

2017 SCC OnLine Gau 1025 : (2017) 6 Gau LR 188

Partly reversed in law in *Manik Kutum v. Julie Kutum*, (2020) 14 SCC 469

In the High Court of Gauhati  
(BEFORE RUMI KUMARI PHUKAN, J.)

Julie Kutum ... Petitioner;

*Versus*

Manik Kutum ... Respondent.

Criminal Revision No. 102 of 2012

Decided on August 1, 2017



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Criminal Procedure Code, 1973, S. 125 — Maintenance — Only legally wedded wife can claim maintenance which includes divorced wife — Term 'wife' in section 125 of Cr. P.C. has to be given very wide interpretation — Strict/valid proof of marriage not required — Respondent conducted the second marriage during the subsistence of his first marriage with suppression and also gave birth to a child; but subsequently fended off all such relations — Except denial of marriage respondent failed to bring anything on record that even at the time of marriage with the respondent, petitioner was aware of his earlier marriage — Clear case of suppression of earlier marriage — Trial court held that since the petitioner was not being the legally wedded wife of the respondent, she was not entitled to maintenance — Maintenance granted to the minor daughter holding the child to be an illegitimate one born out of illicit relationship — On revision being filed, petitioner treated to be legally married wife of the respondent for the purpose of section 125, Cr. P.C. — Order passed by the trial court set aside — Matter remanded to the trial court to declare the petitioner to be the legally married wife of the respondent and to decide the quantum of maintenance by recording proper evidence only on the point of income and to award proper maintenance to the petitioner as well as the minor child.

Obviously, the petitioner was running two marital affairs by suppressing the same aspect and now he cannot be permitted to avail of the benefit of having the first wife by virtue of their marriage prior to the marriage with the present petitioner. The destiny of a woman in the context of Indian society is always determined by the conduct of the male counterpart and basically most of the women rely on other part being the dependent. Of course a woman cannot be permitted to enter into a marriage with full knowledge to a man who is already a married one as per the established law but the affairs of a woman who was totally unaware about the earlier marriage of his male counterpart should be protected being benevolent one and the so-called husband should not be allowed to take advantage of his own wrong/illegal conduct.

[Para 21]

The role of the court should always be dynamic so as to address the actual issue behind each and every case so as to foster social justice to all sections of people and more particularly the vulnerable section of society that is the poor and helpless woman. It is emphasized that the court should adopt different approaches in social justice jurisdiction which is also known as social context adjudication as mere adversarial approach may not be appropriate. From the viewpoint of purposive interpretation in the context of the provision of section 125 of the Cr. P.C. and having regard to the evidence on record we can definitely come to a conclusion that there was a marriage



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between the parties to treat the petitioner as the legally married wife of the respondent.

[Para 22]

It is the submission of the respondent herein that a Hindu cannot perform a second marriage and equally a second wife has no legal status. But to the utter dismay what we found the same person has conducted the second marriage during the subsistence of his first wife with suppression and also gave birth to a child but subsequently fended off all such relations. Thus, he himself has frustrated the provisions of the *Hindu Law* in spite of claiming him to be a Hindu, whereas the marriage, according to the *Hindu Law*, is a holy union and not a contract. Hindu marriage is treated as entirely a sacrament but the petitioner is least bothered in such holistic relation of marriage. He has maintained dual relationship towards his family which is not at all loyal either to his first wife or to his second wife whom he married under great suppression.

[Para 25]

Advocates who appeared in the case:

Mr. S.S. Sarma, for the Petitioner.

Mr. A.I. Uddin, for the Respondent.

*Cases referred:* Chronological

*Badsha v. Urmila Badsha Godse*, (2014) 1 SCC 188.

*Chanmunia v. Virendra Kumar Singh Kushawaha*, (2011) 1 SCC 141.

*D. Veluswamy v. B. Patchaimmal*, (2011) 1 SCC (Cri) 59.

*Sabitaben*, (2005) 3 SCC 636.

*Dwarika Prasad Satpathy v. Bidyut Prabha Dixit*, (1999) 7 SCC 675 : 2000 CrI. LJ (1).

*Vimla K. v. Veerason*, (1991) 2 SCC 375.

