



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 20th DAY OF SEPTEMBER, 2021

BEFORE

HON'BLE MR. JUSTICE ANOOP CHITKARA

CRIMINAL MISC. PETITION (MAIN) U/S 482 CrPC

No. 582 of 2018

Between:-

**SUBHASH CHAND
SON OF SH. MEHAR CHAND,
RESIDENT OF VILLAGE JANGALCHALLEDA,
P.O. BINAULA, TEHSIL SADAR, DISTRICT BILASPUR, H.P.**

....PETITIONER

(BY SH. T.S.CHAUHAN, ADVOCATE)

AND

**KRISHANI DEVI
WIFE OF LATE SURESH KUMAR,
RESIDENT OF VILLAGE JANGALCHALLEDA, TEHSIL
SADAR, DISTRICT BILASPUR, H.P.**

....RESPONDENT

(BY MS. SEEMA AZAD, ADVOCATE, LEGAL AID COUNSEL)

Reserved on :14.09.2021

Decided on : 21.09.2021

_____ This petition coming on for hearing this day, the Court passed the following:

ORDER

Trial Court Case Number	Order dated 13-4-2018, passed in CMP No.445/4 of 2016 and computers No.759/2016 in Case No.17/4 of 2016 and C.N. No.29/2016, whereby learned JMFC had granted monthly maintenance of Rs.2000/- to the applicant Wife.
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Criminal Revision before Sessions Court.	No.5/10 of 2018 dismissed on 1-10-2018, by the learned Sessions Judge, Bilaspur, H.P.
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The petitioner's wife had filed an application under Section 125 CrPC, seeking monthly maintenance from the petitioner-husband. In the application, she averred that they had solemnized marriage on 22.09.2000 at Bilaspur. At the time of the wedding, she was a widow with three children. On his persuasion, she agreed to marry him. In the beginning, her marital life was good, but later on, his attitude changed, which led to discord, and he even withdrew his financial support. He would spend money on liquor instead of giving it to her and her children.

2. Furthermore, he would abuse, assault, and beat the petitioner on trivial matters. Given such behavior and the absence of financial support, it became impossible for her to reside with him in his house. Consequently, she was forced to shift to the house of her first husband, where Subhash Chand neither paid visit nor gave any money. The wife also alleged that her second husband is a driver by profession and earns sufficient money.

3. The husband filed a reply and took a specific stand that Krishani Devi has played fraud upon him by preparing false documents with the connivance of the Notary Public. He stated that although the marriage is claimed to be solemnized on 22.09.2000, the certificate was allegedly obtained on 23.07.2010. Subhash Chand also claimed that Krishani Devi, in connivance with the priest of temple Lord Shri Laxmi Narayan Ji, Bilaspur, prepared false documents and affidavit. He further stated that she is still drawing benefits, which is being given to widows, and, as

such, her drawing such benefits would show that she never solemnized marriage with him.

4. Vide above captioned order dated 18.04.2018, learned JMFC, granted interim maintenance to the wife by observing as under:-

“An assiduous perusal of the contents of the application as well as reply reflects that applicant is legally wedded wife of the respondent and further the applicant has alleged that she has no source of income to maintain herself. Though respondent has disputed the factum of marriage whereas respondent has not denied this fact that the applicant is unable to maintain herself. The question that whether the marriage between the parties has been legally solemnized only will be decided when both parties to lis lead cogent and convincing evidence. At this stage applicant able to established prima-facie case in her favour. Since the applicant has prima facie established that fact of marriage, as such, the respondent who is able bodied person and having good earning capacity under the legal as well as moral obligation to maintain his legally wedded wife to protect her from becoming destitute and respondent can easily spare Rs.2000/- per month to provide interim maintenance to his legally wedded wife, who has no source of income. As such, the respondent is directed to pay Rs.2000/- per month as interim maintenance to the applicant from the date of this order. Application disposed of accordingly.”

5. The husband challenged the said order by filing criminal revision in the Court of learned Sessions Judge, Bilaspur. Vide above captioned order, the learned Sessions Judge, did not find merits in the petition and dismissed the same.

6. Challenging both the orders, the husband is now before this Court by filing the instant petition under Section 482 of CrPC.

