

AND

.....RESPONDENTS

(NONE)

Reserved on : 26.02.2024

Pronounced on : 11.03.2024

These criminal revisions having been heard and reserved for orders, coming on for pronouncement this day, the court passed the following:

ORDER

With the consent of the parties heard finally.

1. This order shall govern the disposal of these criminal revisions as they are arisen out of same order dated 13.05.2017 passed in Miscellaneous Judicial Case (Criminal) No. 230/2015 by the learned Principal Judge, Family Court, District-Rajgarh. Hence, they are heard analogously and are being decided by this common order.

2. These criminal revisions have been filed by the petitioners under Section 19(4) of Family Court Act, 1984 read with Section 397/401 of Cr.P.C. being aggrieved by the judgment dated 13.05.2017, passed in MJC(Cri) No.230/2015, by learned Principal Judge, Family Court, District-Rajgarh (Biaora) whereby the learned Family Court has rejected the application filed under Section 125 of Cr.P.C on the ground that applicant/wife has failed to prove that she being the legal wife of the respondent/husband, is liable to receive the maintenance. Whereas the maintenance of Rs.4,000/- was awarded to petitioner No. 2/Chanchal per month from the date of filing of application. Further, the wife-Durga Bai and daughter-Chanchal will be addressed as

petitioner Nos. 1 and 2 while husband-Keval Singh will be addressed as respondent.

3 . The Criminal Revision No. 754/2017 has been filed by Durga Bai/petitioner No. 1 for awarding the maintenance amount of Rs.10,000/- for her and enhancing the maintenance of Rs.5,000/- from Rs.4,000/- to petitioner No. 2, while the Criminal Revision No. 726/2017 has been filed by respondent/Keval Singh to set aside the order of maintenance in favour of his daughter/petitioner No.2. It is also worth mentioning that in Criminal Revision No. 754/2017, no one appeared on behalf of respondent/Keval Singh today, hence, revision petition No. 754/2017 is decided in non-appearance of respondent/Keval Singh.

4. The facts in brief are that, the marriage between petitioner No. 1 and respondent was solemnized as per Hindu Rituals in the year 2009. After conjugal relation between both, baby Chanchal was born from their wedlock. This marriage was second marriage for both petitioner No.1/Durga Bai and respondent/Keval Singh. Previously, marriage was solemnized between Durga Bai and Bhagwan Singh resident of Village Lalpuria, but Bhagwan Singh consummated second marriage and abandoned Durgabai. As per custom and rituals of society, Bhagwan Singh gave divorce. After getting divorce from Bhagwan Singh, the petitioner No. 1/Durgabai did second marriage with Keval Singh/respondent. Thereafter, the parents of respondent/Keval Singh taunted Durgabai with regard to demand of dowry and Keval Singh himself used to beat her after getting liquor. Owing to cruel treatment by respondent, petitioner was compelled to leave the house and from April, 2015, she was residing in her brother's house in Rajgarh. The petitioner No. 1 is only a homemaker and is an unemployed lady, therefore, she has filed application under Section 125 of Cr.P.C for maintenance which has been dismissed by the Family Court,

therefore, this revision has been filed.

5. Learned counsel for the petitioners has submitted that the trial Court has not considered all aspects of the case and not appreciated the evidence available on record. The petitioner No. 1 is an uneducated lady. From April 2015, she was residing at her brother's house in Rajgarh alongwith her 4 years old child/petitioner No. 2. He also submits that the petitioner No. 1 is liable to get maintenance from respondent, being a wife and as she is compelled by respondent to live separately because of mental and physical cruelty. The respondent is owner of transport vehicle and also having income from agriculture. It is further expostulated that since petitioner No. 1 has obtained divorce from her earlier husband as per norms of society, she cannot be treated as illegitimate wife of respondent/Keval Singh. It is contended that at the time of marriage between Durgabai and Bhagwan Singh (previous husband), Durgabai was minor. Hence, her marriage was void ab initio. As such, the second marriage of Durgabai with respondent/Keval Singh cannot be treated as illegitimate wife. It is also contended that since at the time of first marriage Durgabai was minor, there is no legal requirement to take divorce from Court. Thus, second marriage of petitioner No. 1/Durgabai with respondent/Keval Singh was valid. In this way, she cannot be precluded to get maintenance from respondent. Hence, learned counsel has prayed to set aside the impugned order and revision may kindly be allowed and order of family Court be modified to the extent that the petitioner No. 1 be awarded maintenance of Rs.10,000/- and the maintenance amount of petitioner No. 2 be enhanced from Rs.4,000/- to Rs.5,000/-. In this regard, learned counsel for petitioners Durgabai and Chanchal has relied upon the law laid down in the cases of *Harinayaran Khati*

