether the living together of a man and woman as husband and wife for a considerable period of time would raise the presumption of a valid marriage between them and whether such a presumption would entitle the woman to maintenance under Section 125 Cr.P.C.?
2. Whether strict proof of marriage is essential for a claim of maintenance under Section 125

Cr.P.C. having regard to the provisions of the Domestic Violence Act, 2005?

3. Whether a marriage performed according to the customary rites and ceremonies, without strictly fulfilling the requisites of Section 7(1) of the Hindu Marriage Act, 1955, or any other personal law would entitle the woman to maintenance under Section 125 Cr.P.C.?

42. We are of the opinion that a broad and expansive interpretation should be given to the term "wife" to include even those cases where a man and woman having been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a precondition for maintenance under Section 125 Cr.P.C. so as to fulfil the true spirit and essence of the beneficial provision of maintenance under Section 125. We also believe that such an interpretation would be a just application of the principles enshrined in the Preamble to our Constitution, namely, social justice and upholding the dignity of the individual."

19. The questions which have been referred in the aforementioned judgement are yet to be decided by the

Supreme Court. With regard to the 2021: observation of the Supreme Court that the term "wife" should include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time and that strict proof of marriage should not be a precondition for maintenance under Section 125 Cr.P.C., this principle has been routinely invoked in subsequent decisions of the Supreme Court such as Kamala and Ors. v. M.R. Mohan Kumar (supra).

20. The issue which arises at this juncture is whether the finding in Chanmuniya v. Virender Kumar Singh Kushwaha (supra) is applicable to the instant case. As per Sections 5 and 11 of the Hindu Marriage Act, 1955, a marriage may be solemnized between any two Hindus if neither party has a spouse living at the time of the marriage, and in case there exists a spouse living at the time of the marriage, such a marriage would be null and void. Furthermore, a divorce between two individuals can only be granted by the Court. Sections 5 and 11 of the Hindu Marriage Act, 1955, have been reproduced hereunder:

"5. Conditions for a Hindu marriage.-A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

(i) neither party has a spouse living at the time of the marriage;

(ii) at the time of the marriage, neither party-

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) thought capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity;

(iii) the bridegroom has completed the age of twenty-one years and the bride the age of eighteen years at the time of marriage;

(iv) the parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two."

"Section 11. Void marriages.-Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i) , (iv) and (v) of Section 5."

17. On perusal of the material on record shows that the respondent was already married to Sunil Kumar Gupta in the 2006 - 2007 where, the marriage of this

petitioner and respondent took place on 29.03.2017. It is evident that the parties herein are governed under the Hindu Marriage Act, 1955. The respondent had married Sunil Kumar Gupta in the year 2006-2007 and their marriage is still subsisting. The respondent has been unable to place any documents on record to substantiate the fact that she had obtained a divorce from Sunil Kumar Gupta. She has produced Exhibit P/1 and P/2, compromise applications filed before JMFC Court Waidhan District-Singrauli in a case under Domestic Violence Act filed by respondent against her husband Sunil Kumar Gupta and stated that she has taken a divorce as per custom of caste.

18. It is to be noted that decree of divorce can only be granted by the Court and divorce by such agreement is not valid in the eyes of law. Therefore, it can be reduced that at the time of alleged marriage, the respondent was already married to other people i.e. Sunil Kumar Gupta and he was alived.

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.

20. In light of the above, this Court is inclined to allow this petition and set aside the impugned Order dated 25.03.22 passed by the Ld. Principal Judge, Family Court, Singrauli.

21. Accordingly, the petition is disposed of along with the pending application(s), if any.

(RAJENDRA KUMAR (VERMA))

JUDGE