

# **THE HIGH COURT OF TRIPURA**

## **A G A R T A L A**

**Crl. M.C. No. 18 of 2005**

**Petitioner :**

Shri Haradhan Nath,  
S/o. Lt. Bharat Ch. Nath of village Doulbari,  
P.S. Sabroom, District-South Tripura.

**By Advocates :**

Mr. A.K. Bhowmik, Sr. Adv.  
Mr. R. Dutta, Adv.

**Respondent :**

Smti Hemalata Nath,  
W/o. Rabindra Nath of village Doulbari,  
P.S.-Sabroom, District-South Tripura.

**By Advocate :**

Mr. D.C. Nath, Adv.

**B E F O R E**

**HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

Date of hearing &  
Judgment & Order : **28<sup>th</sup> February, 2014.**

Whether fit for reporting :

Yes	No
√	

## **J U D G M E N T & O R D E R(ORAL)**

This petition by the petitioner Sri Haradhan Nath is directed against the judgment dated 17<sup>th</sup> January, 2005 passed by the learned Sessions Judge, South Tripura, Udaipur whereby the learned Sessions Judge allowed the revision petition filed by the respondent herein, held her to be the wife entitled to maintenance under Section 125 Cr.P.C and granted her maintenance @ Rs.400/- per month. He also awarded maintenance @ Rs.700/- per month to the daughter of the petitioner. The

learned trial Magistrate had not awarded any maintenance to the wife but had only awarded maintenance to the daughter.

**[2]** The facts as they emerge from the record are that the respondent, hereinafter referred to as 'the lady', alleged that she was accepted as wife by the petitioner more than 20 years earlier and thereafter she and the petitioner had started cohabiting with each other and living as husband and wife. According to the lady, the present petitioner introduced her as his wife in society and they both started living together and out of this cohabitation, a female child was born on 17.08.1988. At the time when the child was admitted in school, the petitioner was shown as the father. Accordingly, the lady claimed maintenance for herself and the minor daughter.

**[3]** The petitioner herein denied all the allegations and according to him he already had a wife living and he had 2(two) sons and 2(two) daughters. He also stated that the lady was also a married lady and name of her husband was Sri Rabindra Nath who was still alive and according to the petitioner the child was the daughter of Rabindra Nath. The lady led evidence and produced certain documents including family Ration Card, certificate of the Panchayat Secretary, horoscope of the daughter and some other documents to show that the petitioner was shown as the father of the minor and husband of the lady. From the oral evidence it was revealed that the lady was married to one Rabindra Nath but thereafter they abandoned each other, but there was no divorce. The lady was a labourer and started living with the present petitioner. Both the Courts below have held that the present petitioner treated the lady as a second wife and also provided her a

separate hut. Both the Courts below also held that the child was born out of this relationship. These are pure findings of fact which cannot be interfered with in the revisional petition.

**[4]** Sri A. K. Bhowmik, learned Sr. counsel for the petitioner submits that even if all these facts are taken to be correct then also the petition under Section 125 Cr. P.C on behalf of the lady for grant of maintenance is not maintainable in view of the fact that she was not the legally wedded wife of the petitioner.

**[5]** On the other hand, it is urged by Sri D. C. Nath, learned counsel for the respondent that there is a long standing relationship between the two going back to more than 20(twenty) years. It is submitted that these two persons have cohabited for twenty years and the petitioner had always projected the respondent as his wife and, therefore, he cannot turn around and now claim that the respondent is not his wife or that the child is not his child.

**[6]** Learned counsel for the parties have also drawn my attention to a number of cases. Sri Bhowmik has referred to the judgment of the Apex Court in ***Smt. Yamunabai Anantrao Adhav Vrs. Anatrao Shivram Adhav and Another : AIR 1988 SC 644*** wherein the Apex Court held as follows:

**"4. The question then arises as to whether the expression 'wife' used in S. 125 of the Code should be interpreted to mean only a legally wedded wife not covered by S.11 of the Act. The word is not defined in the Code except indicating in the Explanation its inclusive character so as to cover a divorce. A woman cannot be a divorcee unless there was a marriage in the eye of law preceding that status. The expression must, therefore, be given the meaning in which it is understood in law applicable**

to the parties, subject to the Explanation (b), which is not relevant in the present context.

