

2021 SCeJ 1091 (Guj.)

[2021 PLR-SCEJ 1091Download](#)

HIGH COURT OF GUJARAT AT AHMEDABAD

Before: Justice Ilesh J. Vora

DUDELA RADHAKRISHNA MADHUKARBHAI RAO

versus

MANISHA RADHAKRISHNA DUDELA

Criminal Revision Application No. 1299 of 2019

19.08.2021

CrPC , S. 125 – Subsisting previous marriage -When marriage took place between the petitioner and respondent No.1, previous marriage of the petitioner-husband with T] was subsisting – Due to suppression of the fact of previous marriage, the parties herein have married and lived together for some days – Where a man marries second time by keeping that lady in dark about the first surviving marriage – Respondent No.1 was in dark about the previous marriage and was not informed about the proceedings of divorce pending before the Court and only on basis of matrimonial profile of the petitioner, she entered into matrimonial relationship with the petitioner – Respondent wife is entitled to receive the maintenance under Section 125 of the Code. [#2021 SCeJ 1091 \(Guj.\)](#) [Para 32, 33]

CrPC , S. 125 – Merely because the wife was earning some income, it could not be a ground to reject the claim for maintenance – Even the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. [#2021 SCeJ 1091 \(Guj.\)](#) [Para 36]

Mr Db Reddy, Ld Counsel With Mr Nv Gandhi(1693) for the Applicant Mr Subramaniam Iyer(2104) for the Respondent No. 1.

JUDGMENT

1. The present Revision application under Section 397 read with Section 401 of the Code of Criminal Procedure (hereinafter referred to as 'the Code' for short), directed against the judgment and order dated 30.08.2019 passed by the learned Family Court, Ahmedabad in Criminal Misc. Application No. 2935 of 2015, whereby, the learned Court has awarded monthly amount of Rs.40,000/- towards maintenance to the respondent wife under Section 125 of the Code.

2. The facts and circumstances giving rise to file present revision application are as under:

2.1 The respondent wife claims that she was married to the petitioner on 5.6.2014, at the Vajjnath Temple, Vejalpur, Ahmedabad according to customary rights and rituals of their caste. Before the marriage, they came into contact through matrimonial website namely Jivansathi.com. Though initially, petitioner husband treated her nicely, thereafter, he started ill-treating her and she was subjected the mental and physical torture and the husband threw her out of matrimonial home at Kapada, State of Andhra Pradesh and she came return back to her parental home at Ahmedabad. According to her case, she having no means for livelihood and was unable to maintain herself, whereas, the petitioner husband is serving as Police Officer in the Sub-Intelligent Bureau, Ministry of Home Affairs, having salary of Rs.85,000/- p.m and also having immovable properties, living a luxury life and having also no any responsibility to maintain the other person/s except the applicant. Under these circumstances, it is the case of the respondent wife that the petitioner husband neglected to maintain her, as a result of which, she compelled to file a maintenance petition and accordingly, application under Section 125 of the Code was filed claiming maintenance of Rs.50,000/- p.m. 2.2 The application was opposed by the petitioner husband taking the following stand:

- (i) That the petition is not maintainable because it does not fall under the purview of Section 125 of the Code. A marriage between the parties was not solemnized as per Hindu rights and rituals and he has denied his relationship with respondent No.1 alleging that, he never entered with any matrimonial alliance with her as claimed by the respondent No.1.
- (ii) That the parties have never resided as husband and wife under the same roof and there has never been any cohabitation between the parties.
- (iii) That on 05.06.2014, his marriage with one Toral Jhaveri, resident of Jamnagar with whom he married earlier, was subsisting and the competent Court has not passed final decree of divorce. Thus, the alleged marriage as claimed by the wife is null and void.
- (iv) That the documents including wedding invitation, photographs and Jivansathi profile, submitted by the wife are completely false, fake and concocted only for the purpose of using it as a supporting proof to buttress the false claim of the marriage.
- (v) That the petitioner was married first in the year 2002 with one M. Smitha and said marriage was annulled by consent divorce decree dated 21.02.2009. Thereafter, he was married to one Toral Jheveri, resident of Jamnagar, Gujarat State in the month of May, 2013 and said marriage was also stand no longer and parties took divorce by consent decree dated 31.07.2014.
- (vi) That in January, 2014, the petitioner husband met the respondent wife near a shopping mall at Ahmedabad and started conversation on mobile phone. Thereafter, they met of and on when he was in Ahmedabad and at the relevant point of time, the respondent wife expressed strong desire to marry with him as according to her, she was in love with him.

