IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2416 OF 2022

SHARADA
RANGNATH
WAHULE

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SHARADA
RANGNATH WAHULE
Date: 2023.12.14
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…Petitioner

Versus

2. The State of Maharashtra …Respondents

Mr. Narayan G. Rokade a/w Mr. Ajinkya V. Taskar for the Petitioner.
Mr. Priyank Daga i/b Mrs. Sushrita Daga for the Respondent No.1.
Mr. Y. M. Nakhwa, APP for the Respondent-State.

CORAM	:	**RAJESH S. PATIL, J.**
RESERVED ON	:	**3 NOVEMBER, 2023**
PRONOUNCED ON	:	**14 DECEMBER, 2023**

JUDGMENT :

1. RULE. Rule by consent made returnable forthwith.

2. This Writ Petition is filed under Article 227 of the

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Constitution of India challenging the Judgment and Order dated 21 April 2022, passed by the Additional Sessions Judge, Niphad, in Criminal Revision Application No.11 of 2015.

FACTS :

3. The Petitioner on 20 December 2012, filed an Application being Criminal Application No. 444 of 2012 under Section 125 of the Code of Criminal Procedure,1973 (for short "Cr.P.C.") for grant of maintenance before the J.M.F.C., Yeola, from the Respondent/Husband.

3.1 It was pleaded by the Petitioner before the J.M.F.C. that she is the second wife of the Respondent, and her marriage took place with the Respondent in the year 1989. It was further stated that she was made to believe that the first wife of the Respondent namely Jijabai was not cohabiting with him properly and as Jijabai was not able to conceive a male child, the Respondent got divorced from her. Relying on the words of the Respondent, the Petitioner got married with the Respondent.

3.2 It is further case of the Petitioner that on 3 September 1991, she gave birth to a male child who was conceived with the Respondent. After one or two years of her marriage, the first wife

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of the Respondent, namely Jijabai, requested the Respondent through mediators to allow her to cohabit with him, and through the intervention, the Petitioner herself gave consent to the Respondent to allow Jijabai to reside with them jointly. Thereafter, the Petitioner gave birth to another male child, while Jijabai also gave birth to a male child.

3.3. It is further case of Petitioner that the Respondent immediately thereafter started harassing the Petitioner. The Petitioner was subjected to various abuses and physical beating at the hands of the Respondent and ultimately, she was sent to her parental home. Subsequently, due to intervention of members of the community, there was a mutual understanding between the Petitioner and Respondent, pursuant to which, the Petitioner started residing separately along with her children in the same village. The Respondent started paying maintenance amount to the Petitioner, which continued till the year 2011, but however, since 2011 at the instigation of the first wife Jijabai, the Respondent stopped paying maintenance to the Petitioner and he also stopped visiting the house of the Petitioner. So also, the Respondent abused the children conceived with the Petitioner

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and also threatened them not to demand any maintenance amount. It was also further submitted by the Petitioner that Respondent was having good income as he was owner of irrigated agricultural land, and also had milk business. He was also a contractor for digging wells; and as such his monthly income is around Rupees fifty to sixty thousand, therefore, the Petitioner claimed a sum of Rs.5,000/- per month from the Respondent.

4. The Respondent/Husband filed his reply to the maintenance application filed by the Petitioner. The Respondent denied the contention of the Petitioner. He stated that he never married the Petitioner and as per his contention he got married with Jijabai on 12 March 1981 and the said marriage was still in existence and he had never divorced Jijabai. The Respondent further stated that he never resided with the Petitioner, and he has no concern with the children of the Petitioner, whatsoever.