*Yamunabai*, (1988) 1 SCC 530.

#### JUDGMENT AND ORDER

1. Heard Mr. S.S. Sarma, learned senior counsel for petitioner and Mr. A.I. Uddin, learned counsel for respondent.

2. This revision is directed against the order of the learned SDJM, Gossaigaon dated 21.11.2011 in Misc. Case No. 28/2009 whereby the petition filed by the petitioner for granting maintenance on the ground of her being the 2nd wife of respondent is rejected and granted Rs. 2,000 maintenance per month to her minor daughter.

3. The petitioner herein filed a petition under section 125 of the Cr.PC before the SDJM, Gossaigaon claiming that she is the married wife of the respondent and the marriage was solemnised as per the social custom and usage of the parties at Kalaghat Christian Church on 3.4.2005. Before marriage in the Church a marriage of agreement was executed between the parties on 17.8.2004. They started their conjugal life and the petitioner



was taken by the respondent to his place of posting at Mumbai and thereafter to Hyderabad and lived there until August 2005 and in the meantime the petitioner became pregnant. Thereafter the respondent was transferred to Lumding on promotion and posted at the first battalion of the Railway Protection Special Force as head constable and due to the frequent transfer, the respondent kept the petitioner at her father's house at Dingdinga Bazaar at Tamarhat so that she may get proper care during pregnancy. On 23.1.2006 the petitioner gave birth to a female child, viz.,

Christiana Kutum and thereafter they were taken to the place of posting at Lumding by the respondent, where they stayed until September 2008. While the respondent came to her parental house to take them to Lumding, he made a demand for Rs. 50,000 on the pretext of purchasing of household goods which, however, could not be provided and for the reason the respondent started ill-treating her and refused to maintain her properly and made repeated demands for bringing the demanded amount of Rs. 50,000 and subsequently, in the month of September the petitioner came to know that the respondent has developed illicit relationship with one lady and on protest she was badly assaulted for which the petitioner was constrained to lodge an FIR with the police on 15.10.2008 leading to registration of *Lumding PS case 152/2008* under section 294/323/506 of the IPC.

4. After filing of the FIR, respondent compelled her to leave the matrimonial house along with the minor daughter in the last part of October 2008 and since then she is residing in her parental house and neglected to maintain the family and as a result of which petitioner is compelled to file a petition for maintenance due to acute financial hardship faced by her. According to petitioner, respondent is drawing salary of Rs. 15,000, being an employee of NF Railway whereas the petitioner has no source of income. On the basis of the said petition, Misc. Case No. 28/2009 under section 125 of the Cr.PC was drawn up against the respondent.

5. Refuting the case of the petitioner, in his written statement, respondent denied his relation with the petitioner and her daughter and alleged that he never entered with any matrimonial alliance with the petitioner on 3.4.2005 as claimed by her, nor did they live together as husband and wife. He also contends that he had never taken the petitioner to Mumbai, Hyderabad, etc., as stated by the petitioner. Denying all the allegations of the petitioner it is submitted that the respondent is a Hindu by religion and the petitioner is a Christian, and neither of them had relinquished their religion and, hence, the question of marriage between the parties does not arise. Accordingly it is contended that the respondent has never married the petitioner and as such is not entitled to get maintenance.



6. According to respondent, he married one Smt. Gitali 13 years ago as per the *Hindu law* and they have two children aged about 12 and 6 years. He alleged that the petitioner being a poor lady having poor family background, he had family friendship with the petitioner and on many occasions out of sympathy he used to help her family financially and taking advantage of such friendship she started to claim herself as wife of the respondent and he has no knowledge about the birth of the child of the petitioner and he stoutly denied the paternity of the minor child. Thus, according to respondent, petitioner could not have been his wife during subsistence of his first marriage and she has filed the false case claiming such relation with the respondent.

7. Evidence was led by both the parties and after hearing the argument of learned counsel for both parties the learned trial court allowed the plea of the respondent that the petitioner being not legally married wife of the respondent, petitioner is not entitled to maintenance, however, holding the child to be an illegitimate one born out of illicit relationship between the parties, respondent was directed to pay maintenance to the minor daughter Miss Christina Kutum at the rate of Rs. 2,000 per month from the date of filing the petition on 27.4.2009 till she attains majority.