(vii) On 22.07.2014, when he was in Ahmedabad, they met at the residence of the respondent wife, where, he was held captive during the period of 22.07.2014 to 24.07.2014 and the respondent wife and her family members persuaded him for marriage but the petitioner had refused that he was not in a mood to accept the proposal.

(viii) That on 24.07.2014, the respondent wife and her family members took him to a restaurant and then escorted him to a Mahadev temple nearby residence of the respondent in Vejalpur, Ahmedabad and attempted to forcefully conduct a marriage ceremony. On the same day, the respondent wife having some health problem, as a result, the customary rituals of Saptapadi were not performed and immediately, petitioner left the place and reached his work place at Kadapa, State of Andhra Pradesh.

(ix) That, as a part of criminal conspiracy, to defame him, the respondent wife making false claim to the effect that she is the lawful wedded wife to him and he is refusing to keep her in the house as he having an extramarital affairs with his ex-wife Toral Jhaveri. It is further alleged that, he was intimidated and assaulted by the brothers of the respondent wife at Kadapa and also trespassed into residential quarter and committed an offence of theft by taking away the ornaments and other things, for which, the petitioner had filed criminal complaint with the jurisdictional police station.

(x) That the respondent wife is working woman and she has been working since last many years having sufficient means and is able to maintain herself.

(xi) That the petitioner husband owed liability to maintain old aged parents residing at Hyderabad and therefore, the allegations made by the respondent wife that there is no liability to maintain other persons, is not true.

(xii) It is denied that the petitioner is having monthly salary of Rs.85,000/- as on the day of filing the maintenance application, his salary was Rs.42,000/- p.m. In view of the aforesaid facts, the petitioner husband stated that the entire petition filed by the respondent wife is based on concocted lies and without any basis and therefore, may kindly be dismissed with cost.

3. Before the Family Court, Ahmedabad, the respondent wife adduced the evidence. She herself was examined at Exhs. 16 and 39. In support of her evidence, the witnesses namely Nilesh Kanubhai Maru at Exh.47, Pavan Bharatbhai Soni – Exh. 48, Priest Suryanarayan Murthy – Exh. 49, Father V.P. Kar and Mother Laxmiben at Exh. 51 and 52, were examined. The testimony of the petitioner husband was recorded at Exh. 63 and in support thereof, he had examined Aalam Prabhakar – Exh. 70, Ajay Shankar at Exh. 74, Shri Harikumar Narsinh Rao – Exh. 75, Chanur Shaikh at Exh. 76, Kandula Srinivas Sulu at Exh. 77.

4. Parties have produced voluminous documents before the Family Court. The respondent wife has mainly relied on the photographs and video recording of the marriage, invitation card, profile of petitioner husband duly uploaded on the Jivansathi matrimonial site.

5. Upon considering the evidence and hearing the parties, the Family Court held that the marriage between the petitioner and respondent No.1 has taken place on 05.06.2014 as

claimed by the wife. The learned Family Court recorded the findings of the fact that, the petitioner, in his profile, uploaded with the matrimonial site, has stated his status as divorcee and accordingly, the respondent wife relying the status of the husband agreed for marriage. The learned Family Court observed that, the respondent wife was unaware with regard to previous marriage with Toral Jhaveri at Jamnagar and same was suppressed by the petitioner husband. Thus, the learned Family Court relying on the decision of **Badshah Vs. Urmila Badshah Godse, (2014) 1 SCC 188**, held that if the wife is not aware of the previous marriage of the husband and she married to such husband, she is entitled to the maintenance. The learned Family Court has observed that strict proof of evidence is not required to prove the alleged marriage. The learned Family Court has taken into consideration the salary particulars of the petitioner husband and considering the fact that the respondent wife is unable to maintain herself, it is held that the petitioner husband having sufficient means, neglected respondent wife in providing maintenance and the petitioner husband ordered to pay monthly maintenance of Rs.40,000/- from the date of application.

6. Aggrieved by the impugned order of maintenance vide order dated 30.08.2019, the petitioner husband is before this Court by way of present Revision Application.