5. The Petitioner examined herself and reiterated the statement made by her in her pleadings. She also stated that if necessary, she was ready to undergo a DNA test to prove that her children are begotten from the Respondent. The Petitioner also

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examined her two sons as Witness No.2 and Witness No.3. The Leaving Certificate of Witness No.2 as well as the Final Marksheet of Std. 12th of Witness No.3 were produced on record to prove that the Respondent No.1 is the father of Witness Nos.2 and 3. So also, one Mr. Asaram Tupke, who arranged the marriage of Petitioner and Respondent, was also examined as a witness on behalf of the Petitioner. One more witness, namely, Machindra More was examined as Witness No.5 to prove that the Petitioner was residing with the Respondent. Whereas the Respondent examined himself and also his first wife Jijabai and one of his relatives namely, Bhima Yeole, in order to prove that he had not married Petitioner.

6. Subsequently, the J.M.F.C., Yeola, after hearing both the parties and after considering the evidence and documents on record, by its Order dated 19 January 2015, granted the Petitioner maintenance of Rs.2,500/- per month, from the date of the filing of the Application by her and Rs.1,000/- for cost of the Application.

7. The Order passed by the J.M.F.C., Yeola, dated 19 January 2015 was challenged by the Respondent/Husband by

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way of Criminal Revision Application No.11 of 2015. The Revision Court, by its Judgment and Order dated 21 April 2022, set aside the Judgment and Order dated 19 January 2015 passed by the J.M.F.C. Yeola and allowed the Revision Application of Husband.

8. Petitioner/wife, by present Criminal Writ Petition, challenges the impugned Judgment and Order dated 21 April, 2022 passed by Revision Court / Sessions Court.

SUBMISSIONS :

9. Mr. Narayan Rokade appearing on behalf of the Petitioner (second wife) made his submissions.

9.1. Mr. Rokade submitted that the Revision Court should not have reappreciated the evidence which was duly proved before the J.M.F.C.

9.2. Mr. Rokade further submitted that the Petitioner had, in all, examined five witnesses to prove her marriage with the Respondent. Mr. Rokade submitted that it was a promise made by the Respondent to the Petitioner, that he had already divorced his first wife and only entrusting upon the said promise, the

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Petitioner agreed to get married to the Respondent.

9.3. Mr. Rokade further submitted that Petitioner in fact, was always ready for a DNA test for her two sons and accordingly she had made submissions before the J.M.F.C.

9.4. Mr. Rokade submitted that it is a summary proceeding, and there was no reason that maintenance could not be granted to the Petitioner. Mr. Rokade submitted that the marriage was performed as per the customs of the community of the Petitioner and Respondent.

9.5. Mr. Rokade in his submission, further relied upon the Judgment of Supreme Court in cases of (i) ***Badshah V/s. Sou. Urmila Badshah Godse & Anr.*** reported in ***2014 (1) SCC 188*** and (ii) ***Vimala (K) Vs. Veeraswamy (K) reported in 1991 (2) SCC 375.*** So also, Mr. Rokade submitted that the definition of wife under Section 125 of Cr.P.C. is quite clear, and the Petitioner is covered under the definition.

10. Mr. Priyank Daga, on the other hand, made his submissions on behalf of the Respondent.

10.1. Mr. Daga submitted that the Revision Court has rightly

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taken into consideration the law on the point and had set aside the Order passed by the J.M.F.C. Mr. Daga submitted that the issue involved in this matter has been answered by the Supreme Court in the case of ***Chanmuniya V/s. Virender Kumar Singh Kushwaha*** reported in ***2011 (1) SCC 141,*** and this Court need not go into the said issue, as it is already settled.

10.2. Mr. Daga further submitted that the Petitioner was not sure about the facts, and she had changed her stand in her evidence, therefore, the evidence of Petitioner should not be considered at all.

10.3. Mr. Daga also relied upon the Judgment of ***D. Velusamy V/s. D Patchaiammal*** *reported in* ***2010 (10) SCC 469*** and upon the Judgment of Supreme Court in ***Lalita Toppo V/s. State of Jharkhand,*** *reported in* ***2019 (13) SCC 796.*** Mr. Daga also referred to the Judgment of Madhya Pradesh High Court passed in the case of ***Bhagwandas V/s. Panpati Shah*** *reported in* ***(2023) SCC Online MP 1325,*** the Judgment of Supreme Court in ***Smt. Yamunabai V/s. Anantrao Shivram Adhav and another*** *reported in* ***1988 (1) SCC 530*** and Judgment of ***Bakulabai Vs. Gangaram*** reported in ***(1988)1***

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10.4. Mr. Daga therefore submitted that there are no merits in the Petition and the same should be dismissed.

