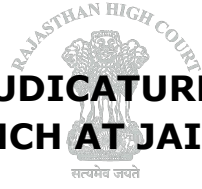




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 268/2019



-----Petitioner

Versus

-----Respondent

For Petitioner(s) : None present
For Respondent(s) : Mr. Jagdish Nagar

JUSTICE ANOOP KUMAR DHAND

Order

27/04/2026

Reportable

1. By way of filing the instant miscellaneous petition, a challenge has been led to the impugned order dated 25.10.2018, passed by the learned Judge, Family Court, Baran, in Criminal Case No. 43/2016, by which the application submitted by the petitioner under Section 125 Cr.P.C. against the respondent, seeking maintenance, has been rejected.
2. None has put in appearance on behalf of the petitioner.
3. Learned counsel for the respondent submits that both the petitioner and the respondent were already married with different spouses. In the event of non-registration of their marriage, the petitioner and the respondent resided separately. Hence, the petitioner submitted an application under Section 125 Cr.P.C. for getting maintenance from the respondent.



4. Learned counsel further submits that the petitioner is not legally wedded wife of the respondent, hence, under these circumstances the provisions contained under Section 125 Cr.P.C. are not attracted and on this ground alone, the application submitted by the petitioner was rejected. The Court below has not committed any error in passing the impugned order, which warrants any interference of this Court.

5. Heard and considered the submissions made at the Bar and perused the material available on record.

6. It is pertinent that for submitting an application for maintenance under Section 125 Cr.P.C., one has to fall within the statutory provisions of Section 125 Cr.P.C. The provisions of Section 125 Cr.P.C. read 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:

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this subsection, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation.—For the purposes of this Chapter,

(a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

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

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

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount





within a period of one year from the date on which it became due:

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

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

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

(5) On proof that any wife in whose favour an order has been made under this section 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."

7. 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 Hon'ble Supreme Court has consistently upheld that the conceptualisation of Section 125 Cr.P.C. 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.

8. In **Bhuvan Mohan Singh v. Meena & Ors.** reported in **(2015) 6 SCC 353**, the Hon'ble 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."

9. 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.

10. 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 Hon'ble 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** reported in **(1985) 2 SCC 556**, and **Dwarika Prasad Satpathy v. Bidyut Prava Dixit** reported in **(1999) 7 SCC 675**, the Hon'ble Supreme Court held that liability imposed by Section 125 Cr.P.C. 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 broader 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 Cr.P.C. is not required. On the other hand, the Hon'ble Supreme Court in **Yamunabhai Anantrao Adhav v. Anantrao Shivram Adhav** reported in **(1988) 1 SCC 530** and **Savitaben Somabhai Bhatiya v. State of Gujarat** reported in **(2005) 3 SCC 636** has held that the inadequacy in the law could only be corrected by the legislature, and in the meanwhile, the term "wife" in Section 125 Cr.P.C. could only be interpreted to mean a "legally wedded wife".

11. 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 she would not be entitled to maintenance under this provision. In the case of **Vimala (K.) v. Veeraswamy (K.)**, reported in **(1991) 2 SCC 375**, the Hon'ble

Supreme Court has 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.”

12. This Court has perused the documents annexed with the instant miscellaneous petition and this fact is not in dispute that the petitioner and the respondent are re-married with separate spouses. This fact is also not in dispute that their marriage from the earlier spouses has also been dissolved. Hence, under these circumstances, the petitioner has not attained the status of “legally wedded wife” of the respondent. The provisions contained under Section 125 Cr.P.C. are attracted in the case of “legally wedded wife” and unless and until, this fact is established on the record that the petitioner is legally wedded wife of the respondent, she is not entitled to get maintenance from him.

13. This Court finds no error in the order impugned passed by the Court below and the same is just and proper which does not require any interference by this Court. Accordingly, the instant miscellaneous petition stands dismissed.

14. Stay application and all pending application(s), if any, also stand disposed of.

15. Before parting with the order, this Court would like to observe that 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 considered opinion that the petitioner herein cannot seek maintenance from the respondent 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 the 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 petitioner, it is constrained to deny her maintenance as per the law of the land which stands as of today. However, the petitioner has the liberty to avail other remedies, that may be better suited to the facts and circumstances of the present case, such as seeking compensation under Section 22 of the DV Act.

16. Let a copy of this order be sent to the petitioner on her address, as mentioned in the cause title.

17. Accordingly, the stay application and all pending application(s), if any, also stand disposed of.

(ANOOP KUMAR DHAND),J

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