

**AIROnline 2018 MP 1252**

MADHYA PRADESH HIGH COURT

(INDORE BENCH)

S. K. AWASTHI, J.Criminal Revision - 3416 of 2018 **D/- 11 - 12 - 2018**

Laxman Purushottam JI Patidar v. Mamta

**Criminal P.C. (2 of 1974), S.125 - Maintenance - Application for - Application by lady who is not legally wedded wife of non-applicant, on ground that she lived in live-in-relationship with non-applicant, when material on record showing that she had not taken divorce from first husband -Maintenance cannot be granted.**

**(Paras 8, 9, 10)**

Ms. Seema Sharma, Learned Counsel for Petitioner; Mohan Sharma, Learned Counsel for Respondent.

**Judgement**

1. **ORDER :-** The applicant has preferred this revision under Section 19 (4) of the Family Courts Act, 1984 being aggrieved by order dated 26.06.2018 passed in Miscellaneous Criminal Case No.2000113/2016 by Principal Judge, Family Court, Dhar (MP), whereby an application filed by the respondent / wife under Section 125 of the Code of Criminal Procedure, 1973 has been allowed; and the applicant / husband is directed to pay Rs.4,000/- (rupees four thousand) per month to the respondent / wife.

2. Briefly stated facts of the case are that respondent moved an application under Section 125 of the Code of Criminal Procedure, 1973 before the Principal Judge, Family Court, Dhar (MP) stating that she is legally wedded wife of the applicant. The applicant and his family members were making demand of dowry and were ill-treating her. In the month of February, 2014, the respondent / wife was ousted from her matrimonial house. After that, she was residing with her parents. A criminal case against the applicant and his family members was registered under Section 498-A of the Indian Penal Code, 1860. It was further pleaded that the present respondent / wife is unable to maintain herself, as she does not have any source of income, whereas the applicant / husband is owner of 60 Bigha agriculture land and his yearly income is around Rs.30,00,000/- from farming as well as from money lending business. Accordingly, a prayer was made for issuance of a direction to the applicant / husband to pay Rs.10,000/- per month as maintenance to the respondent / wife.

3. The applicant in his reply denied the allegation made in the application. He pleaded that Rakesh s/o Shriram Bhuwan, first husband of the respondent / wife is alive and no divorce took place between the respondent and her husband (Rakesh s/o Shriram Bhuwan). No marriage was solemnized / took place between the parties; therefore, the respondent is not legally wedded wife of the applicant. Hence, there is no relationship of husband and wife between them. It was further pleaded that the respondent falsely lodged First Information Report against him for the offence under Section 498-A of the Indian

Penal Code, 1860. The respondent is not entitled for any maintenance amount from the applicant. Therefore, he prayed that the application may be rejected.

4. Learned Principal Judge, Family Court, Dhar, after considering the entire evidence adduced by the parties, partly allowed the application by the impugned order; and has directed the applicant / husband to pay Rs.4,000/- per month to the respondent / wife, on the basis that the respondent took divorce from his first husband as per their social rituals and customs; and after that, she got married with the applicant in *natra* form.

5. Learned counsel for the applicant has submitted that under Section 125 of the Code of Criminal Procedure, 1973, maintenance can be granted to wife only, however, the respondent was already a married woman; and no divorce took place between the respondent and her husband (Rakesh s/o Shriram Bhuwan). Hence, the respondent could not be said to be the legally wedded wife of the applicant. It is further submitted that the applicant also married to Jaya d/o Rajaram in the year 2008 and no divorce took place between Jaya and him. Therefore, trial Court has committed error in granting Rs.4,000/- per month to the wife as maintenance.

6. On the contrary, learned counsel for the respondent has submitted that the respondent / wife is married wife of the applicant; and she remained with the applicant for a period of six months. After that, the applicant was making demand of Rs.5,00,000/- in dowry and ill-treated her, therefore, she left the house of the applicant and residing with her parents. Hence, trial Court has rightly directed the applicant / husband to pay Rs.4,000/- per month as maintenance to the respondent / wife. The applicant is having sufficient means to pay the aforesaid amount, therefore, it is prayed that the revision application may be dismissed.

7. I have heard learned counsel for the parties and perused the record.

8. Considering the submissions advanced by the learned counsel for the parties, it reflects from the evidence adduced by the parties that marriage took place between the applicant and respondent is not material in the present case, because respondent Mamta (PW-1) has accepted in paragraph No.5 of her cross examination that her first marriage was solemnized about seventeen years ago; and she was married to Rakesh resident of Kod. Although she claims that she lived with him for a period of 3-4 days but, admits that no divorce took place between Rakesh and her from any Court. As per the respondent, she took divorce from her husband Rakesh as per their social customs; however, in this regard no document has been filed nor any witness examined to substantiate the aforesaid fact. It is also pertinent to note that Motilal (PW-3) admits in his cross examination that first husband of Mamta is alive and he is residing at village Tornod; and he accepted that no divorce took place between Rakesh and Mamta. Father of the respondent / wife, Sundarlal (PW-2) has also stated that no divorce took place between Mamta and Rakesh. In these circumstances, if any marriage was performed between the applicant and respondent, it cannot be said to be a valid marriage in the eye of law, because in Hindu Marriage Act, 1955 bigamy is not permitted and therefore, no married woman can marry with another man, without taking any divorce from her previous husband. Hence, it is not proved that the respondent is a wedded wife of the applicant.

9. Learned counsel for the respondent / wife relied on the judgment passed by this Court in the case of *Harinarayan v. State of Madhya Pradesh* reported in 2005 (1) MPLJ 196 and *Kamala and others v. M.R. Mohan Kumar* passed on October 24, 2018 by the Apex Court in Criminal Appeal No.2368-2369 of 2009 reported in 2018 SCC OnLine SC 2121 in which it is held that where the

applicant and respondent lived under same roof for a considerable period, then it will be presumed that they are living as husband and wife. However, case of such a woman is different when she was residing with a man for a longer period to the case when she claims that she was a married wife of that man. If wife is unable to prove her marriage by direct evidence, then such relationship should be proved by conduct of the man and time period should be such that they were living as husband and wife.

**10.** In the case at hand, the respondent / wife stated that she was living with the applicant for a period of six months. However, duration of live-in-relation is not material, because the respondent / wife was already married with one Rakesh s/o Shriram Bhuwan; and no divorce took place with her husband. In these circumstances, if marriage took place between the applicant / husband and respondent / wife then, it was not a valid marriage. Under such circumstances, the period of live-in-relation has no concern in the present case, and therefore, Principal Judge, Family Court, Dhar committed an error of law in granting the relief of maintenance amount to the respondent / wife under Section 125 of the Code of Criminal Procedure, 1973.

11. Thus, the present revision petition is hereby allowed. The impugned order dated 26.06.2018 passed in Miscellaneous Criminal Case No.2000113/2016 by Principal Judge, Family Court, Dhar (MP) is hereby set aside. The application filed by the respondent / wife under Section 125 of the Code of Criminal Procedure, 1973 is hereby dismissed; however, the order relating to the cost passed by the Principal Judge, Family Court, Dhar is maintained.

12. Consequently, Criminal Revision No.3416/2018 stands allowed and disposed of.