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6. The attempt to exclude altogether the personal law applicable to the parties from consideration also has to be repelled. The section has been enacted in the interest of a wife, and who intends to take benefit under sub-section (1)(a) has to establish the necessary condition, namely, that she is the wife of the person concerned. This issue can be decided only by a reference to the law applicable to the parties.\*\*\*\*\*

7. Lastly it was urged that the appellant was not informed about the respondent's marriage with Lilabai when she married the respondent who treated her as his wife, and therefore, her prayer for maintenance should be allowed. There is no merit in this point either. The appellant cannot rely on the principle of estoppel so as to defeat the provisions of the Act. So far as the respondent treating her as his wife is concerned, it is again of no avail as the issue has to be settled under the law. It is the intention of the legislature which is relevant and not the attitude of the party.

8. We, therefore, hold that the marriage of a woman in accordance with the Hindu rites with a man having a living spouse is a complete nullity in the eye of law and she is not entitled to the benefit of S.125 of the Code. The appeal is accordingly dismissed. There will be no order as to costs. During the pendency of the appeal in this Court some money was paid to the appellant in pursuance of an interim order. The respondent shall not be permitted to claim for its refund."

Reliance has also been placed by Mr. Bhowmik on the judgment of the Apex Court in ***Savitaben Somabhai Bhatiya Vrs. State of Gujarat and Ors. (Appeal (Crl.) 399 of 2005*** wherein the Apex Court held as follows:

"In Smt. Yamunabai's case (supra) it was held that expression 'wife' used in Section 125 of the Code should be interpreted to mean only a legally wedded wife. The word 'wife' is not defined in the Code except indicating in the Explanation to Section 125 its inclusive character so as to cover a divorce. A woman cannot be a divorcee unless there was a marriage in the eye of law preceding that status. The expression must therefore be given the meaning in which it is understood in law applicable to the parties. The marriage of a woman in accordance with

the Hindu rites with a man having a living spouse is a complete nullity in the eye of law and she is therefore not entitled to the benefit of Section 125 of the Code or the Hindu Marriage Act, 1955 (in short the 'Marriage Act'). Marriage with person having living spouse is null and void and not voidable. However, the attempt to exclude altogether the personal law applicable to the parties from consideration is improper. Section 125 of the Code has been enacted in the interest of a wife and one who intends to take benefit under sub-section (1)(a) has to establish the necessary condition, namely, that she is the wife of the person concerned. The issue can be decided only by a reference to the law applicable to the parties. It is only where an applicant establishes such status of relationship with reference to the personal law that an application for maintenance can be maintained. Once the right under the provision in Section 125 of the Code is established by proof of necessary conditions mentioned therein, it cannot be defeated by further reference to the personal law. The issue whether the Section is attracted or not cannot be answered except by reference to the appropriate law governing the parties.

But it does not further the case of the appellant in the instant case. Even if it is accepted as stated by learned counsel for the appellant that husband was treating her as his wife it is really inconsequential. It is the intention of the legislature which is relevant and not the attitude of the party.

In Smt. Yamunabai's case (supra) plea similar to the one advanced in the present case that the appellant was not informed about the respondent's earlier marriage when she married him was held to be of no avail. The principle of estoppel cannot be pressed into service to defeat the provision of Section 125 of the Code.

It may be noted at this juncture that the legislature considered it necessary to include within the scope of the provision an illegitimate child but it has not done so with respect to woman not lawfully married. However, desirable it may be, as contended by learned counsel for the appellant to take note of the plight of the unfortunate woman, the legislative intent being clearly reflected in Section 125 of the Code, there is no scope for enlarging its scope by introducing any artificial definition to include woman lawfully married in the expression 'wife'. As noted by this Court in *Vimala (K.) V. Veeraswamy (K.)* (1991 (2) SCC 375) when a plea of subsisting marriage is raised by the respondent-husband it has to be satisfactorily proved by tendering evidence to substantiate that he was already married."

[7] On the other hand, Sri Nath learned counsel for the lady has placed strong reliance on the judgment of the Apex Court in ***Dwarika Prasad Satpathy Vrs. Bidyut Prava Dixit : (1999) 7 SCC 675***. In this case the Apex Court held that in summary proceedings under Section 125 Cr. P.C, the standard of proof of proving a marriage is not as strict as that required in an offence under Section 494 IPC. The Apex Court held that if it is shown that the lady and the man have lived together as husband and wife and have cohabited together for a long period, the Court can presume that they are legally wedded spouses. Even then, the Apex Court held that the party who denies the marital status can rebut such presumption. The Apex Court held as follows:

" 6. ....The validity of the marriage for the purpose of summary proceeding under Section 125 Cr.P.C. 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 of the 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 spouse, 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,Cr.P.C."

