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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

CRIMINAL REVISION No. 466 of 2023

BETWEEN:-

**SHRIKRISHNA S/O LATE SHRI VINAYAK RAO KHEDE,
AGED ABOUT 62 YEARS, OCCUPATION: RETIRED
NARMADA DHAM COLONY, NARMADA ROAD,
BARWAH, TEHSIL BARWAH, DISTRICT KHARGONE
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI RISHI TIWARI, ADVOCATE)

AND

**SMT. SUNITA BAI W/O DILIP CHATURVEDI, AGED
ABOUT 57 YEARS, 48, GOONDI PATTI (SUBHASH MARG),
BARWAH, TEHSIL BARWAH, DISTRICT KHARGONE
(MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI NILESH DAVE, ADVOCATE)

.....
Heard on : ***05.04.2024***

Delivered on : ***02.05.2024***
.....

This criminal revision having been heard and reserved for judgments, coming on for pronouncement this day, the court passed the following:

ORDER

With the consent of the parties heard finally.

2. This criminal revision has been filed by the petitioner under Section 397(1) read with Section 401 of the Code of Criminal Procedure, 1973 being aggrieved and disgruntled by the judgment dated 05.01.2023, passed in Criminal Revision No. 11/2021, by learned III Additional Sessions Judge, Barwah,

District-Mandleshwar (M.P.) whereby the learned Court has set aside the order dated 06.09.2021 passed by Judicial Magistrate First Class, Badwah District West Nimad passed in MJC R No. 400081/2016 and by allowing the application filed under Section 125 of Cr.P.C awarded maintenance of Rs.10,000/- in favour of respondent from the date of application.

3. The facts of respondent's application in brief are that, the petitioner and respondent got married about 6-7 years ago and further, under influence of his elder brother and sister-in-law, the petitioner started mistreating the respondent and made no arrangement for her maintenance. Therefore, the respondent has filed an application under Section 125 of Cr.P.C for maintenance which has been dismissed by the trial Court. Thereafter, revision has been filed before the Revisional Court, which was allowed in favour of respondent, hence, being aggrieved by the order of aforesaid order, this petition has been filed.

4. Learned counsel for the petitioner has submitted that the Revisional Court has not considered all the aspects of the case and not appreciated the evidence available on record. The petitioner has denied the factum of marriage solemnized between them. It was categorically stated that the respondent was married with one Dilip Chaturvedi and had three sons from that marriage. As per the Ration Card and Samagra ID of the respondent, her husband was Dilip Chaturvedi. It was clarified that the eldest son of the respondent had given a house on rent by the petitioner and due to dispute of payment of rent, a false case was filed. The income of Rs.50,000/- per month and Rs.10,00,000/- income from agriculture, was denied by the petitioner. He further submitted that the petitioner had retired and his pension was yet to be sanctioned.

5. It is further submitted that the respondent/wife herself admitted in her cross-examination that earlier she was married one Dilip Chaturvedi and out of that wedlock, three children were born and also stated that neither she has filed any case for divorce before any of the Courts against Dilip Chaturvedi nor Dilip Chaturvedi has taken any action against respondent in this regard. Hence, prays for setting aside the impugned judgment. In support of his contentions, learned counsel for the petitioner has relied upon the law laid down in the case of ***Gindan and Ors. Vs. Barelal, [AIR 1976 MP 83]*** passed in ***F.A. No. 199/1974*** decided on 05.12.1975.

6. On the other hand, learned counsel for the respondent has opposed the prayer and submitted that looking to the income of the applicant, the Revisional Court has rightly awarded maintenance amount in favour of respondent. He has placed reliance in the case of ***Chanmuniya Vs. Chanmuniya Virendra Kumar Singh Kushwaha and Ors*** reported in ***(2011) 1 SC 141*** and in the case of ***Kamala and Ors. Vs. M.R. Mohan Kumar*** reported in ***AIR 2018 SC 5128***. Therefore, the petition deserves to be dismissed.

7. In view of the aforesaid submissions, the conundrum of the case is as to whether the findings of learned Revisional Court, reversing the order of rejecting maintenance by learned trial Court under Section 125 of Cr.P.C., is incorrect and suffering from infirmity and illegality.

8. Heard learned counsel for the parties and perused the record.

9. Learned counsel for the petitioner has placed reliance in the case of ***Gindan (supra)***, it is condign to quote the following extracts of the judgment, herein below :-

".....it was not disputed before us that appellant No. 1 was of about 10 years of age when she was married. That being so, it is no doubt true that she had not attained the age prescribed for a marriage under [Section 5\(iii\)](#) of the Hindu Marriage Act, but, in our opinion, it cannot be declared as void or even voidable. The contravention of the provision is only punishable under [Section 18](#) of the Act Marriage which can be declared null and void on a petition presented by either party thereto, by a decree of nullity, are those where they contravene any of the conditions specified in Clauses (i), (iv) and (v) of [Section 5](#). The marriage can be voidable and may be annulled by a decree of nullity on any of the grounds mentioned in [Section 12](#) of the Act. But breach of Clause (iii) of [Section 5](#) does not find place either in [Sections 11](#) and [12](#) of the Act. That being so, it is difficult to hold that in case of such a breach having been committed the marriage can be declared void or even voidable. In this connection we may quote with approval a passage from Mulla on Hindu Law, 14th Edn. page 688. which reads as under :

"A marriage solemnized in violation of the requirement as to age Laid down in this clause is not void or even voidable but the contravention of the condition is punishable as an offence under [Section 18](#) of the Act.