Vs. Rekhbai, 2004(4) MPLJ 455, Smt. Sukhraj W/o Puran Prasad Vs. Puran Prasad passed in *Criminal Revision No. 41/2006* decided on *20.01.2017, Kamala and others Vs. M.R. Mohan Kumar*, reported in *AIR 2018 SC 5128* and *Badshah Vs. Urmila Badshah Godse* reported in *(2014) 1 SCC 188*.

6. Learned counsel for the respondent/husband has submitted that the learned Family Court, after considering all legal and factual matrix of the case rejected the application of petitioner No. 1 regarding maintenance. Since, petitioner No. 1 was already married with another person Bhagwansingh and without getting divorce from him married with present respondent/Keval Singh, her marriage was ab initio void. So far as the maintenance awarded in favour of child is concerned, the learned trial Court has passed the order only on the basis of petitioners averments. The trial Court did not pay any heed on the evidence available on record. The income of the respondent/husband is only Rs.5,000/- per month by which he is maintaining himself very hardly and has no other source of income. Therefore, learned counsel for the respondent/husband has also contended that the impugned order with regard to awarding maintenance to petitioner No. 2 be set aside. In order to buttress the contentions, learned counsel has also relied upon law laid down by Hon'ble Apex Court in the case of *Savitaben Somabhai Bhatia vs. State of Gujarat and Ors.* reported as *2005 Lawsuit (SC) 466* and the order passed by this Court in the case of *Smt. Sangeeta Rathore Vs. Naresh Rathore 2023 Lawsuit MP 470*.

7. In view of the rival submissions, I have gone through the record. Now, the crux of the case is as to whether petitioner No. 1 is entitled to get maintenance from her second husband /respondent.

8. At this juncture, the relevant part of Section 125 of Cr.P.C is also worth referring hereunder:-

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

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

- (a) his wife, unable to maintain herself, or
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
- (d) his father or mother, unable to maintain himself or herself,

9. It is unfolded from the aforesaid provision that an illegitimate child is entitled to get maintenance but an illegitimate wife is not entitled to get maintenance. The intention of legislature is obvious that maintenance can only be granted in favour of legally wedded wife. Now, the question is required to be answered as to whether petitioner No.1 /Durgabai is legitimate wife of respondent/Keval Singh.

10. The learned counsel for the petitioner has submitted the point in two ways. Firstly, he has contended that petitioner was minor at the time of her first marriage, her second marriage will be void ab initio. On this aspect, the relevant part of Sections 5 & 11 of Hindu Marriage Act is relevant to quote here :-

Section 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 as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity² ***];

(iii) the bridegroom has completed the age of³[twenty-one years] and the bride, the age of⁴[eighteen years] at the time of the 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;

11. Void marriages.-

Any marriage solemnised 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.

11. Having considered the aforesaid provisions, it is clear in day light that the condition mentioned in Sub Section III of Section 5 pertaining to age of bride, has not been mentioned in Section 11. Therefore, the demurrer of learned counsel of petitioner regarding nullity of first marriage of petitioner No. 1 with Bhagwansingh cannot be substantiated.

