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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Reserved on: 21st December, 2021**
Pronounced on: 28th January, 2022

\+ **CRL.REV.P. 588/2018, CRL.M.A. 12593/2018 & CRL.M.A. 13141/2021**

MOHD SHAKEEL @ SHAKEEL AHMED ..... Petitioner

Through: Mr. Salim Malik and Ms. Shavana, Advocates

versus

MST SABIA BEGUM & ORS ..... Respondent

Through: Mr. Aditya Gaur, Advocate.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

JUDGMENT

(THROUGH VIDEO CONFERENCING)

CHANDRA DHARI SINGH, J.

1. The instant Petition under Section 397/401 of the Code of Criminal Procedure, 1908, (hereinafter "Cr.P.C.) has been filed by the Revisionist/Petitioner (hereinafter "Petitioner') seeking setting aside of the Order dated 3rd April, 2018, passed by the learned Judge, Family Court, North-East, Karkardooma, Delhi whereby the Petitioner was directed to pay maintenance to the tune of Rs. 4,000/- per month to Respondent No. 1 and Rs. 3,000/- to Respondents No. 2 and 3, each till

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attaining the age of maturity, alongwith litigation expenses of Rs. 11,000/-.

FACTUAL MATRIX

2. It has been alleged by the Respondents that the marriage between Petitioner and Respondent No. 1 was solemnized in January, 1994, according to Muslim rites and ceremonies. Respondents No. 2 and 3 were born out of their wedlock. Prior to her marriage with the Petitioner, the Respondent No. 1 was married to one Likayat Ali and had four children out of that wedlock, namely, Danish, Monish, Sanah and Farah. It has been alleged that the Petitioner accepted the children of Respondent No.1 and gave his name as their father in the school records.

3. The Petitioner along with Respondents and said four children were residing together at their matrimonial house at Khajoori Khas, Delhi. However, due to disputes between the first wife of the Petitioner and Respondent No. 1, the Petitioner purchased a separate property at Ziauddinpur, Delhi and started living there alongwith the Respondents.

4. Subsequently, due to certain matrimonial issues between the parties, the Petitioner stopped paying maintenance to the Respondents and aggrieved by the same, Respondent No.1 filed maintenance petition for herself and Respondents No.2 and 3 under Section 125 of the Cr.P.C. before the learned Judge, Family Court, North-East District, Karkardooma Courts, Delhi.

5. The Petitioner in his Written Statement dated 29th February, 2008, to the Petition under Section 125 of the Cr.P.C., denied his marriage to

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Respondent No. 1 and the birth of Respondents No. 2 and 3 from the wedlock of the Petitioner and Respondent No. 1. However, Respondent No.1 refuted the allegations of the Petitioner and agreed to carry out a DNA test for Respondents No.2 and 3. The learned Trial Court vide order dated 5th November, 2014, allowed the commission of the test subject to cost of Rs. 5,000/- to be paid by the Petitioner. However, the test was not carried out for unstipulated reasons.

6. Following witnesses were examined on behalf of the Respondents before the learned Trial Court:

Witness Name	**Examined as**	**Relevant part of the depositions**
Mst. Sabia Begum (Respondent No. 1)	PW 1	• Alleged that her marriage was solemnized with the Petitioner. Tendered her affidavit and produced photographs of marriage. (Ex. PW1/1- PW1/7). • Deposed that the marriage was performed before a Qazi and a Nikahnama was prepared but it is in possession of the Petitioner. • The nikah took place at the Petitioner's house and only Respondent's mother was there. • Produced her ration card (Ex.

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		PW1/8) wherein the Petitioner is named as her husband. • Copy of voter list showing her and Petitioner's name at serial no. 1206 and 1205. (Ex. PW1/10). • Due to interference of first wife of the Petitioner, he stopped paying for expenses of the Respondents from February, 2007. • She is a semi-illiterate lady, did not have any work and had no source of income to maintain her children. • Petitioner is a man of means, who is running handicrafts business-and polishing the handicrafts items and is earning more than Rs. 60,000/- per month and his rental income is more than Rs. 20,000/- per month. He had huge bank balance and FDRs in his own name and all modern facilities, own car, scooter, etc. and was leading a luxurious life. • She denied the suggestion that the Petitioner did labour work of

