

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 09th NOVEMBER, 2021

IN THE MATTER OF:

+ **CRL. REV. P. 129/2021**

SUNDER LAL SAINI

..... Petitioner

Through: Mr. Ram Kishan Saini, Advocate
versus

MEENA SAINI

..... Respondent

Through: Ms. Upasana Nath, Advocate

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 125 Cr.P.C. is for setting aside the order dated 03.07.2020, passed by Ld. Principal Judge, Family Courts, Shahdara District, Karkardooma Courts, Delhi, in C.C. No. 359/2018, wherein the Ld. Trial Court granted maintenance of Rs. 4200/- per month to be paid by the Petitioner herein to the Respondent.

2. The facts leading up to the filing of this petition are as follows:

- i. It is stated that the Petitioner herein was married to the Respondent as per Hindu Rites and Customs on 18.11.1999. In September 2011, the Respondent herein filed a petition under Section 125 Cr.P.C before the Ld. Trial Court. A Reply to that petition was filed by the Petitioner on 29.05.2013 stating that the Respondent as well as the Petitioner were already married to their respective spouses at time of the alleged marriage between the two parties, and therefore, the Respondent was not

entitled to any maintenance on the ground that the alleged marriage was null and void.

- ii. The Ld. Trial Court on 08.10.2013 dismissed the Respondent's Application for Interim Maintenance stating despite the Petitioner herein having admitted to physical relations between him and the Respondent herein, the scope of Section 125 Cr.P.C. was limited. Accordingly, the Respondent was not entitled to interim maintenance.
- iii. Between 16.11.2018 to 24.03.2020, the Petitioner (RW-1) and the Respondent (PW-1), along with other witnesses, were examined. The Petitioner allegedly deposed that he had been married on 10.05.1980 with Smt. Dharamwati and that his marriage was still subsisting. This was supported by Smt. Dharamwati during her examination as RW-2.
- iv. On 03.07.2020, the Ld. Trial Court held that, after perusing the material on record, there was a clear indication that the parties in question had been living together as husband and wife, and had conveyed the same to the society at large. The Ld. Trial Court, placing reliance on Chanmuniya v. Virender Kumar Singh Kushwaha, (2011) 1 SCC 141, held that a presumption of a matrimonial relationship arose and that a poor woman could not be left to vagrancy and destitution on the basis of mere technicalities. The Ld. Trial Court also noted that The Protection of Women from Domestic Violence Act, 2005, also stipulated that a woman in a live-in relationship would be entitled to maintenance. Accordingly, the Ld. Trial

Court directed the Petitioner herein to pay Rs. 4200/- per month to the Respondent as maintenance.

- v. The Petitioner has approached this Court challenging the impugned Order dated 03.07.2020 passed by the Ld. Principal Judge, Family Court, Shahdara District, Karkardooma Courts, New Delhi, and seeking the dismissal of the petition under Section 125 Cr.P.C. filed before the Ld. Trial Court by the Respondent herein with heavy costs.

3. Mr. Ram Kishan Saini, learned Counsel for the Petitioner, has submitted before this Court that the Section 125 Cr.P.C. filed by the Respondent before the Ld. Trial Court is not maintainable as the Petitioner was already married to Smt. Dharamwati while the Respondent was married to Man Singh Saini, and therefore, no valid marriage could have taken place between the Petitioner and the Respondent. Mr. Saini submitted that the wife of the Petitioner could not conceive. He also submitted that no divorce had taken place between the Respondent and Man Singh Saini, and as the relation between the Respondent and her husband were strained, the Petitioner had entered into talks with the parents of the Respondent that she would provide him with a male issue so that his lineage could continue. Consequently, the parties agreed to live together and the Petitioner paid Rs. 1,60,000/- for the same. It was further submitted that the Respondent could not conceive, and therefore, in January 2011, she left the Petitioner and had been residing separately.

4. Mr. Saini, learned Counsel for the Petitioner, has submitted that the Respondent was a teacher in a private school in Shahdara, New Delhi, and was earning Rs. 5000/- per month. He has informed the Court that para 15

of the impugned Order dated 03.07.2020 notes that Respondent had already been married to Man Singh Saini in 1985 and that the divorce petition filed by her against Saini had been dismissed by the Ld. Trial Court. Furthermore, it has been submitted that the Respondent had claimed that she had divorced Saini by panchayat, however, she could not substantiate the same or provide any corroborative evidence.