7. In the petition, a letter written to Krishani Devi to Pradhan has been annexed as Annexure P-3, in which she allegedly declared herself as a widow of Suresh Kumar. Similarly, a receipt of a grant of concerned Panchayat of Rs.12000/- has been annexed, in which Krishani Devi showed her as a widow of Suresh Kumar. In another document of the Ministry of Social Justice annexed as Annexure P-4, she disclosed herself to be a widow.

8. Mr. Tara Singh Chauhan, learned counsel for the petitioner, argued that Krishani Devi defrauded Subhash Chand by showing her his legally wedded wife to claim maintenance.

9. On the contrary, Ms. Seema Azad, Advocate, appointed as a Legal Aid Counsel to defend the respondent-wife Krishani Devi, argued that the courts have granted only interim maintenance and the element of fraud, etc., are subject to proof in evidence and cross-examination. She argued that law provides for interim maintenance an immediate remedy for sustenance. She further argued that a meager amount had been granted, whereas the husband worked with HRTC as a driver.

ANALYSIS AND REASONING:

10. S. 125 (1) (a) of CrPC provides a grant of maintenance to the wife, unable to maintain herself. Section 18 of the Hindu Adoptions and Maintenance Act, 1956, mandates a wife's lifetime maintenance rights from her husband. During the proceeding's pendency, the Proviso to S. 125 CrPC empowers the Magistrate to order monthly allowance for the interim maintenance and the expenses of such proceeding. The following provisions of S. 18(2) of the Hindu Adoptions and Maintenance Act,

1956 entitles a wife to live separately from her husband without forfeiting her claim to maintenance-

- (a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;
- (b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;
- (g) if there is any other cause justifying her living separately.

11. In Mohd Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556, Para 8, Constitutional Bench of Hon'ble Supreme Court held that Sir James- Fitz James Stephen who piloted the Code of Criminal Procedure, 1872 as a Legal Member of the Viceroy's Council, described the precursor of Chapter IX of the Code in which Section 125 occurs, as 'a mode of preventing vagrancy or at least of preventing its consequences'.

12. In Ramesh Chander Kaushal v. Veena Kaushal, AIR 1978 SC 1807, Hon'ble Supreme Court holds, "[9]. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15 (3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to the selective in picking out that interpretation out of two alternatives which advances the cause - the cause of the derelicts."

13. In Savitri v. Govind Singh Rawat, 1985 (4) SCC 337, Hon'ble Supreme Court holds,

[5]. The jurisdiction of a Magistrate under Chapter IX of the Code is not strictly a criminal jurisdiction. While passing an order under that Chapter asking a person to pay maintenance to his wife, child or parent, as the case may be, the Magistrate is not imposing any punishment on such person for a crime committed by him. Chapter IX of the Code contains a summary remedy for securing some reasonable sum by way of maintenance, subject to a decree, if any, which may be made in a civil Court in a given case provided the Personal Law applicable to the person concerned authorises the enforcement of any such right to maintenance. The Code, however, provides a quick remedy to protect the applicant against starvation and to tide over immediate difficulties. Chapter IX of the Code does not in reality create any serious new obligation unknown to Indian social life.

[6]. In view of the foregoing it is the duty of the Court to interpret the provisions in Chap. IX of the Code in such a way that the construction placed on them would not defeat the very object of the legislation. In the absence of any express prohibition, it is appropriate to construe the provisions in Chapter IX as conferring an implied power on the Magistrate to direct the person against whom an application is made under S. 125 of the Code to pay some reasonable sum by way of maintenance to the applicant pending final disposal of the application. It is quite common that applications made under S. 125 of the Code also take several months for being disposed of finally. In order to enjoy the fruits of the proceedings under S. 125, the applicant should be alive till the date of the final order and that the applicant can do in a large number of cases only if an order for payment of interim maintenance is passed by the Court. Every Court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim 'ubi aliquid conceditur,