8. Challenging the legality and validity of the order dated 21.11.2011 this revision

is filed on so many counts that the impugned order suffers from severe infirmity as the learned trial court did not take into account the oral and documentary evidence produced by the petitioner regarding their marriage, birth of the child, etc., which proves marital relationship between the parties as well as the birth of the child from the wedlock. Respondent herein has married the petitioner by suppressing his earlier marriage and the petitioner believing him to be an unmarried person fell in his love and married him in bona fide belief. It further contends that the learned trial court failed to appreciate the evidence adduced by the petitioner and came to an erroneous decision.

9. On the other hand according to respondent as the petitioner does not have the status of wife is not entitled to any maintenance.

10. Heard the submissions of learned counsel for both parties. Also went through the evidence on record. It appears that the learned Magistrate proceeded on the basis that the respondent was an earlier married person having two children from the wedlock and as such the petitioner cannot be held to be legally married wife and maintenance was declined to petitioner. So by way of this revision petition we are confronted with the issue as to whether the petitioner in the instant case can be treated as legally married wife of the respondent? We are also aware of that much deliberations was going on such issue and there is catena of



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decisions from the highest authority as to whether a second wife can be given the status of legally married wife and such wife can prefer maintenance petition.

11. So far as the section 125 of the Cr.PC is concerned only legally wedded wife can claim maintenance which includes the divorced wife in the category. For the purpose of proper appreciation of the matter it would be useful to refer to the observations rendered in *Dwarika Prasad Satpathy v. Bidyut Prabha Dixit*, (1999) 7 SCC 675 : 2000 CrL. LJ (1), which are as follows:

"The validity of marriage for the purpose of summary proceeding under section 125 of the Cr.PC is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceeding 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.PC. 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 Cr.PC which are of summary nature strict proof of performance of essential rites is not required.

It is further held:

It is to be remembered that the order passed in an application under section 125, Cr.PC 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 Civil Suit which is pending before the trial court. In such a situation, this court in *S. Sethurathinam Pillai v.*

*Barbara alias Dolly Sethurathinam*, (1971) 3 SCC 923, observed that maintenance under section 488, Cr.PC 1898 (similar to section 125, Cr.PC) 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."

12. Next, the decision of *Chanmunia v. Virendra Kumar Singh Kushawaha*, (2011) 1 SCC 141, can be referred to wherein the court held that the term "wife" given in section 125 of the Cr.PC is to be given very wide interpretation, the relevant part is quoted below:



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"26. Thus, in those cases where a man who lived with a woman for a long time and even though they may not have undergone legal necessities of valid marriage should be made liable to pay the woman maintenance if he deserts her. The man should not be allowed to benefit from the legal loopholes by enjoying the advantage of a de facto marriage without undertaking the duties and obligations. Any other interpretation would lead to vagrancy and destitution which the provision of maintenance under section 125 is meant to prevent.

46. We are of opinion that a broad and expansive interpretation should be given to the term "wife" to include even those cases where a man and woman living together as husband and wife for a reasonably long period of time, the strict proof of marriage should not be a precondition for maintenance under section 125 of the Cr.PC so as to fulfil the true spirit and the essence of beneficiary provision under section 125 and such an interpretation would be just application of principle and enshrined in the preamble to the Constitution holding the dignity of the individual."

13. With the aforesaid proposition of law we can hold that for the purpose of maintenance strict/valid proof of the marriage is not required as is the standard of proof of marriage in an offence under section 494 of the IPC.

14. We may further refer to the latest decision of the Supreme Court in *Badsha v. Urmila Badsha Godse*, (2014) 1 SCC 188, wherein a similar aspect as that of the matter in issue in the present case is elaborately dealt with, and we may gainfully refer to certain observations in this behalf. So many facets of the law and society and the role of the court while interpreting the law is highlighted showing concern over such sensitive issues having regard to the status of a deprived woman in the society. Some of the observations are quoted below.

"The law regulates relationship between people. It prescribes patterns of behaviour. 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 life of the law, 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 discretion in determining the proper relationship between the subjective and objective purposes of the law.