Various other High Courts in India have also taken a similar view. [See : [Mohinder Kaur v. Major Singh](#), (1970) 72 Pun LR 377; [Smt Naumi v. Narotam](#), AIR 1963 HP 15 and [Budhi Sahu v. Lohurani Sahuani](#), ILR (1970) Cut 1215]. No doubt, a contrary view has been taken by the Andhra Pradesh High Court in [Panchireddi Appala Suramma v. Gadela](#)

[Ganapatlu](#), AIR 1975 Andhra Pradesh 193 wherein an earlier decision of the said Court reported in [Rayudu Pallamsetti v. Dommeti Sriramulu](#), AIR 1968 Andhra Pradesh 375 has been relied upon. With great respect we disagree with the view expressed by the learned Judges. In both the decisions the provisions of [Sections 11](#) and [12](#) of the Act have not been taken into consideration while it is not the consequence of a marriage being solemnized in breach of Clause (iii) of [Section 5](#) of the Act. That being so, we are of opinion that a marriage solemnized in contravention of the age mentioned in Clause (iii) of [Section 5](#) of the Hindu Marriage Act can neither be declared ab initio void nor voidable. The consequences, if any, which flow from that contravention are given in [Section 18](#) and that is that a person who procures a marriage of himself or herself in such contravention shall be punishable with imprisonment which may extend to fifteen days, or with fine Which may extend to one thousand rupees, or with both. In our opinion, no other result is stated in the Act to flow from the contravention of the type now under consideration of Clause (iii) of [Section 5](#) to affect the tie of marriage itself and to render the marriage either void or voidable. If the Legislature intended otherwise, the Act certainly would have made a specific provision in that regard in the like manner as it has been done in the case of contravention of Clauses (i), (ii), (iv) and (v) of [Section 5](#) in [Section 11](#) of the Act. Thus, the marriage would remain

valid in law and enforceable and recognizable in the Court of law."

10. On this aspect in the case of *Bhagwandas S/o. Tilakdhari Shah vs. Panpati w/o. Bhagwandas Shah* reported as *2023 Lawsuit (MP) 223*, this High Court has recently having discussed on concerning legal provisions and also the law 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.

11. In view of the aforesaid law, it emerged that a lady who has already been married to another person cannot be treated as a legally wedded wife of the second husband without getting divorce from her first husband. As such, being not legally wedded wife, she cannot claim maintenance from her second husband. Now coming to the contentions of the learned counsel of petitioner that if a woman resided with another man for a substantive period in living relation or as a concubine, she would be entitled for maintenance from that man. On this aspect, learned counsel relied upon **Chanmuniya (supra)**. Having gone through the factual matrix of that case, it is revealed that 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 case at hand,

despite cohabitation as husband and wife, it is not legally tenable to raise a presumption of a valid marriage because the Respondent was already married to her respective spouse Dilip Chaturvedi and their marriage 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.

12. Learned counsel has also relied upon another judgment delivered by Hon'ble Apex Court in *Kamala (supra)*. In this case, Hon'ble Apex Court further held that there should be a broad and expansive interpretation to the term of "wife" mentioned in Section 125 of Cr.P.C. However, in this case too, the wife was not married earlier with another person and therefore, the principal laid down by Hon'ble Apex Court in this case is also not beneficial for petitioner.

13. From the record, it is evident that learned JMFC has passed the order by dismissing the application under Section 125 of Cr.P.C. on the ground that since the respondent did not get divorce from her earlier husband and without getting divorce she entered into second marriage. Hence, she cannot be ascertained as a legally wedded wife of the petitioner and she is not entitled for the claim of maintenance.

14. 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,

15. It is unearthed 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. On this issue the law laid down by the full Bench in the case of *Savitaben Somabhai Bhatia vs. State of Gujarat and Ors.* reported as *2005 Lawsuit (SC) 466*, is also poignant to be pointed out her:

"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."

16. 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 cases of *Sangeeta Rathore W/o Naresh Rathore*

Vs. Naresh Rathore, 2023 LawSuit (MP) 470 and Kewal Singh Vs. Durgabai, 2024 LawSuit (MP) 179.

17. In conspectus of the aforesaid settled proposition, in this petition filed under Section 125 Cr.P.C., the term "wife" under Section 125 Cr.P.C. envisages a situation wherein she, having a living spouse, cannot seek maintenance from her second husband without getting divorce from her earlier husband. Nevertheless, 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 and unquestioned. In spite of the social justice factor embedded in Section 125 Cr.P.C., the objective of the provision is frustrated as it fails to arrest the exploitation which it seeks to curb. In the instant case, while the Court sympathizes 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 D.V. Act.

18. In the result thereof, the order of the learned Revisional Court awarding the maintenance to the respondent is found against the law and is also suffering from infirmity and illegality. Accordingly, the impugned order of the learned Revisional Court is set aside and the order of learned trial Court dated 06.09.2021 is hereby affirmed.

19. *Ex-consequencia*, this criminal revision is hereby allowed.

(PREM NARAYAN SINGH)
JUDGE