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		polishing and earned Rs. 3,000/- per month.
Lady Head Constable Meena	PW2	• Produced summoned record of Case No. S-340, Diary No.-1911 dated 28th November, 2005, statements of the Petitioner, Ex. PW1/13 dated 20th December, 2006, and Ex. PW2/1 dated 7th January, 2006.
Sh. SM Sharma, Food & Supply Inspector	PW3	• Produced summoned record of ration card bearing no. APL52230244 in the name of Smt. Sabia (Respondent No.1) including her family members and the Petitioner issued on 26th October, 2005 and exhibited as Ex. PW1/8. • Testified that the new ration card was renewed from the old card which was also issued in the name of Smt. Sabia w/o Sh. Shakeel Ahmed (Petitioner) which was issued on 8th September, 1997 and it included the names of all her children from previous marriage, naming the Petitioner as their

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		father.
Sh. SC Gupta, Sub Registrar	PW4	• Produced summoned record pertaining to Respondent No. 3 and testified that he was born on 18th January, 2000.
Sh. Bishan Pal, Official at Mohan Nursing Home	PW5	• Produced the record of birth of Respondent No. 3 and deposed that he was born on 18th January, 2000.
Mohd. Idris (Neighbour)	PW7	• Resides at B-120, Gali No. 20/3, Ziauddinpur, Near Idgah Gate, New Mustafabad, Delhi, and testified that his house was in front of the house of Petitioner and the Petitioner and Respondent No. 1 had performed 'Quran Khani' and he and his family were invited to the religious function. • He deposed that the Petitioner told him that the Respondent No. 1 was his wife. • He deposed that his family was invited by the Petitioner on several other occasions, including to the birth of their son (Respondent No. 3). His wife was accompanied by

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		the Petitioner to the hospital where the Respondent No. 3 was born. • He deposed that he has known the Respondent No.1 since 2005, and since then her Nikah has not been held.
Sh. Akbar Ali (Neighbour)	PW8	• Filed an affidavit evidencing that he lives at B-128, Gall No.20/3, Ziauddin Pur, New Mustafabad, Delhi-94 and lives near the house of the Petitioner and his family. • He testified that the Respondent No. 1 alongwith the Petitioner and their children came into the house at B-106, Gali No. 20, Ziauddinpur, Delhi in the month of December, 1995, and performed Quran Khani where he and his family was invited. They were also invited in the birth of Respondent No.3 and at other religious occasions.
Ruksana (Neighbour)	PW9	• Deposed that she resides at B-100, Gali No.20/3,ZiauddinPur,New Mustafabad, Delhi and that her

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		house is situated near the house of the Respondent No. 1 and the Petitioner where they are residing with their children. • Stated that she has joined the Petitioner and Respondent No.1 at their house at many religious occasions with her family members. • Deposed that while the Respondent No. 1 was admitted during the birth of her child, the Petitioner asked her to lookafter Sabia Begum. She remained three nights at the hospital with Respondent No. 1 on his request. She stated that she had known the Respondent No. 1 for 17-18 years.
Faizan @ Faizee (Respondent No. 2)	CW1	• The Respondent No.2 refused to undergo a DNA test, despite the Order of the Ld. Trial Court. In a statement recorded on 4th March, 2017, submitted that he was major and specified his birth to be 27th July 1999, however, in his

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		deposition he stated his date of birth to be 26th May 1998. • Deposed that the name of their father was Mohd. Shakeel as per the school record.
Mohd. Suhail Khan (Respondent No. 3)	CW2	• The Respondent No.3 refused to undergo a DNA test. He stated his date of birth to be 18th January, 2000. • Deposed that the name of their father was Mohd. Shakeel as per the school record.
Mohd. Saleem, Principal of School	CW3	• Produced admission register/ record, wherein, the date of admission for Respondent No.2 was 14th July, 2003.

7. Taking the above depositions, affidavits and evidence examined, the learned Trial Court was of the opinion that Respondent No. 1 had established her relationship with the Petitioner as his wife and she was entitled to seek maintenance from him.

8. On the question of DNA test, the learned Trial Court observed that it was not required, in light of the testimonies, documentary evidence as well as the fact that the children were not inclined to undergo such test. The evidence recorded was found sufficient for the purpose of adjudication and as such the DNA test was not found to be necessary.