The court as the interpreter of law is supposed to supply omissions, correct uncertainties and harmonise results with justice through the method of free decision.



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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 that is first propounded in *Hydonsh* which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction *ut res magis valeat quam per* in such cases that is where alternative construction is possible the court must give effect to which it 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 of between two interpretations the nearer of which would fell to achieve the manifest purpose of the legislation should be avoided. We should avoid construction which would reduce the legislation to futility and should accept bolder construction based on the view that the Parliament would legislate only for purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving premium to the husband for defrauding the wife. Therefore, at least for the purpose of giving maintenance such a woman is to be treated as legally married wife."

15. While making the said decision the hon'ble court has accepted certain propositions that are proved in the said case that there was marriage between the parties and while doing so the husband has suppressed the first marriage and in view of the fact that the husband has duped the second wife by not revealing the fact of his earlier marriage, he cannot deny maintenance to her. The honourable court is of the opinion that he cannot be permitted to deny the benefit of maintenance to respondent wife by taking advantage of his own wrong. It is further held that being purposive construction of the provisions of section 125 of the Cr.PC and applying mischief rule, at least for the purpose of maintenance such woman can be treated as legally married wife. It is further held that the judgment of the Supreme Court in *Yamunabai, In re.*, (1988) 1 SCC 530, and *Sabitaben, In re.*, (2005) 3 SCC 636, supporting the contention of husband would apply in those circumstances where a woman married a man with full knowledge of subsistence of his first marriage.

16. Having regard to the said legal pronouncements set forth by the Apex Court, let us turn to the evidence on record led by the parties. The petitioner herein examined 5 witnesses including her and the respondent examined 4 witnesses. Respondent, examining him as DW1 and his earlier wife DW2 and two other witnesses from his locality as DWs3 and 4, has submitted that the respondent married DW2 in the year 1996 and in the year 1997 she gave birth to a child and another child in the year 2002 and the respondent has declared DW2 as his wife in all his official records. It is to be noted that the respondent in his pleadings as well as in evidence has admitted some sort of relation with the petitioner but not specifically spelt out. Similarly he has admitted his signature in exhibit 2(4), which



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is a form filed with the LIC while opening a policy for a minor child, Christiana Kutum (the daughter of the respondent). He has also admitted his photograph along with the respondent vide exhibit 9-series.

17. On the other hand the petitioner has also examined her as PW 4 stating about the marriage between them on 3.4.2005 at Kalaghat Christian Church at Dingdingia as per the Christian religion vide the marriage certificate vide exhibit 7 in presence of witnesses and exhibit 9(1) to 9(5) is the photograph of her marriage with the respondent. She has also narrated about their conjugal life during 2005–2008 and the birth of the child in the year 2006. PW 5 was witness to the marriage in the church. He has supported the said marriage between the parties and who signed the marriage certificate exhibit 7 as Pastor of the Church and also exhibited signature of the respondent in the marriage certificate vide exhibit 7(2) and also about the photograph vide exhibit 9 at the time of the marriage of both parties.

18. Lokman Ali Mandal, an advocate, who examined him as PW 3, deposed that he drafted the marriage agreement between the parties vide exhibit 8 and both the parties have signed the said agreement.

19. Another witness who is examined by the petitioner is an employee of the LIC office as PW 1, Khagen Ch. Rabha, and PW 2 Swapan Kr. Saha, who has testified the fact that the said Manik Kutum opened an LIC policy in the name of Christiana Kutum declaring him to be the father of the child vide Ext. 1 is the identity card of the petitioner and Ext. 1(2)(a) is the birth certificate of Christiana Kutum, Ext. 4 is the declaration form and 4(1) is the signature of Manik Kutum and Exts. 5 and 6 are the relevant policy documents bearing number 489600402 issued in the name of Manik Kutum for a sum assured Rs. 50,000 for opening policy in the name of his daughter Christina.