5. The learned Counsel for the Petitioner has also brought the attention of the Court to Para 16 of the impugned Order wherein it has been stated that there was no proof on record that the Petitioner and the Respondent were legally married. Mr. Saini has submitted that the Ld. Trial Court has wrongly placed reliance on Chanmuniya v. Virender Kumar Singh Kushwaha (supra), and has argued that the judgement was merely a reference to the Hon'ble Chief Justice of India and that there was no finding as such in the judgement which could have given credence to granting of maintenance to the Respondent. Additionally, the facts of the aforementioned case are starkly different from the instant matter as in the case herein, both the parties were married at the time of the alleged marriage.

6. He has further submitted that the Ld. Trial Court has failed to rely upon the judgments cited by the Petitioner herein wherein it had been held that in view of Sections 5 and 11 of the Hindu Marriage Act, 1955, a second wife whose marriage was void would not be entitled to claim maintenance, and that for claiming maintenance under Section 125 Cr.P.C., the expression "wife" would mean 'legally wedded wife'. He stated that the scope of "wife" could not be enlarged to include the Respondent herein.

7. Mr. Saini has also submitted that the Respondent runs a tea shop and that she has falsely stated that the tea shop belongs to her deceased brother. He has also informed the Court that the Petitioner is a poor labourer.

8. *Per contra*, Ms. Upasana Nath, learned Counsel for the Respondent, has submitted that the Petitioner was married to the Respondent according to Hindu Rites and Customs on 18.11.1999, and that at the time of the marriage, the Petitioner had concealed the fact that his first marriage was subsisting. She has submitted that the Petitioner was aware of the fact that the Respondent's husband had deserted her and that she had sought for divorce by panchayat as per the prevalent customs. Ms. Nath has informed the Court that the Respondent had been treated as a legally wedded wife of the Petitioner for a span of about ten years, and that she was thrown out of her matrimonial home by the Petitioner on 19.07.2009.

9. The learned Counsel for the Respondent has submitted that as the Respondent had no source of income, she had filed a petition under Section 125 Cr.P.C. for grant of maintenance. It has been stated that the Respondent's application for interim maintenance had been dismissed by the Ld. Trial Court without appreciating the facts and circumstances of the case.

10. It has been argued by Ms. Nath that on 16.11.2018, the Respondent had been examined as PW-1 wherein she had mentioned that at the time of her marriage with the Petitioner, she was unaware of the subsisting marriage of the Petitioner. Therefore, it has been submitted that the Petitioner cannot take advantage of legal loopholes by enjoying de-facto marriage without undertaking the corresponding duties and obligations.

11. The learned Counsel for the Respondent has placed reliance on Kamala v. M.R. Mohan Kumar, (2019) 11 SCC 491 to submit that when a man and a woman cohabit continuously for years, a presumption arises in favour of marriage for a claim of maintenance of wife under Section 125 Cr.P.C. Ms. Nath has further cited Chanmuniya v. Virender Kumar Singh Kushwaha (supra) to submit that a broad and expansive interpretation should be given to the term “wife” to include even those cases where a man and a 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.

12. This Court has heard the submissions of Mr. Ram Kishan Saini, learned Counsel for the Petitioner, and Ms. Upasana Nath, learned Counsel for the Respondent, as well as perused the material on record.

13. At the outset, this Court finds it pertinent to reproduce Section 125 Cr.P.C. The relevant provision can be read as follows:

“125. Order for maintenance of wives, children and parents. –

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class

may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the 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. ...”

14. 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.

15. 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 forth e 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 lead 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.”

16. 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.

17. 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”.

18. 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*, “DV 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

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) though 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.”

21. A perusal of the material on record showcases that both the Petitioner and the Respondent were already married to other individuals when their alleged marriage took place on 18.11.1999. It is evident that the parties herein are governed under the Hindu Marriage Act, 1955. The Petitioner had married Smt. Dharamwati on 10.05.1980 and their marriage is still subsisting. On the other hand, the Respondent has been unable to place any documents on record to substantiate the fact she had obtained a divorce from Man Singh Saini. She has also not been able to produce any documents to prove that she has taken a divorce as per customs in panchayat. Furthermore, as has been discussed earlier, it is to be noted that a decree of divorce can only be granted by the Courts and a divorce by

panchayat is not valid in the eyes of law. Therefore, it can be deduced that at the time of the alleged marriage, the Petitioner and the Respondent were already married to other people and their spouses were alive.

22. 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.

25. In light of the above, this Court is inclined to allow this petition and set aside the impugned Order dated 03.07.2020 passed by the Ld. Principal Judge, Family Court, Shahdara District, Karkardooma Courts, Delhi.

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

SUBRAMONIUM PRASAD, J.

NOVEMBER 09, 2021

Rahul