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9. The income of the Petitioner was estimated to be at least Rs.50,000/- having regard to the material on record, social status of the parties and other documents. The learned Trial Court further observed that the order of maintenance under Section 125 of the Cr.P.C. can be passed, if any person, having sufficient means, neglects or refuses to maintain his wife, unable to maintain herself, or his legitimate or illegitimate minor child, whether married or not, unable to maintain itself. It observed that the proceedings under Section 125 of the Cr.P.C. are based on the principle of preponderance of probability and not on the principle of proving beyond reasonable doubt. It is further observed that Section 125 of the Cr.P.C is a measure of social justice especially enacted to protect women and children and is meant to achieve a social purpose with the object is to prevent vagrancy and destitution. Thus, it was observed that if a man is not fulfilling his obligation to maintain his wife and children, then the burden is on him to show that he has no sufficient means to discharge his obligation.

10. Vide the impugned Judgment dated 3rd April, 2018, the learned Trial Court directed the Petitioner to clear the arrears and pay a sum of Rs. 4,000/- per month to Respondent No. 1 from the date of filing the petition and Rs. 3,000/- per month to Respondents No. 2 and 3 each, until they attain majority, alongwith Rs. 11,000/- for litigation expenses.

11. Aggrieved by the said judgment, the Petitioner has preferred the present Petition.

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SUBMISSIONS

12. The learned counsel appearing on behalf of the Petitioner submitted that the impugned judgment dated 3rd April, 2018, is bad in law, contrary to facts and circumstances and hence, liable to be set aside. At the very outset, it is submitted that the Nikah between the Petitioner and Respondent No.1 never took place and as such Respondent No. 1 is not the wife of the Petitioner and neither are Respondents No. 2 and 3 his children, and hence, the provisions of Section 125 of the Cr.P.C. do not apply. It is submitted that the second Nikah of Respondent No. 1 was solemnized with one Fehmood and Respondent No. 2 and 3 are his children.

13. It is submitted by the learned counsel for Petitioner that no material had been placed by the Respondents before the Trial Court to establish that the marriage between them was ever solemnized. Neither there was any documentary evidence or Nikahnama on record, nor any Qazi or Imam was produced before the learned Trial Court to prove that Respondent No. 1 is the legally wedded wife of the Petitioner. It is submitted that for a valid marriage under Muslim law, the proposal and acceptance of marriage are to be made before at least two witnesses, two males or one male and two females. However, no such witnesses were produced before the Trial Court as evidence. The counsel for Petitioner relying upon the provisions of Section 125 of the Cr.P.C, submitted that the in light of the aforesaid facts, Petitioner is not at all liable to pay any

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maintenance since there is no valid marriage between the concerned parties.

14. The learned counsel appearing for the Petitioner further submitted that Respondent No.1 was merely a tenant at the premises bearing no. B-106, Gali No. 20, Ziauddinpur, Near Idgah Gate, New Mustafabad, Delhi. She has been living on the rented premises with her children and the Petitioner does not live at the said address with her. It is submitted that Respondent No. 1 has been attempting to encroach upon the said premises on the pretext of marriage, however, she is not the wife of the Petitioner and the learned Trial Court has wrongfully held that the valid marriage was solemnized between the parties.

15. It is submitted that despite the order of the learned Trial Court dated 5th November, 2014, allowing the DNA test of Respondents No. 2 and 3, the Respondents were not taken to the FSL Rohini which reflected the intention of Respondent No.1 not to get the DNA test conducted. The learned Trial Court vide its order dated 11th July, 2016, recorded the submissions of the Petitioner herein that the Respondents were absent before the FSL when the required DNA test was to be conducted and hence, the DNA test was directed to be dispensed with, since a substantial amount of time had already passed. The question was also raised by the Petitioner in Crl.M.C. No. 173/2018, however, in the absence of any stay order, the final judgment was passed in the matter without a final decision in the said miscellaneous application.

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16. Learned counsel appearing on behalf of the Petitioner, further submitted that the documents such as Voter ID Card, Ration Card, Birth Certificate, School Certificate etc. produced by the Respondents have been fraudulently prepared by Respondent No. 1 with a view to present false evidence. In the ration card produced by Respondent No. 1, the year of birth of Respondent No. 2 is reflected as 1995, whereas according to the school records, his date of birth is 26th May, 1998. Similarly, year of birth of Respondent No. 3 in Ration Card is mentioned as indicates 1997, however, according to the school records it is 18th January, 2000. It is, therefore, submitted that the aforesaid contradictions raise questions as to their veracity and makes them unreliable.