12. Now turning to the second limb of learned counsel for petitioner No.1/Durgabai, certainly petitioner has contended that the divorce was taken by

petitioner No.1 in accordance with customary way. On this aspect, the examination of petitioner No. 1 is required to be scrutinized. In para 8 and 9 of the cross-examination, petitioner No. 1 herself conceded that she has married with Bhagwansingh according to custom of Hindu Saptpadi. She further admitted that she has also filed a case against her husband Bhagwansingh, father-in-law Vijaysingh, Mother-in-law Panchubai and other members namely Indarsingh and Jhabibai for the offence under Sections 498A, 294, 323 & 506 of IPC but she has no knowledge as and when she withdraw the aforesaid case. She further clearly conceded that no divorce has been taken from her first husband Bhagwansingh. So far as the document Exhibit-P/9 is concerned, she has admitted in para 9 that neither any seal nor sign of any officer is affixed on the certificate. When the marriage has been consummated by the custom of Hindu Saptpadi, then it cannot be divorced by a Rajinama/Panchnama (Ex.P/9).

13. Considering such evidence of petitioner No. 1/Durgabai, the learned Family Court Judge has passed this order on the ground that since the petitioner is not a legally wedded wife of the respondent, therefore, she is not entitled for the claim of maintenance. Now, coming to the verdicts filed by petitioners, the law laid down **Harinarayan Khati** (supra) is well considered by the learned trial Court in para 13 of the impugned judgment. The learned Judge considering the law laid down by Hon'ble Apex Court in **Savitaben** (supra) rightly distinguished the law laid down in Harinarayan Khati. Likewise, the law laid down in **Smt. Sukhraj** (supra) is also distinguishable in view of the law laid down in **Savitaben** (supra).

14. Learned counsel for the petitioners has also relied upon the leave granted by Hon'ble Supreme Court in the case of **Badshah (supra)**, however, in the said judgment, the husband was already married. but he duped the wife

by suppressing the factum of alleged first marriage, whereas, in the present case, the wife has not got divorced from her earlier husband.

15. On this aspect, the following excerpt of **Badshah** (supra) is relevant to refer here :-

"16. 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 her 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 Adhav and Savitaben 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."

16. Since in **Badshah** (supra) husband was already married with another woman, and by suppressing the factum of first marriage he duped the petitioner/second wife, hence, he cannot be permitted to get benefit of his own wrong. Likewise, the law laid down by Hon'ble Apex Court in **Kamala** (supra) is also not applicable to this case due to different factual matrix. In this case, petitioner's wife was not married with any other person, whereas, in this case the petitioner No. 1 had consummated marriage with Bhagwansingh and without taking divorce from any court, she has been married with respondent.

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

"Additionally, a "wife" under Section 125 Cr.P.C. would include a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. As discussed above, even if a woman does not have the legal status of a wife, she is brought within the inclusive definition of "wife" in order to maintain consistency with the object of the statutory provision. However, a second wife whose marriage is void on account of survival of the first marriage would not be a legally wedded wife, and therefore would not be entitled to maintenance under this provision In the case of *Vimala (K.) v. Veeraswamy (K.)*,(1991) 2 SCC 375, the Supreme Court held as follows:

3. Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. When an attempt is made by the husband to negative the claim of the neglected wife depicting her as a kept-mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage. The term "wife" in Section 125 of the Code of Criminal Procedure, includes a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. The woman not having the legal status of a wife is thus brought within the inclusive definition of the term "wife" consistent with the objective. However, under the law a second wife whose marriage is void on account of the survival of the first marriage is not a legally wedded wife and is, therefore, not entitled to maintenance

under this provision.

Therefore, the law which disentitles the second wife from receiving maintenance from her husband under Section 125, CrPC, for the sole reason that the marriage ceremony though performed in the customary form lacks legal sanctity can be applied only when the husband satisfactorily proves the subsistence of a legal and valid marriage particularly when the provision in the Code is a measure of social justice intended to protect women and children. We are unable to find that the respondent herein has discharged the heavy burden by tendering strict proof of the fact in issue. The High Court failed to consider the standard of proof required and has proceeded on no evidence whatsoever in determining the question against the appellant. We are, therefore, unable to agree that the appellant is not entitled to maintenance.