7. Heard learned counsel Mr. D.B. Reddy assisted by Mr. N.V. Gandhi, learned counsel for the petitioner, Mr. S.H. Iyer, the learned counsel for the respondent No. 1 wife and Mrs. Krina Calla, learned Ms. Krina Calla, Id. APP for the respondent No. 2 State.

8. The respondent no.1 wife has filed detailed affidavit in reply and petitioner husband has also filed rejoinder affidavit denying the averments made in the affidavit in reply.

9. There is threefold arguments advanced by Mr. Reddy, learned counsel for the petitioner i.e. (i) the alleged marriage has not taken place; (ii) the alleged marriage is void because earlier marriage with Toral Jhaveri was subsisting; and (iii) the cohabitation has not been proved. In these circumstances, it is his submission that the findings of fact arrived at by the learned Family Court are perverse and without considering the material evidence on record. The learned Family Court failed to appreciate the oral testimony of the petitioner and other supporting evidence to prove that, as such no marriage as claimed by the respondent No.1 having been taken place and the parties never ever resided together as husband and wife and therefore, the wife is failed to prove that there was a cohabitation. The learned counsel drew the attention of this Court to the date of consent decree passed by the learned Civil Court, Jamnagar, to submit that, on the alleged day i.e. 05.06.2014, the previous marriage of the petitioner with one Toral Jhaveri at Jamnagar was not dissolved. He would further submit that, the marriage between the parties cannot dissolve by executing of agreement, but it can be dissolved only by procedure known to law. He would further submit that, in the present case, the deed of dissolution of marriage was registered on 12.12.2013, which cannot be termed to be a valid divorce between the parties in the eye of law. In this background facts, it is the submission of learned counsel that, on the alleged date of marriage date i.e. 05.06.2014, the petitioner husband had living wife and his previous marriage with Toral Jhaveri was still subsisting, therefore, under the provisions of the Hindu Marriage Act, marriage with a person having a living spouse is null and void.

Placing reliance on the case of ***Yamuna Bai Anantrao Adhav Vs. Anantrao Shivram Adhav [AIR 1988 SCC 644]*** and ***Savitaben Somabhai Bhatia Vs. State of Gujarat [(2005) 3 SCC 636]***, to submit that, law is fairly well settled regarding the definition of expression “wife” and there is no scope for giving an extended meaning to include a woman, who is not legally married. The expression “wife” must therefore be given the meaning in which it is understood in law applicable to the parties and therefore, marriage with a person having a living spouse is a complete nullity in the eye of law and the wife is therefore not entitled to the benefit of Section 125 of the Code.

10. Mr. Reddy, learned counsel for the petitioner further submits that, on 18.10.2015, respondent No.1-wife had filed a bogus complaint at Saroornagar, Cybrabad, Hyderabad Police Station, wherein, she has admitted that, she has no proof of the alleged marriage and since long, having no talking terms with the petitioner husband. In view of the complaint, the learned counsel would further submit that, it is evident on record that, the marriage as alleged having not taken place and the very facts having not properly appreciated by the learned Family Court while deciding the issue of marriage.

11. Mr. Reddy, learned counsel for the petitioner further submits that, the parties never ever resided anywhere as husband and wife under the same roof for which the learned Family Court did not have considered the testimony of the petitioner and supporting evidence of witnesses, who have categorically stated that, the respondent wife never resided together with the petitioner husband and therefore, the factum of marriage as well as cohabitation recorded by the learned trial Court are contrary to the evidence on record and against the principles of settled law.

12. Mr. D.B. Reddy, learned counsel for the petitioner would submit that the learned Family Court has seriously erred by awarding maintenance in favour of the wife and same is passed on the basis of inferences and surmises and contrary to the facts and evidence on record and brushing aside the entire evidence of the husband to show that marriage has not taken place, there was no cohabitation and on the date of alleged marriage i.e. 5.6.2014, his marriage was subsisting with one Toral Jhaveri.

13. Learned counsel for the petitioner, alternatively submitted that, the learned Family Court failed to appreciate the facts that, the respondent No.1 was earlier earning substantial amount and the salary of the petitioner on the date of filing the application was Rs.42,000/- something. Thus, the amount of maintenance awarded by the learned Family Court at Rs.40,000/- p.m. is not commensurate with the income of the petitioner as he having responsibility of old aged parents.