17. *Per Contra,* learned counsel appearing on behalf of the Respondents vehemently opposed the present petition and submitted that the Trial Court has committed no error in awarding maintenance to the Respondents. It is submitted that the Petitioner has concealed material information and has not come before this Court with clean hands and hence, the instant Petition is not maintainable and liable to be dismissed.

18. It is submitted that the challenge to the marriage being solemnized between Respondent No. 1 and the Petitioner does not stand on any ground as the Respondent has already established before the learned Trial Court that marriage between the concerned parties was performed in accordance with Muslim rites and ceremonies before a Qazi and a Nikahnama was also duly prepared, which was in possession of the Petitioner. In furtherance of the same, several witnesses were examined and documentary evidence was also produced. After perusal of the

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evidence as aforestated, the learned Trial Court was of the view that marriage between the concerned parties was duly solemnized. It is further submitted that Respondent No. 1 has been fulfilling her duties as a legally wedded wife, however, the Petitioner has been avoiding his social, moral and legal obligations as well as his duty to maintain his wife and children.

19. Learned counsel appearing on behalf of the Respondents strongly opposed the arguments advanced by the learned counsel for the Petitioner that he is not the husband of Respondent No. 1 and submits that the ration card of Respondent No. 1, produced as Ex. PW1/8 before the learned Trial Court, indicates the Petitioner's name as her husband and was also verified by the Food & Supply Inspector in the proceedings before the learned Family Court. Further, it has been strongly denied by Respondent No.1 that she married one Fehmood and Respondents No. 2 and 3 are their children, as being alleged by the Petitioner.

20. It is submitted that the contentions raised by the Petitioner that the Respondent No. 1 is merely a tenant in his rented accommodation has never been raised before the Court in the present Petition or before the learned Trial Court and now to exert pressure on the Respondents and to evade the liability to pay maintenance the Petitioner is making baseless and false allegations. Further, it is submitted that there is no evidence placed on record, either oral or documentary, before the learned Trial Court or before this Court, to substantiate the averments made by the Petitioner that Respondent No. 1 was a tenant living at the abovementioned premises of the Petitioner. There is no rent agreement or

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lease deed produced before the Court at any stage and as such the contention of the Petitioner is not backed by any evidence whatsoever.

21. It is submitted that the maintenance awarded to the Respondents is, in fact, less than what the Petitioner can afford, since, his income was more than Rs. 60,000/- per month from his business of handicrafts, at the time of filing the maintenance petition, and now since 12 years have passed since filing of the same, the circumstances and rate of index have changed and there is every probability that he might be earning in lakhs.

22. Learned counsel appearing on behalf of the Respondents submitted that the present Petition in light of the submissions made is devoid of any merit and as such is liable to be dismissed because there is no infirmity in the order dated 3rd April 2018, passed by the learned Judge, Family Court, North-East, Karkardooma, Delhi.

ANALYSIS

23. Heard learned counsel for the parties and perused the material on record.

24. In the present matter, it has been vehemently argued by the learned counsel for the Petitioner that the Petitioner had never been married to Respondent No. 1 and that the learned Trial Court had committed grave error in granting maintenance in favour of Respondents towards whom there exists no obligation of maintenance. This contention of the Petitioner raises an important question that needs to be deliberated before adverting into the award passed by the learned Trial Court and to

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investigate into the same, it is pertinent to analyse the provision under Section 125 of the Cr.P.C.

SCOPE OF SECTION 125 OF THE CR.P.C.

25. The provision for maintenance under Section 125 of the 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 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:*

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[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 months allowance for the

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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 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 wifes 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 in 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."

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26. A bare reading of the Section 125 of the Cr.P.C. suggests that the intention of the legislature while making the provision for maintenance was to ensure that a person shall oblige with his matrimonial and familial obligations of maintaining his wife and children, when they do not have sufficient means to sustain themselves. The power to adjudicate on the issue of maintenance has been given, at the first instance, to the Magistrate, who may upon being satisfied direct the concerned person to provide such maintenance/monthly allowance to his wife, children or parents. There is, therefore, a discretionary power with the Magistrate that is to be exercised while appreciating the evidence and material on record when awarding maintenance to the parties.