ANALYSIS and CONCLUSION:

11. I have heard both the sides and have gone through the documents on record.

12. In the present proceedings, the Petitioner / Wife's case is that she was made to believe by the Respondent that he had divorced his first wife, and relying upon his statement she got married with the Respondent. From the said wedlock she had given birth to one son. After two years of her marriage to the Respondent, the first wife of Respondent, requested the Respondent, through mediators to allow her to cohabit with Respondent. The Petitioner herself gave consent to the Respondent to allow the first wife to reside with them jointly. The first wife hence started residing with the Petitioner and the Respondent. Later on, the Petitioner gave birth to one more male child; so also the first wife of Respondent gave birth to a male child. Subsequently, the Respondent started harassing the Petitioner, hence, the Petitioner along with her sons started

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residing separately in the same village. The Respondent started paying maintenance amount to the Petitioner, which continued till the year 2011. Since 2011 the Respondent stopped paying maintenance to the Petitioner.

13. The Petitioner thereafter filed maintenance application u/s. 125 of the Cr.P.C. demanding Rs.5,000/- p.m. from the Respondent. However, the Respondent denied the claim of the Petitioner and submitted that he has no concern with the children of the Petitioner, he never resided with the Petitioner and his first marriage was in existence.

14. The Petitioner examined five witnesses to prove her claim for maintenance and also produced school documents of her two sons, where the name of their father is of Respondent. In rebuttal, Respondent examined himself and his first wife along with one relative. The J.M.F.C., Yeola, granted maintenance of Rs.2,500/- per month to the Petitioner. However, the Sessions Court set aside the maintenance order.

15. From both the sides judgments have been referred to buttress their point. I am first considering the judgment delivered by Supreme Court in ***Chanmuniya*** *(supra).*

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16. In ***Chanmuniya*** *(supra),* the facts were that the first husband of the wife had died and after his death, as per the customs prevailing in the community (Kushwaha) of husband and of wife; the wife got married to the younger brother of the husband. It was the case of the wife that, she was married to her second husband (brother of first husband) in accordance with the local custom of *Katha* and *Sindur*. She had further narrated that they lived together as husband and wife and had discharged all material obligations to each other. However, things did not go well according to the wife, as her second husband was harassing and torturing her, and also refused to discharge his marital obligations towards her, hence, she filed proceedings under Section 125 of Cr.P.C. for maintenance and also filed a Suit for Restitution of Conjugal Rights under Section 9 of Hindu Marriage Act. Supreme Court in the said Judgment came to a finding that in the D.V. Act, domestic relationship has a wide interpretation as to take it outside the confines of a marital relationships and even includes live-in relationship. Therefore, women even in live-in relationships are entitled to reliefs under the said Act. Therefore, live-in relationship is covered under the ambit of Section 125 of Cr.P.C. However, the said bench in

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Chanmuniya *(Supra)* requested the Chief Justice to refer three questions to the larger bench, basically on the point of whether living together of a man and woman as husband and wife for a considerable period of time would raise a presumption of valid marriage and whether a strict prove of marriage is essential and whether customary rites and ceremonies would entitle women for maintenance under Section 125 of Cr.P.C. Paragraph Nos.38, 39, 40 and 41 of ***Chanmuniya*** *(Supra)* are reproduced herein below:

> *"38. Most significantly, the Act gives a very wide interpretation to the term 'domestic relationship' as to take it outside the confines of a marital relationship, and even includes live-in relationships in the nature of marriage within the definition of 'domestic relationship' under Section 2(f) of the Act. Therefore, women in live-in relationships are also entitled to all the reliefs given in the said Act.*
>
> *39. We are thus of the opinion that if the abovementioned monetary relief and compensation can be awarded in cases of live-in relationships under the Act of 2005, they should also be allowed in a proceedings under Section 125 of Cr.P.C. It seems to us that the same view is confirmed by Section 26 of the said Act of 2005.*
>
> *40. We believe that in 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 of 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*

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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 Domestic Violence Act, 2005?*
3. *Whether a marriage performed according to 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.?"*

[Emphasis Supplied]

17. In a later Judgment delivered by Supreme Court in the case of ***Badshah*** *(Supra),* wherein the facts were that the wife got divorce from her first husband and thereafter, got married to another person (second husband), the said marriage was as per the Hindu Marriage Customs. After few months of her second marriage, the first wife of the second husband came back. The first wife and second wife started residing together with the second husband. As she was ill-treated, it become intolerable and thus, she came back to the house of her parents. At the time of living in her parental abode, she was already pregnant from the husband and delivered a baby girl at her parental house. Thereafter, she filed a claim for maintenance from her second husband, and the said maintenance application was under Section 125 of Cr.P.C. The Supreme Court came to a finding that

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her marriage with the second husband was valid and there was no dispute with regards to the marriage which was performed in the customary form. The Supreme Court further held that both lived together as husband and wife, and the husband had neglected to maintain her.

18. As far as the Judgment of ***Chanmuniya*** *(Supra)* was concerned though it was referred to a larger bench the question on which it was referred to larger bench was depending on the facts of ***Chanmuniya*** *(Supra),* where the marriage itself was under question. However, in the case of ***Badshah*** *(Supra),* before the division bench of Supreme Court it was not the question whether the marriage was valid or not, as the wife had proved that the marriage was solemnized. Therefore, in ***Badshah*** *(Supra)* the Petition filed by the husband was dismissed. So also, in ***Badshah*** *(Supra)* the husband had denied that he had any matrimonial alliance with the wife. Para No. 12 and 13 of ***Badshah*** *(Supra)* reads as under :

> 12. No doubt, in Chanmuniya, the Division Bench of this Court took the view that the matter needs to be considered with respect to Section 125 a CrPC, by a larger Bench and in para 41, three questions were formulated for determination by a larger Bench which are as follows: (SCC p. 149)
>
> "1. Whether the living together of a man and woman as husband and

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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 CrPC? b
2. Whether strict proof of marriage is essential for a claim of maintenance under Section 125 CrPC 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 C the woman to maintenance under Section 125 CrPC?"

13. On this basis, it was pleaded before us that this matter be also tagged along with the aforesaid case. However, in the facts of the present case, we do not deem it proper to do so as we find that the view taken by the courts below is perfectly justified. We are dealing with a situation where the marriage between the parties has been proved. However, the petitioner was already married. But he duped the respondent by suppressing the factum of alleged first marriage. On these facts, in our opinion, he cannot be permitted to deny the benefit of maintenance to the respondent, taking advantage of his own wrong. Our reasons for this course of action are stated hereinafter:

13.1. Firstly, in Chanmuniya case, the parties had been living together for a long time and on that basis question arose as to whether there would be a presumption of marriage between the two because of the said reason, thus, giving rise to claim of maintenance under Section 125 CrPC by interpreting the term "wife" widely. The Court has impressed that if man and woman have been living together for a long time even without a valid marriage, as in that case, term of valid marriage entitling such a woman to maintenance should be drawn and a woman in such a case should be entitled to maintain application under Section 125 Cr.P.C. On the other hand, in the present case, Respondent 1 has been able to prove, by cogent and strong evidence, that the petitioner and Respondent 1 had been married to each other.