14. In view of the aforesaid contentions, the learned counsel for the petitioner Mr. Reddy would submit that, the finding of fact arrived at by the Family Court with respect to the issue raised hereinabove are perverse and without considering the material evidence on record, which warrants interference of this Court and the impugned order may be quashed and set aside.

15. On the other hand, learned counsel for the respondent wife Mr. S.H.Iyer would submit

that, the Family Court has recorded his findings based upon oral and documentary evidence and has come to a definite conclusion that, the marriage between the parties has taken place on 05.06.2014 at Ahmedabad and therefore, when family Court held that, there was a valid marriage, this High Court being a revisional court has no power reassessing the evidence and substitutes its view on findings of fact.

16. Mr. Iyer, learned counsel for the respondent wife would further submit that, the marriage between the petitioner and his earlier wife Toral Jhaveri was dissolved by registered deed of dissolution of marriage on 12.12.2014 and both the parties have ended their matrimonial life and their relation as husband and wife comes to an end from the date of registration. Under the circumstances, it is his submission that, on the date of marriage i.e. 05.06.2014, the earlier marriage with Toral Jhaveri was already dissolved and merely because decree of consent divorce passed on 31.07.2014, it cannot be said that, the marriage of the petitioner with Toral Jhaveri still was subsisting.

17. Mr. Iyer, learned counsel for the respondent wife raised the legal contention that even if it is assumed that, dissolution of earlier marriage with Toral Jhaveri comes into effect after 31.07..2014, the marriage between the petitioner and respondent No.1 which took place on 05.06.2014 is not rendered ab initio void, but it is voidable in view of the provisions contained in Section 11 of the [Hindu Marriage Act](#). It has been urged that, Section 5 and 11 of the Hindu Marriage Act required to be read together harmoniously and on combined reading of both the sections, it becomes clear that, the marriage between two Hindus in contravention of Section 5(i) does not become void automatically. It becomes void only when it has declared void by a decree of nullity by the court of competent jurisdiction on a petition presented by the either party. The pre-conditions for a marriage being void under Section 11 are - (1) either party must make an application to the court of competent jurisdiction. (2) such application must be adjudicated by the court in accordance with the law and (3) the court must pass a decree declaring the marriage to be void. In absence of any such application made by either party and in absence of any adjudication on such application and in absence of decree of declaration, the marriage does not become void automatically. Reliance has been placed on the case **A. Subash Babu Vs. State, reported in (2011) 7 SCC 616**, para 10 of the said judgment reads thus:

“Though Section 11 the Hindu Marriage Act provides that any marriage solemnized, if it contravenes the conditions specified in Clause (i) of Section 5 of the said Act, shall be null and void, it also provides that such marriage may on a petition presented by either party thereto, be so declared. Though the law specifically does not cast obligation on either party to seek declaration of nullity of marriage and it may be open to the parties even without recourse to the Court to treat the marriage as a nullity, such a course is neither prudent nor intended and a declaration in terms of Section 11 of the Hindu Marriage Act will have to be asked for, for the purpose Reportable of precaution and/ or record. Therefore, until the declaration contemplated by Section 11 of the Hindu Marriage Act is made by a competent Court, the woman with whom second marriage is solemnized continues to be the wife within the meaning of Section 494 IPC and would be entitled to maintain a complaint against her husband.”

In view of the aforesaid, it is the submission of learned counsel that, in the present case, neither petitioner nor respondent had moved any petition before the competent court for obtaining decree of declaration as contemplated by Section 11 of the Hindu Marriage Act, 1955 and therefore, the marriage between the parties cannot be held invalid and the respondent wife is legally entitled for the maintenance.

18. Learned counsel for the respondent wife has further submitted that, strict proof about valid marriage is not sine qua non for getting a maintenance under Section 125 of the Code. The oral evidence of the respondent wife and supporting testimonies of the witnesses as well the documentary evidence like photographs, video recording of marriage, invitation card would demonstrate that, the marriage has taken place on 05.06.2014 and thereafter, the parties lived together and cohabitation has taken place. Under the circumstances, the presumption arises in favour of the wife that marriage has taken place for which the petitioner failed to rebut the said presumption. Thus, the learned Family Court after analyzing the evidence adduced by the parties has rightly decided the issues and held the contention negated raised by the petitioner husband for which no interference is required.