27. One of the material facts to be considered by the Court while entertaining a matter under Section 125 of the Cr.P.C., at the very first instance, is whether the parties before it share a domestic relationship and/or are legally and lawfully married to each other. This becomes a prominent factor to be investigated into, especially, when one of the parties deny any such relationship subsisting between the parties. In matrimonial matters, the question of marriage between the parties may be raised during the preliminary stage and be considered and decided to the *prima facie* satisfaction of the Court. This implies that before adjudicating upon the quantum of maintenance, the Court may first, in light of the provision under Section 125 of the Cr.P.C, be *prima facie* satisfied to the point that there exists a lawful domestic relationship between the parties, which gives rise to the obligations and duties to maintain the family members. In so far as proving the existence of a

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marital relationship between the parties is concerned, the burden of proof would lie on the party alleging that such marriage has been solemnized in accordance with the law applicable, be it statutory or personal. However, the extent of proof is limited to the *prima facie* satisfaction and the need to prove it strictly and/or beyond reasonable doubt does not arise.

28. The principle of *prima facie* evidence for establishing the existence of a marital relationship may vary with the facts and circumstances of each case. The same has to be addressed keeping in view the essentials of a valid marriage as well as the material facts of the case. There is no straight jacket formula for judging the validity of the marriage between the parties. Every case has to be judged on its own merits depending upon the conditions provided under the statutory or personal law for solemnization of marriage. The legal standard for determining the marital status of the parties in maintenance proceedings has been set out by the Hon'ble Supreme Court in the case of ***Santosh v. Naresh Pal,* (1998) 8 SCC 447**. Therein, the Trial Court found the appellant to be the legally wedded wife of the respondent, which was subsequently reversed by the High Court. Thus, the Hon'ble Supreme Court was required to adjudge, whether the appellant could be considered to be a legally wedded wife of the Respondent. The Hon'ble Supreme Court restored the judgement of the Trial Court and observed:

> *"…However, learned Judicial Magistrate after considering this question came to the conclusion that the respondent was already divorced from his first wife and thereafter he had entered into a second marriage with the appellant who was also a divorcee. The High Court took the contrary view and observed that the*

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> *appellant had not proved that she was the married wife of the respondent and that she had her first husband, Satendra and there was no dissolution of her marriage with him. These are the questions which are required to be thrashed out finally in civil proceedings. In a proceeding for maintenance under Section 125 CrPC the learned Magistrate was expected to pass appropriate orders after being prima facie satisfied about the marital status of parties. It is obvious that the said decision will be a tentative decision subject to final order in any civil proceedings, if the parties are so advised to adopt."*

29. The Patna High Court has made observations in the case of ***Zulekha Khatoon v. The State of Bihar,*** **(2000) SCC Online Pat 425** concerning the similar question of law**.** In this case, the wife was granted maintenance by the Chief Judicial Magistrate. The order came to be challenged before the Additional Sessions Judge in a revision petition, where the order granting maintenance was set aside. In the revision petition, it was averred by the Revisionist that neither he was the legally wedded husband nor the father of the daughter, who were to be maintained. The Revisional Court's setting aside of order came to be challenged before the High Court. The High Court restored the order granting maintenance and in doing so observed as under:

> *"5.The learned Addl. Sessions Judge has not given due weight on the birth certificate (Ext. 2). The learned Addl. Sessions Judge has rejected the Nikahnama (Ext. 2), because it did not bear the thumb impression of the petitioner. In her evidence she has stated that she is an illiterate person and had put her thumb impression on Nikahnama. The finding of the learned Addl. Sessions Judge is otherwise. He says that there was no thumb impression. Opposite party no. 2 the signature*

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on the Nikahnama. He, however, did not make any prayer for examination of signature by expert. The entire onus lay on him to prove that the petitioner was not his legally married wife. Opposite party no. 2 also alleged that the petitioner was having illicit relation with some body but he did not disclose the name. The learned Addl. Sessions Judge has drawn adverse inference because out of two witnesses Alim Mian was not examined.