13.2. Secondly, as already discussed above, when the marriage between Respondent 1 and the petitioner was solemnised, the petitioner had kept Respondent 1 in dark about his first marriage. A false representation was given to Respondent 1 that he was single and was competent to enter into marital tie with Respondent 1. In such circumstances, can the petitioner be allowed to take advantage of his own wrong and turn around to say that the respondents are not entitled to maintenance by filing the petition under Section 125 CrPC as Respondent I is not "legally wedded wife" of the petitioner? Our answer is in the negative. We are of the view that at least for the

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> purpose of Section 125 Cr.P.C, Respondent 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 a 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 a second b 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 harmonised.
>
> 13.3. Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125 CrPC. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society.
>
> *[Emphasis Supplied]*

19. Therefore, the facts of ***Badshah*** *(Supra)* are squarely applicable to the present proceedings, are quite similar. Hence the ratio laid down in ***Badshah*** (supra) is squarely applicable to the case in hand.

20. The Judgment of ***Badshah*** (supra) was considered by the Trial Court, however Sessions Court, did not consider the judgment of ***Badshah*** (supra).

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21. Yamunabai's (Supra) Judgment of Supreme Court, has been considered in the Judgment of ***Badshah*** (Supra). In the Judgment of ***Yamunabai*** (Supra) Appellant lady got married to Respondent in June 1974, who's earlier marriage was subsisting as his first wife was alive. The Appellant lived with Respondent for a week and thereafter left the house alleging ill-treatment. And made an Application of maintenance in the year 1976, which was dismissed. Therefore, the fact in the Judgment of ***Yamunabai*** *(Supra)* were quite different then the present proceedings.

22.1. I would like to refer to the decision of Supreme Court in ***Dwarika Prasad Satpathy*** *(Supra)*. In the said judgment in para no.6, 9 and 13 it was held as under:

> "6. ....the validity of the marriage for the purpose of summary proceedings under Section 125 CrPC is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceedings is not as strict as is required in a trial of offence under Section 494 IPC. If the claimant in proceedings under Section 125 of the Code succeeds in showing that she and the respondent have lived together as husband and wife, the court can presume that they are legally wedded spouses, and in such a situation, the party who denies the marital status can rebut the presumption......... Once it is admitted that the marriage procedure was followed then it is not necessary to further probe into whether the said procedure was complete as per the Hindu rites in the proceedings under Section 125 CrPC.
>
> 9. It is to be remembered that the order passed in an application

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under Section 125 CrPC does not finally determine the rights and obligations of the parties and the said section is enacted with a view to provide summary remedy for providing maintenance to a wife, children and parents. For the purpose of getting his rights determined, the appellant has also filed a civil suit, which is pending before the trial court. In such a situation, this Court in S. Sethurathinam Pillai v. Barbara observed that maintenance under Section 488 CrPC, 1898 (similar to Section 125 CrPC) cannot be denied where there was some evidence on which conclusion for grant of maintenance could be reached. It was held that order passed under Section 488 is a summary order which does not finally determine the rights and obligations of the parties; the decision of the criminal court that there was a valid marriage between the parties will not operate as decisive in any civil proceeding between the parties.

13. Hence, in our view from the evidence which is led if the Magistrate is prima facie satisfied with regard to the performance of marriage in proceedings under Section 125 CrPC which are of a 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 PC 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.*"

[Emphasis Supplied]

22.2. In the judgment of Supreme Court in ***Vimala*** (Supra) held that when a plea is taken by husband that marriage was void due to subsistence of an earlier marriage. Burden of strict proof of earlier marriage lied on the husband. In the said judgment in para no.3 it was held as under:

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. <u>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.</u> The term 'wife' in Section 125 of the Code of Criminal

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> 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 ha proceeded on no evidence whatsoever in determining the question against the appellant. We are, therefore, unable to agree that the appellant is not entitled maintenance.
>
> *[Emphasis Supplied]*

22.3. Supreme Court in the judgment of ***Pyla Mutyalamma @ Satyavathi Vs. Pyla Suri Demudu*** reported in ***(2011)12 SCC 189,*** held that if maintainence order passed by the Magistrate court under Section 125 of Cr.P.C. , the Revision Court has no power to reassess evidence and substitute its own findings since the questions whether applicant is a married wife, children are legitimate/illegitimate, are pre-eminently questions of fact . In the said judgment in para no.16 it was held 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 g evidence and substitute its own findings. Under revisional jurisdiction, the questions whether the applicant is a married wife, the children are legitimate/

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> 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 intertere 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, as also in Pravati Rani Sahoo v. Bishnupada Sahoo. 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."