conceditur et id sine quo res ipsa esse non potest (Where anything is conceded, there is conceded also anything without which the thing itself cannot exist.) Vide Earl Jowitt's Dictionary of English Law 1959 Edn. P. 1797). Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done then that something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case however would advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed. There is no room for the apprehension that the recognition of such implied power would lead to the passing of interim orders in a large number of cases where the liability to pay maintenance may not exist. It is quite possible that such contingency may arise in a few cases but the prejudice caused thereby to the person against whom it is made is minimal as it can be set right quickly after hearing both the parties. The Magistrate may, however, insist upon an affidavit being filed by or on behalf of the applicant concerned stating the grounds in support of the claim for interim maintenance to satisfy himself that there is a prima facie case for making such an order. Such an order may also be made in an appropriate case ex parte pending service of notice of the application subject to any modification or even an order of cancellation that may be passed after the respondent is heard. If a civil Court can pass such interim orders on affidavits, there is no reason why a Magistrate should not rely on them for the purpose of issuing directions regarding payment of interim maintenance. The affidavit may be treated as supplying prima facie proof of the case of the applicant. If the allegations in the application or the affidavit are not true, it is always open to the person against whom such an order is made to show that the order is unsustainable. Having regard to the nature of the jurisdiction exercised by a Magistrate under S. 125 of the Code, we feel that the said provision should be

interpreted as conferring power by necessary implication on the Magistrate to pass an order directing a person against whom an application is made under it to pay a reasonable sum by way of interim maintenance subject to the other conditions referred to the pending final disposal of the application. In taking this view we have also taken note of the provisions of S. 7(2)(a) of the Family Courts Act, 1984 (Act No. 66 of 1984) passed recently by Parliament proposing to transfer the jurisdiction exercisable by Magistrates under S. 125 of the Code to the Family Courts constituted under the said Act.

14. In SavitabenSomabhaiBhatiya v. State of Gujarat, (2005) 3 SCC 636, Hon'ble Supreme Court holds,

[18] 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 Sec. 125 of the Code, there is no scope for enlarging its scope by introducing any artificial definition to include woman not lawfully married in the expression 'wife'.

[19] 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.

15. In Mohd Ali alias Barket Ram v. Mt Sakina Begum alias Shakuntla, 26-5-1943, Lahore High Court observed, “[2]. There is ample authority for the proposition that Section 488 provides only a speedy remedy against starvation for a deserted wife or child, that it is only a summary procedure which does not cover entirely the same ground as the civil liability of a husband or father under his personal law to maintain his

wife or child, and that when substantial issues of civil law are raised between the parties their remedy lies only in the civil Courts: In re Kandasami Chetty A.I.R. 1926 Mad. 346, M. Bulteel v. Emperor (37) 1937 M.W.N. 1127 and Chantan v. C. Mathu A.I.R. 1917 Mad. 276 inter alia.”

16. Granting interim maintenance is similar to giving first aid. Chapter IX of Code of Criminal Procedure, 1973, provides a quick remedy by a summary procedure to protect the applicant against starvation and tide over immediate difficulties by a deserted wife or children to secure some reasonable sum by way of maintenance. S. 125 (1) (a) of CrPC provides a grant of maintenance to the wife, unable to maintain herself. Proviso to S. 125 CrPC empowers the Magistrate to order monthly allowance for the interim maintenance and also the expenses of such proceeding during its pendency. The foundation of the measures of social Justice enacted by the Legislature lay beneath the sweep of Article 15 (3) of the Constitution of India. It fulfills the concept of a welfare State in a vibrant democracy by safeguarding wives and children and preventing them from the modes of vagrancy and its consequences. Given above, it would be appropriate for the Courts to direct the person against whom an application is made under S. 125 of the Code to pay some reasonable sum by way of maintenance to the applicant pending final disposal of the application.

17. The contents of the wife's application, which is supported by her affidavit, prima facie make out just grounds for the wife to live separately and that she could not sustain financially, making out a case for interim maintenance. Although the marriage has been challenged as never

solemnized yet it is subject to proof. In the present petition, the Court is concerned with interim maintenance and nothing more, nothing beyond.

18. There is neither any illegality nor the maintenance beyond the petitioner's means; as such, there are no merits in the present petition. Furthermore, if the Court concludes that Krishani Devi played fraud upon Subhash Chand, it would undoubtedly have consequences. Given above, the impugned orders are well reasoned and call for no interference.

19. In the facts and circumstances peculiar to this case, the petitioner fails to make out a case at this stage. However, this order shall not prohibit any of the parties to seek legal remedies under section 127 CrPC in accordance with law.

20. I express gratitude to Ms. Seema Azad Advocate, Ld. Legal Aid Counsel, for excellent assistance.

Petition dismissed. Pending applications, if any, are also closed.

**Anoop Chitkara,
Judge**

September 20, 2021
(*R.Atal*)