19. The learned counsel for the respondent would further submit that, the facts of earlier marriage with Toral Jhaveri having not brought into notice of the respondent wife. It is pertinent to note that, on the matrimonial site, the petitioner stated his status as divorcee. Even the petitioner had not apprised the respondent No.1 with regard to pendency of marriage petition filed under Section 13(b) of the Hindu Marriage Act and also did not inform to the respondent that, he was earlier married to Toral Jhaveri. In this context, the learned counsel Mr. Iyer has urged that, if true facts of earlier marriage brought to the notice of the respondent wife, then the respondent would have either refused to marry him or on advise she could wait till date the decree of consent divorce petition. In that view of the matter, it has been urged that, the petitioner made false statement and misrepresented by mentioning his status as divorcee in his profile and now he cannot turn around to plea that his marriage with the respondent No.1 was void in terms of Section 5(i) of the Hindu Marriage Act and therefore, as per the settled law, a person cannot take undue advantage of his own wrong. Thus, the family Court has rightly held that maintenance application is maintainable and the respondent being wife of the petitioner legally entitled for maintenance as the petitioner has suppressed the fact of his previous marriage with Toral Jhaveri and there was a divorce by way of registered dissolution of marriage.

20. In view of the aforesaid issue raised by the learned counsel for the respondent Mr. Iyer, he prays to reject the revision application as there is no perversity in the findings of the fact recorded by the learned Family Court, which does not require any interference by this Court.

21. This Court has also taken into account the written submissions submitted by the parties.

22. Having heard the learned counsel for the respective parties and on perusal of the case record submitted in the form of paper-book and the impugned judgment and order, this Court finds that, it is not in dispute that, this is a third marriage of the petitioner. Before the

alleged marriage, the petitioner was married twice. In the year 2002, he married with one M. Smitha and said marriage annulled by consent divorce decree vide order dated 21.02.2009. Thereafter, in the month of May, 2013, the petitioner married with one Toral Jhaveri, resident of Jamnagar, but due to some differences, they have decided to dissolve the marriage by mutual consent and filed a petition titled as HMP No.2/2014 in the Court of Civil Judge, Jamnagar, State of Gujarat. Meanwhile, on 12.12.2013, the petitioner and Toral Jhaveri executed a registered deed of dissolution of marriage. The learned Civil Judge, Jamnagar, annulled the marriage between the petitioner and Toral Jhaveri by passing a decree of divorce vide order dated 31.07.2014. It is also admitted fact that, the petitioner is serving as a Police Officer in the Sub-Intelligent Bureau, Ministry of Home Affairs at Kapada, State of Andhra Pradesh. The respondent No.1 wife having roots in Ahmedabad and permanent residents of Vejalpur, Ahmedabad. Considering the written statements filed before the Family Court at Exh:14, it is evident on record that, during his stay at the resident of the respondent No.1, the petitioner had participated in the marriage ceremony and according to his allegation, rituals of Saptapadi having not taken place due to ill-health of the wife and thereafter, he came returned back at his work place.

23. After perusal of the documentary evidence like photographs and profile of the petitioner duly uploaded with the Jeevansathi matrimonial site, it can be seen that the presence of the petitioner at Vajinath temple was found and in the presence of priest, the marriage ceremony being taken place and it further reveals that, the petitioner is putting 'Mangalsutra" on the neck of respondent No.1 wife and there was also lunch organized by the father of respondent No.1 at Hotel Gordhan Thal, Ahmedabad. The marriage ceremony had been video-graphed by the witness examined by respondent No.1 wife and everything like marriage ceremony etc. being video-graphed by the witness examined by the respondent wife.