22.4. In the judgement of supreme court in ***D. Velusamy*** (Supra) , the facts were that the Appellant / Husband, had proved his earlier subsisting marriage by producing Ration card, voter's identity card of wife, transfer certificate of his son, discharge certificate of his wife from hospital, photographs of wedding. Hence, maintenance under section 125 of Cr.P.C. was rejected.

22.5. In ***Lalita*** (Supra) the supreme court had passed an Order, in the facts of the said case held that the appellant has an efficacious remedy to seeek maintenance under the provisions of D.V. Act, even assuming that she is not the legally wedded wife and therefore not entitled to maintenance under Section 125 of Cr.P.C.

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22.6. In ***Bakulabai*** (Supra) decided by the supreme court. The facts were that the respondent / husband had denied his marriage with the Appellant , and further averred that he was already married twice before the wedding pleaded by Appellant, and both his wives were living. It was held that Respondent /husband had proved his case about his earlier marriage by production of marriage certificate. Therefore, the facts in ***Bakulabai*** (Supra) were different then the facts of present proceedings.

22.7. The Judgment referred by Respondent, of ***Bhagwandas*** *(Supra)* decided as the single judge of Madhya Pradesh high Court. The plea taken by Petitioner/husband was that the Respondent/wife, without taking divorce from first husband cannot be said to be legally wedded wife of the Petitioner therefore, she cannot claim maintenance. The plea of Petitioner/husband was accepted and the maintenance Application of Respondent wife was rejected by High Court.

22.8. Therefore, the ratio laid down by above four Judgments would not be applicable to the facts of the present proceedings.

23. The Petitioner led her evidence and evidence of Asaram

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Tupke, to prove that Petitioner was made to believe that the Respondent had divorced his first wife. In the evidence of Petitioner's son, their school documents were produced, which showed the name of their father, that of Respondent. Petitioner was also ready for a DNA Test of her two sons to prove that they were children of the Petitioner and the Respondent. I am of the view that Respondent cannot be allowed to deny the maintenance claim to the Petitioner, taking advantage of his own wrong. The witness examined by the Respondent are interested witness, being his first wife and another being his relative. I am of the opinion as held in ***Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit*** reported in ***(1999) 7 SCC 675,*** atleast for the purpose of Section 125 of Cr.P.C. Petitioner would be treated as the 'wife' of the Respondent.

24. In the present proceedings the issue is only with regard to the Petitioner, who has claimed maintenance as wife and not for her sons, therefore the case of the Respondent that son of the petitioner was born before the alleged date of marriage, will not make much of a difference. As far as maintenance claim of the Petitioner is concerned, the Petitioner had submitted that

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Respondent is earning around Rs.50,000/- to Rs.60,000/- per month. The J.M.F.C. has granted only Rs.2,500/- per month as maintenance to the Petitioner.

25. Hence, taking into consideration the above facts, Rule is made absolute. The Judgment and Order dated 21 April 2022, passed by Sessions Judge Niphad is quashed and set aside. The Judgment and Order dated 19 January 2015, passed by the J.M.F.C., Yeola, is confirmed.

26. Respondent (husband) is granted two months time to clear the outstanding maintenance amount. Since 9 years have passed after the passing of Order by J.M.F.C. Yeola, the Petitioner is at liberty to file fresh Application for enhancement of maintenance amount. If such Application is preferred, same should be decided on its own merits.

(RAJESH S. PATIL, J.)

Sunny Thote

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