20. The said evidence from the side of petitioner it is abundantly clear that the petitioner performed the marriage ceremony with the respondent in the year 2005 and he failed to disprove his signature in the said relevant documents. The declaration made by the respondent about the fatherhood of the child of petitioner in relevant documents like birth certificate, LIC policy, etc., is enough to support the contention that is raised by the respondent-wife. As is evident that except the denial of marriage the respondent has failed to bring anything on record that even at the time of marriage with the respondent, she was aware of his earlier marriage. So it is a clear case of suppression of the earlier marriage by the petitioner.

21. Obviously, the petitioner was running two marital affairs by suppressing the same aspect and now he cannot be permitted to avail of



the benefit of having the first wife by virtue of their marriage prior to the marriage with the present petitioner. The destiny of a woman in the context of Indian society is always determined by the conduct of the male counterpart and basically most of the women rely on other part being the dependent. Of course a woman cannot be permitted to enter into a marriage with full knowledge to a man who is already a married one as per the established law but the affairs of a woman who was totally unaware about the earlier marriage of his male counterpart should be protected being benevolent one and the so-called husband should not be allowed to take advantage of his own wrong/illegal conduct.

22. As is observed by the said decisions the role of the court should always be dynamic so as to address the actual issue behind each and every case so as to foster social justice to all sections of people and more particularly the vulnerable section of society that is the poor and helpless woman. It is emphasised that the court should adopt different approaches in social justice jurisdiction which is also known as social context adjudication as mere adversarial approach may not be appropriate. From the viewpoint of purposive interpretation in the context of the provision of section 125 of the Cr.PC and having regard to the evidence on record we can definitely come to a conclusion that there was a marriage between the parties to treat the petitioner as the legally married wife of the respondent.

23. It is to be noted that the learned trial court in the impugned judgment also came to a finding about performance of marriage between the parties but the learned trial court, having regard to the decision of *Sabitaben* (supra) and the decision of *Vimla K. v. Veerason*, (1991) 2 SCC 375, held that the petitioner (respondent herein) being the second wife cannot be termed as legally married wife. But from what is discussed above the impugned judgment and order is found to be perverse and liable to be interfered with.

24. Learned counsel for the petitioner prayed maintenance of petitioner as well as the child by treating the petitioner as legally married wife, which has force in law. It may be also indicated that while declaring the status of the petitioner as wife for the purpose of the provision of maintenance under section 125 of the Cr.PC the same can be utilised for a limited purpose of maintenance but cannot be asserted for all civil purposes. On the other hand learned counsel for respondent, referring to a decision *D. Veluswamy v. B. Patchaimmal*, (2011) 1 SCC (Cri) 59 still submitted that the second wife whose marriage was void on account of survival of first marriage and who is not legally wedded wife is not entitled to maintenance but the said decision which was rendered in an altogether different context cannot be applicable in the present case.



The said case was filed after a long delay of 12 years and the marriage between the parties itself was held to be doubtful and was referred to the trial court for decision afresh to decide the question of marriage. I respectfully disagree with the submission made by learned counsel for respondent.

25. It is the submission of the respondent herein that a Hindu cannot perform a second marriage and equally a second wife has no legal status. But to the utter dismay what we found the same person has conducted the second marriage during the subsistence of his first wife with suppression and also gave birth to a child but subsequently fended off all such relations. Thus, he himself has frustrated the provisions of the *Hindu Law* in spite of claiming him to be a Hindu, whereas the marriage, according to the *Hindu Law*, is a holy union and not a contract. Hindu marriage is treated as entirely a sacrament but the petitioner is least bothered in such holistic relation of marriage. He has maintained dual relationship towards his family which is not at all loyal either to his first wife or to his second wife whom he married under great suppression.

26. In view of all above the impugned order passed by the learned court is hereby set aside. The matter is remanded to the learned trial court to declare the respondent (petitioner in the Misc. Case) to be the legally married wife of the present petitioner and to decide the quantum of maintenance by recording proper evidence only on the point of income and to award proper maintenance to petitioner as well as the minor child afresh within a period of three months of receiving the order of this court. In the



meantime the petitioner is directed to clear all the arrear maintenance towards the child that was granted earlier by the learned trial court till the court decides the matter afresh.

27. The revision stands disposed with the observations and directions made above. Return the LCR along with a copy of the judgment.

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