24. In this background, it is evident that, marriage between the petitioner and respondent No.1 has taken place as claimed by the respondent No.1. It is a well settled principle of law that, the law presumes in favour of marriage and against concubinage. Reliance can be placed on the case of ***Dwarika Prasad Satpathi Vs. Bidyut Pravah Dixit [(1999) 7 SCC 676]***, the Apex Court laid down that, the standard of proof of marriage in Section 125 proceedings is not as strict as is required in a trial for an offence under Section 494 IPC. The Apex Court explained the reasons for the aforesaid finding by holding that, an order passed in an application under Section 125 does not really determine the rights and obligations of the parties as the section is enacted with a view to provide a summary remedy to neglected wives to obtain maintenance. It is further held that, the maintenance cannot be denied where there was some evidence on which conclusions of living together could be reached. When the parties have lived together as husband and wife, there is presumption that, they are legally married couple for claim of maintenance of wife under Section 125 of the Cr.P.C. However, it is also well settled that, presumption of valid marriage although is a rebuttable one, it is for the other party to establish the same. This view has been taken in the case of ***Tulsa v. Durghatiya, [2008 Scej 001, (2008) 4 SCC 520]***, wherein, the Apex Court after referring Section 114 of the Evidence Act held that, the provisions refers to common course of natural events, human conduct and private business. The Court may presume the existence of any fact which it thinks likely to have occurred.

The Apex Court reading the provisions of Sections 50 and 114 of the Evidence Act held that, the act of marriage can be presumed for the common course of natural events and conduct of the parties as they are borne out by the facts of a particular case and therefore, it is the husband to discharge his burden to prove that, no marriage has taken place.

25. In view of the law laid down by the Apex Court and applying the same to the facts of the present case, the petitioner failed to disprove the factum of alleged marriage claimed by the respondent No.1 wife. Merely taking the defence of false photography and fabrication of the evidence, is not sufficient to infer that the marriage has not taken place. It is pertinent to note that, the petitioner is Police Officer in the Sub- Intelligent Bureau, Ministry of Home Affairs at Kapada, State of Andhra Pradesh. It is his defence that, under duress he was escorted to the temple and was forced to participate in the alleged marriage ceremony. In view of the status of the petitioner and his job as an intelligent officer, his defence seems to be an afterthought. The petitioner has tried to show that, after alleged incident of marriage, he went to Naranpura Police Station, but due to absentness of the responsible police officer, he left the police station. This theory put forth by the petitioner is not convincing and believable. If he had participated in the alleged marriage under duress, then he could have filed complaint at Kapada where he having regular place of resident. Therefore, considering the conduct of the petitioner at the time of alleged marriage dated 05.06.2014 and subsequent events like the presence of the respondent No.1 and their family members at Kapada, would reasonably infer that the petitioner is suppressing true facts of the events and to get technical benefit of law, he refused to the facts that, he never entered into matrimonial alliance with the respondent No.1. Thus, after examination of the oral testimony of the petitioner at Exh:63 and supporting oral evidence, this Court does not find any contrary facts to the effect that, the marriage as claimed by the respondent wife has not taken place. On the contrary, it appears that, after the marriage, the parties had proceeded towards Hyderabad and thereafter, they arrived at Kapada, where the petitioner is serving. The said facts being found from the cross-examination of respondent No.1 at Exhs:16 and 39, where the question with respect to air ticket being asked by the counsel appearing for the petitioner. Therefore, it is evident that, on 05.06.2014, the marriage as claimed by the respondent No.1 has taken place and parties have resided together as husband wife at the respective places as referred to above which would further prove the fact of cohabitation between the parties. This Court is not in agreement with the argument advanced by learned counsel for the petitioner that, in the complaint filed before the Women Police Station, Saroornagar, Cyberabad, Ranggarreddy District, Hyderabad, she had stated that, she having no proof of marriage and since ling, having no any talking terms with the petitioner, which itself proves that the marriage has not taken place. This Court is of considered view that, the very facts of the complaint is disputed by the wife and there is allegation against him that, the false complaint by the petitioner is filed. Thus, the alleged complaint cannot be sole factor to hold that, the marriage has not taken place.

26. In view of the aforesaid background, this Court is of the considered view that, the learned Family Court has rightly come to a conclusion that the marriage has taken place on 05.06.2014 at Ahmedabad and parties have cohabited after the marriage.

27. Mr. D.B. Reddy, learned counsel for the petitioner raised the legal contention that, the

alleged marriage is void in eye of law as the previous marriage of the petitioner with Toral Jhaveri at Jamnagar was subsisting and therefore, the alleged marriage of a respondent No.1 is completely nullity in the eye of law and she is therefore not entitled to the benefit of Section 125 of the Code.