[8] Reliance has also been placed by Sri Nath on the judgment of the Apex Court in ***Chanmuniya Vrs. Virendra kumar Singh Kushwaha : (2011) 1 SCC 141*** wherein the Supreme Court held that a broad and expensive interpretation should be given to the term 'wife'. The Court held that where a man and woman have been living together as husband and wife for a reasonably long period, strict proof of marriage should not be a

precondition for grant of maintenance under Section 125 Cr. P.C. It would be pertinent to mention that in ***Chanmuniya's*** case, the Division Bench also formulated three questions of law to be decided by a Larger Bench. These questions are as follows:

**"(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?"**

[9] Strong reliance has also been placed by Sri Nath on the judgment of the Apex Court in ***Badshah Vrs. Urmila Badshah Godse and Another: (2014) 1 SCC 188***. The facts of this case are that the husband was already married. He married the lady Urmila Badshah Godse and this was his second marriage. However, the Court held that the lady i.e. Urmila was deceived by the husband and she was not aware of the fact that her husband was earlier married. In this case a formal wedding in accordance with the religious rites had also been performed. A question was raised before the Apex Court that in view of the reference made in ***Chanmuniya's*** case, ***Badshah's*** case should also be referred to the Larger Bench. Repudiating this contention the Apex Court held as follows:

**"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."**

**[10]** The Apex Court gave three reasons in ***Badshah's*** case for granting maintenance. The first was that in the case before the Apex Court a marriage ceremony had been performed between the man and the woman and it was not a case where a presumption of marriage had been raised on the basis of long cohabitation. Secondly, the Apex Court held that the husband had kept the wife in the dark about his first marriage and a false representation was given to the wife that the husband was single and was competent to enter into a marital tie with the wife. The Apex Court held that in such circumstances the husband could not take advantage of his own wrong and turn around to say that the respondent wife is not entitled to any maintenance. Lastly, the Apex Court held that a purposive interpretation needs to be given to the provisions of Section 125 Cr. P.C. In this regard reference may be made to the following observations of the Apex Court:

**"13.3. Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125, Cr.P.C. While dealing with the application of destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalized 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 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.

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16. The law regulates relationships between people. It prescribes patterns of behavior. It reflects the values of society. The role of the Court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the Court is supposed to exercise direction in determining the proper relationship between the subjective and objective purpose of the law.

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18. The Court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonize results with justice through a method of free decision—"*libre recherche scientifique*" i.e. "free scientific research". We are of the opinion that there is a non-rebuttable presumption that the Legislature while making a provision like Section 125 Cr.P.C., to fulfill its constitutional duty in good faith, had always intended to give relief to the woman becoming "wife" under such circumstances. This approach is particularly needed while deciding the issues relating to gender justice. We already have examples of exemplary efforts in this regard. Journey from Shah Bano[(1995) 2 SCC 556] to Shabana Bano[(2010) 1 SCC 666] guaranteeing maintenance rights to Muslim women is a classical example.

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20. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydon Case[(1584 3 Co Rep 7a)] which became the historical source of purposive interpretation. The court would also

invoke the legal maxim construction of *ut res magis valeat quam pereat*, in such cases i.e. where alternative constructions are possible the Court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125, Cr.P.C., such a woman is to be treated as the legally wedded wife.

21. The principles of Hindu Personal Law have developed in an evolutionary way out of concern for all those subject to it so as to make fair provision against destitution. The manifest purpose is to achieve the social objectives for making bare minimum provision to sustain the members of relatively smaller social groups. Its foundation spring is humanistic. In its operation field all though, it lays down the permissible categories under its benefaction, which are so entitled either because of the tenets supported by clear public policy or because of the need to subserve the social and individual morality measured for maintenance."

Relying upon these observations Sri Nath, learned counsel for the lady submits that if a purposive interpretation is given then the lady is entitled to maintenance.