6. It has been held in 1984 Cr. L.J. 1145 that in a summary proceeding under section 125 Cr. P.C. the wife is entitled to claim maintenance unless the illegality or invalidity of her marriage is apparent and without any scope for doubt or dispute. As held in 1982 Cr. L.J. 539 and other cases section 125 is not intended to provide for a full and final determination of the status and personal rights of the parties. In a proceeding under section 125 Cr. P.C., the factum of marriage and not legality thereof is material. When the status of wife is disputed by the husband on flimsy grounds, the Magistrate will not lose his jurisdiction and he has to find out whether the ground raised by the husband is a serious one and a bona fide one. He has to satisfy himself whether prima facie the parties are married and to afford them the immediate and speedy relief provided under section 125 Cr. P.C. without prejudice to the contentions of the parties to establish their real matrimonial links before the Civil Court.

7. The document of Nikah in the instant case is supported by the evidence of witnesses. Thus, in my view, under section 125 Cr. P.C. the proof of marriage need not be so strong or conclusive, as in prosecution for the offence relating to marriage or in a civil proceeding for divorce. The husband has not denied that the petitioner ever lived with him."

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30. A Coordinate Bench of this Court has dealt with the issue of marital status in maintenance matter in the case of ***Nasir Khan v. Sarphina George,*** **(2019) SCC Online Del 8467.** In this case, the Petitioner husband impugned the order granting maintenance in the revisional jurisdiction. It was contended that the Trial Court erred in passing the order on maintenance since the respondent was not her legally wedded wife. Further, he argued that no witnesses were produced to establish the factum of marriage between the parties. This Court negated the contentions of the Petitioner mainly on the ground that the parties to the marriage were living together for several years and this raised a reasonable presumption in favour of the accused. Additionally, the Court while negating the contentions of the husband also noted his inconsistent stand throughout the proceedings. The Court after extensive analysis observed:

> *"15. As held by the Supreme Court in Kamala v. M.R Mohan Kumar unlike matrimonial proceedings where strict proof of marriage is essential, in the proceedings under section 125 Cr.P.C, such strict standard of proof is not necessary as it is summary in nature meant to prevent vagrancy. An order passed in an application under section 125 does not really determine the rights and obligations of the parties as the section is enacted with a view to provide a summary remedy to neglected wives to obtain maintenance. Further it was held that when the parties live together as husband and wife, there is a presumption that they are legally married couple for claim of maintenance of wife under Section 125 Cr.P.C.*
>
> *16. It is fairly well settled that law presumes in favour of marriage and against concubinage when a man and*

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woman have cohabited continuously for a number of years.

17. Supreme Court has further held that when the family court has held that there was a valid marriage, the High Court being the Revisional Court has no power to reassess the evidence and substitute its views on findings of fact.

18. In the present case, the Trial Court has extensively considered the material on record and found that the parties have resided together as husband and wife for 20 years and there is a presumption of marriage. In view of the same I find no infirmity in the view taken by the Trial Court that the respondent has been able to establish that she is married to the Petitioner."

31. Further, the subject was also in contention before the Patna High Court in ***Firoz Alam v. State of Bihar*, (2014) SCC Online Pat 2783,** wherein, the Trial Court had granted maintenance to the wife and the order of maintenance was challenged before the High Court in revision on the ground that the parties to the proceedings were never married and the Trial Court was erred in passing the order for payment of maintenance. In this context, it was reiterated by the High Court:

"If the prima facie materials are on record to suggest that the parties have married or are having relationship in the nature of marriage, the court can presume in favour of the woman claiming maintenance.

Since the provision under Section 125 Cr.P.C. is a measure of social justice and has been enacted to protect women, children or parents and the materials on record suggest two views, then the view in favour of women should be adopted."

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32. A similar question has also been dealt by the Allahabad High Court recently in the case of ***Irshad Ali v. State of U.P.*** **(2021) SCC Online All 92.** In this case, a challenge was made against the order granting maintenance to the wife in a revision Petition before the High Court. It was contended by the revisionist/husband that the wife at the time of marriage was minor and thus, incompetent to enter into marriage. It was also argued that the Nikahnama filed by the revisionist did not bear the signature of the husband and was fabricated by the wife. *In toto,* it was argued that the respondent wife was not the legally wedded wife of the revisionist and the order of maintenance was perverse and against the law, thus liable to be quashed. In this background, the High Court was required to adjudged with the marital status of the parties for deciding the validity of the order on maintenance. The High Court upheld the order granting maintenance and laid down the law and examined the appraisal of the evidence as done by the Court below. In this context, certain portion of the judgement deserves to be extracted, which is as follows:

> *"11. Perusal of above stated pronouncements shows that if from the evidence which is led, the Magistrate/court is prima facie satisfied with regard to the performance of marriage in proceedings under Section 125 Cr.P.C. which are of summary nature, strict proof of performance of essential rites is not required. Either of the parties aggrieved by the order of maintenance under Section 125, Cr.P.C. can approach the civil court for declaration of status as the order passed under Section 125 does not finally determine the rights and obligations of the parties. The nature of proof of marriage required for a proceeding under Section 125 Cr.P.C. need not be so strong or conclusive as in a criminal proceeding for an offence*

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> *under Section 494 IPC, since, the jurisdiction of the Magistrate under Section 125 Cr.P.C. being preventive in nature, the Magistrate cannot usurp the jurisdiction in matrimonial dispute possessed by the Civil Court. The object of the Section being to afford a swift remedy, and the determination by the Magistrate as to the status of the parties being subject to a final determination by the Civil Court, when the husband denies that the applicant is not his wife, all that the Magistrate has to find, in a proceeding under Section 125 Cr.P.C., is whether there was some marriage ceremony between the parties, whether they have lived as husband and wife in the eyes of their neighbours, whether children were born from the union."*

33. Therefore, the Court, in proceedings under Section 125 of the Cr.P.C., is required to merely decide the quantum of maintenance based on the *prima facie* evidence regarding the marital status of the parties. If the party alleging the solemnisation of marriage has sufficient material to *prima facie* establish the existence of a marriage, then the husband may be directed to maintain her without going into the strict requirements of evidence. The task of deciding the marital status of the parties has been conferred with the Civil Courts and the Court under maintenance proceedings under Section 125 of the Cr.P.C. may not usurp the jurisdiction of the Civil Courts. Thus, the litmus test for determining the marital status of the parties in maintenance proceedings is *prima facie* satisfaction of the concerned Magistrate and nothing more. It is also pertinent to note that the abovementioned decisions bring out the fact that the proceedings under Section 125 of the Cr.P.C. are designed to reduce the vagaries of the neglected wife and children. In line with this, the

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Magistrate under such proceedings cannot be expected to wait for the determination of the marital status by the concerned Court. Thus, to preserve the social intent of Section 125 of the Cr.P.C., the Magistrate can render the *prima facie* finding about the factum of marriage, which will not be a conclusive finding for any other purpose apart from the order on maintenance. Any other interpretation would defeat the social intent of the legislation and must be avoided.

SECTION 125 OF THE CR.P.C. AND REVISIONAL JURISDICTION

34. It is an established law that the Revisional Court need not re-assess or re-appreciate the material and evidence on record before the Trial Court. A Revisional Court is to limit its jurisdiction for adjudicating upon the material illegalities and irregularities apparent in the impugned orders. The conclusive determination of marital status in cases of maintenance under Section 125 of the Cr.P.C., shall therefore, be declared by the Civil Court and the Revisional Court shall restrain itself to the questions before it without reopening the evidence.

35. In ***Pyla Mutyalamma v. Pyla Suri Demudu*** **(2011) 12 SCC 189**, the Hon'ble Supreme Court has set out the standards of revisional jurisdiction to be exercised by the High Courts in maintenance proceedings under Section 125 of the Cr.P.C., when it observed as under:

> *"16. In a revision against the maintenance order passed in proceedings under Section 125 CrPC, the Revisional Court has no power to reassess evidence and substitute its own findings. Under revisional jurisdiction, the questions whether the applicant is a*

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> *married wife, the children are legitimate/illegitimate, being pre-eminently 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, re-evaluate 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 the child and the woman. This was the view expressed by the Supreme Court in Santosh v. Naresh Pal [(1998) 8 SCC 447], as also in Pravati Rani Sahoo v. Bishnupada Sahoo [(2002) 10 SCC 510: 2004 SCC (Cri) 1140]. 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 CrPC is that it should not be disturbed while exercising revisional jurisdiction."*

36. To prevent sufferings and vagaries of woman and children, the Hon'ble Supreme Court has held that in cases where the Trial Court has rendered a positive finding with respect to marriage of the parties, the High Court need not substitute its views in such questions of facts especially in their revisional jurisdiction. However, when a negative finding is given, the High Court can revise and revaluate the evidence in order to protect the wife and the children from the evil consequences that might ensue due to non-payment of maintenance, if such an exercise is not undertaken.