28. On the other hand, Mr. Iyer, learned counsel for the respondent wife, relying upon the testimony of the wife and referring to the marriage profile of the petitioner would submit that, the petitioner did not have informed to the respondent No.1 with respect to facts of his previous marriage and pendency of marriage petition at Jamnagar and thereby, the petitioner made false statement that, he is divorcee and has practiced fraud and suppressed the material facts.

29. Before advert to the issue as raised by the respective parties, let us examine the evidence adduced by the parties with respect to issue of divorce.

30. Record indicates that, both the parties have uploaded their marriage profile with Jeevansathi matrimonial site. The petitioner's profile would show that, he has mentioned his status as divorcee. It is pertinent to note that, before filing the petition for consent divorce decree at Jamnagar, the petitioner and Toral Jhaveri had executed registered deed of dissolution of marriage on 12.12.2013 at the office of Sub-Registrar, Jamnagar and after taking into consideration the terms and conditions of the deed, it appears that, both the parties have ended their matrimonial life and have taken divorce through deed and their relationship comes to an end with immediate effect and the petitioner ceases to be the husband of Toral Jhaveri. It is specifically stated by the respondent No.1 on oath that she was kept in dark with respect to previous marriage of the petitioner and was never informed by the petitioner that, the petition for consent divorce still pending with the Civil Court, Jamnagar.

31. In view of the oral testimonies of the parties and conduct of the petitioner, this Court is of considered view that, the respondent No.1 was misled by the profile of the petitioner where he has mentioned his status as divorcee. The record indicates that, the theory projected by the petitioner that, he met the respondent No.1 nearby mall at Ahmedabad cannot be accepted and believable. The fact remains that, parties came into contact through matrimonial site and finally decided to live together and get married. Thus, it transpires that, the respondent No.1 was not knowing the previous marriage of the petitioner with Toral Jhaveri and the court proceedings. It is required to be noted that, if agreement to dissolve the marriage is not sustainable in eye of law, then why the petitioner has executed the registered deed of dissolution. Thus, the gesture on the part of the petitioner to get registered deed of dissolution would suggest that he was in search of bride through matrimonial site, wherein, he has mentioned his status as divorcee and now, in the proceedings initiated by the respondent No.1 is taking technical defence that the respondent No.1 is not legally wedded wife.

32. The aforesaid facts would indicate that, on 05.06.2014, when marriage took place between the petitioner and respondent No.1, previous marriage of the petitioner with Toral Jhaveri was subsisting, as the Civil Court Jamnagar annulled the previous marriage by

passing the decree vide order dated 31.07.2014. On the other hand, due to suppression of the fact of previous marriage, the parties herein have married and lived together for some days. Under the circumstances, the issue falls for consideration of this Court whether the petition under Section 125 of the Code for the maintenance filed by respondent No.1 is maintainable or not. Reference can be made to the case of Badshah (supra), wherein, identical issue came before the Apex Court. The Apex Court after referring the judgments of Yamuna Bai Anantrao (supra) and Savitaben Somabhai (supra), held that, the judgments of this Court in Yamuna Bai and Savitaben Somabhai cases would apply only in those circumstances where a woman married a man with full knowledge of the first subsisting marriage and embargo under the Hindu Marriage Act is applicable, whereas, the judgments would not apply to those cases where a man marries second time by keeping that lady in dark about the first surviving marriage. Paras 16 to 26 of the judgment read thus:

“16. Secondly, as already discussed above, when the marriage between respondent No.1 and petitioner was solemnized, the petitioner had kept the respondent No.1 in dark about her first marriage. A false representation was given to respondent No.1 that he was single and was competent to enter into marital tie with respondent No.1. In such circumstances, can the petitioner be allowed to take advantage of his own wrong and turn around to say that respondents are not entitled to maintenance by filing the petition under Section 125, Cr.P.C. as respondent No.1 is not “legally wedded wife” of the petitioner? Our answer is in the negative. We are of the view that at least for the purpose of Section 125 Cr.P.C., respondent No.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 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 second 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 harmonized.

17. 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. 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.

18. Of late, in this very direction, it is emphasized that the Courts have to adopt different approaches in “social justice adjudication”, which is also known as “social context adjudication” as mere “adversarial approach” may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable

groups in the society. Prof. Madhava Menon describes it eloquently:

“It is, therefore, respectfully submitted that “social context judging” is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social- economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication.”

19. Provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from “adversarial” litigation to social context adjudication is the need of the hour.

20. 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.

21. Cardozo acknowledges in his classic[6] “...no system of jus scriptum has been able to escape the need of it”, and he elaborates: “It is true that Codes and Statutes do not render the Judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however, obscure and latent, had none the less a real and ascertainable pre- existence in the legislator’s mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a judge’s troubles in ascribing meaning to a statute.” Says Gray in his lecture[7] “The fact is that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to determine that the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present.”

22. 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 recherché 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.

23. 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[8] to Shabana Bano[9] guaranteeing maintenance rights to Muslim women is a classical example.

24. In Rameshchandra Daga v. Rameshwari Daga, the right of another woman in a similar situation was upheld. Here the Court had accepted that Hindu marriages have continued to be bigamous despite the enactment of the Hindu Marriage Act in 1955. The Court had commented that though such marriages are illegal as per the provisions of the Act, they are not 'immoral' and hence a financially dependent woman cannot be denied maintenance on this ground.

25. 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's Case[11] which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction *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.

26. 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."

33. Reverting back to the facts of the present case, the respondent No.1 was in dark about the previous marriage and was not informed about the proceedings of divorce pending

before the Court and only on basis of matrimonial profile of the petitioner, she entered into matrimonial relationship with the petitioner. Thus, considering the dictum of law as laid down by the Apex Court in the case of Badshah (supra), the facts of the present case is covered by the Apex Court's judgment. Thus, this Court is of considered view that, the respondent wife is entitled to receive the maintenance under Section 125 of the Code. The Id. Family Court has not committed any error of facts or law while come to a conclusion that the respondent No.1 is entitled to get maintenance amount.

34. Mr. D.B.Reddy vehemently raised the contention that the learned Family Court has failed to appreciate the fact that gross salary of the petitioner was Rs.55,340/- p.m and it has been proved on record vide Exhs:58 and 59, however, the learned Family Court without considering the responsibility of old aged parents awarded maintenance amount of Rs.40,000/- p.m in favour of respondent No.1. He would further submit that, the respondent No.1 is working woman and having sufficient means to maintain herself and therefore, the impugned order is required to be set aside.

35. Having considered the salary certificate issued by the Drawing and Disbursing Officer Subsidiary Intelligence Bureau, Vijaywada, it appears that, for the month of February, 2015, gross salary of the petitioner was Rs.55,340/- p.m. and in the month of September, 2018, it rose to Rs.95,700/- with pay matrix level-8, basic pay Rs.66,000/-. Admittedly, the petition for the maintenance was filed in the year 2015. Considering the salary particulars, it appears that, the conclusion arrived at by the learned Family Court that the salary of the petitioner was Rs.1,00,000/- p.m is without basis. The learned Family Court ought to have decided the amount of maintenance considering the status of the parties and other surrounding aspects like perks and facilities and living standard of the husband. Thus, the amount of maintenance Rs.40,000/- p.m does warrant interference and considering the status of the petitioner and other surrounding aspects, reasonable amount of the maintenance is required to be awarded to the extent of Rs.30,000/- and accordingly, the respondent No.1 wife is entitled for monthly maintenance of Rs.30,000/- p.m and to that extent, the impugned order is modified.

36. This court is not agreement with the contention advanced by learned counsel for the petitioner that, earlier the wife was earning income. It is the case of the wife that, after the marriage, she lost the job and having no income as such. It is a settled law that, merely because the wife was earning some income, it could not be a ground to reject the claim for maintenance. Even the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. Thus, the amount of maintenance of Rs.30,000/- as determined by this Court is sufficient to enable the wife to maintain herself in accordance with the living standard of the petitioner.

37. In view of the foregoing reasons, so far the amount of maintenance is concerned, it is reduced to the extent of Rs.30,000/- p.m and to that extent, the impugned order dated 30.08.2019 passed by the learned Family Court, Ahmedabad, in Criminal Misc. Application No. 2935 of 2015 is modified, whereas, the other findings with regard to marriage and entitlement of the maintenance, there appears to be no illegality and perversity in the impugned order passed by the learned Family Court. Accordingly, this revision is partly

allowed in aforesaid terms.

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