[11] I have carefully gone through all the judgments cited before me. As far as the judgments rendered in **Adhav** and **Savitaben** cases, it would be pertinent to mention that the Apex Court while dealing with those two cases in **Badshah's** case held as follows:

**"\*\*\*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 \*\*\*\*\***

It is thus apparent that even in ***Badshah's*** case the Apex Court held where the woman is aware that the man was already married then she cannot claim maintenance. The position of the lady in the present case is even worse. Not only did she know that the respondent was already married and had four children, she herself also was already married and her marriage had not been dissolved by a grant of decree for divorce. The Apex Court even after giving a purposive interpretation clearly held that the law laid down in ***Adhav*** and ***Savitaben*** cases would be applicable where the woman is aware that the man is already married. In both the cases it was clearly held that no petition under Section 125 Cr. P.C was maintainable. Therefore ***Badshah's*** judgment cannot be relied upon by the petitioner in the present case.

[12] As far as the judgment of this Court in ***Crl. Rev. P. No. 53 of 2007 & Crl. Rev. P. No. 69 of 2007 (Sri Nityagopal Sukladas Vrs. Smt. Anjali Nag(Nath) @ Sukladas)*** is concerned the facts of that case were similar to ***Badshah's*** case. Without further discussion I would like to observe that the learned Single Judge has not taken note of the observations of the Apex Court in ***Badshah's*** case quoted hereinabove in respect of ***Adhav*** and ***Savitaben*** cases wherein the Apex Court has held that the judgments in ***Adhav*** and ***Savitaben*** would still apply when the woman is aware that the man is married.

[13] Be that as it may, in my view the law can be summarized as follows:

(1) That when there is long cohabitation between a man and woman and they are accepted in society as husband and wife then a strong presumption arises in favour of the marriage and, therefore, a petition under Section 125 Cr. P.C would normally lie.

(2) That if the wife has been defrauded into marriage by making her believe that the marriage is a valid marriage and there was no legal bar to the said marriage then the wife being a victim can still file a petition under Section 125 Cr.P C.

(3) However, in case the wife herself is aware of the fact that the man is already married or even if the man is not married she herself is a married woman and has not obtained a legal divorce she cannot enter into a legal valid relationship with any other man and, therefore, she should be aware of the fact that her marriage is not a valid marriage and hence she would not be entitled to file a petition under Section 125 Cr. P.C.

**[14]** I may add that even in those cases where a presumption can be raised due to reason of long cohabitation, if it is proved that the second marriage would be a void marriage in terms of clause (i), (ii) and (v) of the Section 5 of the Hindu Marriage Act, 1955 and the wife had no reason to believe that she was entering into a valid marriage but knew that she was entering into a relationship which was not only illegal but was also immoral then she cannot turn around and claim benefit of Section 125 of the Code of Criminal Procedure. This Court may have sympathy for the woman but something which is inherently illegal and void cannot be made valid and

legal only on the basis of a presumption. Therefore, I am of the considered view that the petition on behalf of the woman is not maintainable. These women may have rights under the Protection of Women from Domestic Violence Act, 2005 but not under section 125 Cr.P.C.

**[15]** As far as the daughter is concerned she is entitled to maintenance in terms of Section 125 of the Code of Criminal Procedure. It is urged by Sri A.K. Bhowmik, learned senior counsel appearing on behalf of the petitioner that since the minor was born on 17<sup>th</sup> March, 1988 she became a major on 17<sup>th</sup> March, 2006 and, therefore, is not entitled to maintenance after the said date. Section 125 of the Code of Criminal Procedure provides that a person is liable to maintain his minor child till that child attains majority unless it is shown that the child by reason of any physical or mental abnormality or injury is unable to maintain itself. The law thus makes the father liable for the child only up to the age of 21(twenty one) years. In terms of Section 125 Cr. P. C minor means a person who under the provisions of Indian Majority Act, 1875 is deemed not to have attained majority. The child is entitled to maintenance till the date she attained majority in terms of Section 3 of the Indian Majority Act, 1875 which reads as follows:

**"3. Age of majority of persons domiciled in India.- Subject as aforesaid, every minor of whose person of property, or both, a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure, has been or shall be appointed or every minor or whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age shall, notwithstanding anything contained in the Indian Succession Act or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before.**

**Subject as aforesaid, every other person domiciled in India shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before."**

Therefore, the intention of the legislature is clear that the minor in terms of the Indian Majority Act, 1875 would attain majority only at the age of 21(twenty one) years and thus the child would be entitled to maintenance from 17<sup>th</sup> March, 1988 to 17<sup>th</sup> March, 2009.

**[16]** In view of the above discussion, the petition is partly allowed in the aforesaid terms. Criminal M. C is disposed of.

Send down the LCRs forthwith.

**CHIEF JUSTICE**