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FINDINGS

37. In the present matter, the objection to marriage by the Petitioner was first raised before the learned Trial Court. The Respondents produced 10 witnesses during evidence to establish their relationship with the Petitioner. By the testimony of the neighbours, it is apparent that the Petitioner and Respondent No. 1 were cohabiting in the premises in question, i.e., B-106, Gali No. 20, Ziauddinpur, Near Idgah Gate, New Mustafabad, Delhi. The examination of PW-7, PW-8 and PW-9 suggested that at several occasions they were invited and welcomed by the Petitioner and Respondent No. 1 to their house, at the abovementioned address, where the witnesses have seen them resides as a family. Witnesses, in their examination, have also stated that they were present at the time of the birth of Respondent No. 3 and were a part of the celebrations and rituals at the time of his birth. The statements of the witnesses/neighbours, clearly imply that the parties were living together for a long time and were known to be husband and wife to the people residing in their neighbourhood. Similar situation was also dealt by a Coordinate Bench of this Court in ***Nasir Khan v. Sarphina George (supra),*** wherein it was held that where the parties have been living together as husband and wife, the assumption is in favour of them being legally married. Therefore, the statements of the neighbours favour the version of Respondent No.1, that there existed a marital relationship between the parties.

38. Further, Respondent No. 1 produced her ration card, exhibited as Ex. PW1/8, which bears the name of the Petitioner as her husband, and as

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per the statement of PW-3, it was made in the year 1997. When the said card was renewed in the year 2005, the names of the children of Respondent No. 1 with her previous husband as well as Respondents No. 2 and 3 were added and both the ration cards were verified by PW-3, who is a competent authority. Such documentary evidence negates the contention of the Petitioner that the identity cards were created only after institution of the maintenance suit. Production of the ration card as a documentary proof of marital relation between the parties met the requirement of *prima facie* evidence in establishing the matrimonial relationship between the parties.

39. There is no force in the argument of the Petitioner that Respondent No.1 was merely a tenant at his premises, since, he had not been able to produce any documents or other evidence to substantiate the contention. Moreover, the statements of the witnesses/neighbours also clarified that the parties were living as husband and wife, which in itself was sufficient to corroborate the fact that they were in a matrimonial relationship and not that of a tenant and landlord.

40. With respect to the question of DNA test, the learned Trial Court need not have satisfied itself to the question of DNA in terms of strict proof, since, the only requirement, as per the provision under Section 125 and the various judgments cited, is *prima facie* satisfaction. After more than 10 years of adjudication into the question of subsistence of a marital relationship between the Petitioner and Respondent No. 1, it was not necessary to go into the legitimacy of the birth of the children, when *prima facie* proof was already produced in their favour.

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41. The learned Trial Court was well within the powers while adjudicating the question of whether there existed a relationship between the parties and in doing so, had appreciated the evidence before it to its *prima facie* satisfaction, which in itself was sufficient to pass the award of maintenance in favour of the Respondents.

42. Furthermore, the Respondents were able to show that they had no source or means of income to sustain themselves and as such it was only the Petitioner who could have maintained them. They were also able to establish that the income of the Petitioner was no less than Rs. 50,000/- per month, owing to his several rented properties and his business in handicrafts. Moreover, due regard was also given by the learned Trial Court to the fact that the Petitioner had another family to maintain. The maintenance awarded to the tune of Rs. 4,000/- per month to Respondent No. 1 and Rs. 3,000/- to Respondents No. 2 and 3, each till attaining the age of majority, is hence seen to be justified in light of the relationship between the parties and the conduct and negligence of the Petitioner towards the Respondents.

CONCLUSION

43. After taking into consideration all the facts and circumstances of this case, the law laid down, the precedents analyzed, arguments advanced as well as the perusal of pleadings, this Court does not find any gross illegality or impropriety in the findings and analysis of the learned Trial Court in upholding the existence of a martial relationship between

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Petitioner and Respondent No.1 and accordingly, awarding maintenance to the Respondents.

44. The learned Family Court, Karkardooma, Delhi, vide its judgment dated 3rd April, 2018, has taken the right view in light of the circumstances present before it. This Court does not find any substantial ground for invoking the Revisional Jurisdiction to interfere with the impugned judgment. In view of the above, this revision petition is dismissed as being devoid of any merit. Pending applications, if any, also stand disposed of.

45. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

January 28, 2022
Aj/Ms