23. The Chanmuniya case (supra) also envisioned a factual matrix wherein both the parties were unmarried and their cohabitation as husband and wife led to the presumption of them being legally married. However, in the instant case, despite cohabitation as husband and wife, it is not legally tenable to raise a presumption of a valid marriage because both the Petitioner as well as the Respondent are already married to their respective spouses and their marriages are subsisting. Therefore, the Respondent cannot rely upon the Chanmuniya case in order to bring herself within the definition of the term "wife" as per the Explanation (b) in Section 125 Cr.P.C. so as to avail an order for maintenance, despite the social object of this statutory provision.

24. As this is a petition under Section 125 Cr.P.C. and the term "wife" under Section 125 Cr.P.C. does not envisage a situation wherein both the parties in the alleged marriage have living spouses, this Court is of the opinion that the Respondent herein cannot seek maintenance from the Petitioner under this provision. This Court finds it unfortunate that many women, specially those belonging to

the poorer strata of society, are routinely exploited in this manner, and that legal loopholes allow the offending parties to slip away unscathed. In spite of the social justice factor embedded in Section 125 Cr.P.C., the objective of the provision is defeated as it fails to arrest the exploitation which it seeks to curb. In the instant case, while the Court sympathises with the position of the Respondent, it is constrained to deny her maintenance as per the law of the land which stands as of today. However, the Respondent has the liberty to avail other remedies that may be better suited to the facts and circumstances of this case, such as seeking of compensation under Section 22 of the DV Act. "

18. On this issue the law laid down in the case of *Savitaben Somabhai Bhatia* (supra), is also poignant to be pointed out here :

"There may be substance in the plea of learned counsel for the appellant that law operates harshly against the woman who unwittingly gets into relationship with a married man and Section 125 of the Code does not give protection to such woman. This may be an inadequacy in law, which only the legislature can undo. But as the position in law stands presently there is no escape from the conclusion that the expression 'wife' as per Section 125 of the Code refers to only legally married wife."

19. In view of aforesaid settled propositions and provisions of law it is crystal clear that the wife should be a "legally wedded wife" for claiming maintenance from her husband. A woman, having solemnized second marriage to another person, is only entitled to get maintenance from that person, when the first marriage has been declared either null and void or she has obtained a divorce decree from her first husband. The aforesaid view has recently been endorsed by this Court in the case of *Sangeeta (supra)* and *Rajkumar Agrawal Vs. Sarika, 2023 Lawsuit MP 533* Since, in the case at hand, as

the petitioner No. 1 could not get divorce from her earlier husband/Bhagwansingh and could not file any proof of setting divorce, she would not be entitled to get maintenance from her second husband/respondent. Nevertheless, the petitioner No. 1 of this case has the liberty to avail other remedies that may be better suited to the factual matrix of this case, as such seeking of compensation order enshrined under Section 22 of the Protection of Women from Domestic Violence Act, 2005.

20. So far as the enhancement in maintenance amount of petitioner No. 2/Chanchal from Rs.4,000/- to Rs.5,000/- is concerned, after going through the record, it is revealed that in the main application for maintenance filed by petitioners before the learned Family Court, only Rs.4,000/- has been demanded for her maintenance. Be that as it may, looking to the income of respondent, Rs.4,000/- per month cannot be enhanced because it has been awarded from the date of filing of application. However, petitioner No. 2 is also at liberty to file an appropriate petition before learned Family Court under Section 127 of Cr.P.C.

21. In result thereof, the impugned order of learned Family Court dismissing the maintenance of petitioner No. 1 and allowing the maintenance of petitioner No. 2 is not suffering from any infirmity and illegality. Accordingly, the Criminal Revision Nos. 726/2017 & 754/2017 being devoid of merit are dismissed and the impugned order is hereby affirmed.

22. Accordingly, these criminal revisions are hereby disposed of.

(PREM NARAYAN SINGH)
JUDGE

