

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.1080 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Gopalganj

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1. Suman Devi @ Suman Gupta, Wife of Chote Lal Gupta. Resident of village- Hatwa, Post Lachmipur Babu, P.S.- Samaur Bazar, District-Kushi Nagar (U.P.) At Present resident of Village- Motipur, P.S.- Kateya, District- Gopalganj.
2. Ansh Kumar Son of Chote Lal Gupta Minor, through mother Guardian Resident of village- Hatwa, Post Lachmipur Babu, P.S.- Samaur Bazar, District-Kushi Nagar (U.P.) At Present resident of Village- Motipur, P.S.- Kateya, District- Gopalganj.

... .. Petitioners

Versus

1. The State of Bihar
2. Chote Lal Gupta, Son of Phulena Gupta, Resident of Village- Hatwa, Post - Lachimipur Babu, P.S.- Samaur Bazar, District- Kushi Nagar. (U.P.) At present- New Nevi Nagar, Asha 2/4, Kalaba, Mumbai.

... .. Respondent

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Code Of Criminal Procedure, 1973—Section 125—maintenance—maintenance petition filed by the petitioners was dismissed by learned Court below—learned Family Court has denied maintenance to wife on the ground that she was having adulterous life prior to the marriage, and maintenance to son was also denied on finding that Opposite Party no. 2 is not his biological father—husband has not given any details with reference to time, place and adulterer to prove that his wife is living in adultery—finding of learned Family Court that wife was living in adultery is erroneous in the eye of law—at the time of the Exhibition of two documents (DNA Report and Hospital Discharge Slip), objection was not invited from the petitioners—no evidence to prove that the petitioner No. 2 was conceived by petitioner No. 1 prior to her marriage with Opposite Party no. 2 with someone else—husband has filed suit for annulment of his marriage with his wife; and it was allowed, though appeal is pending—no document on record to show that the marriage between the parties is annulled—impugned order is not sustainable in the eye of law—both the petitioners are entitled to get maintenance from Opposite Party no. 2

(Paras 24, 29, 34, 40, 51, 54)(2019) 11 SCC 491; (2002) 10 SCC 510 —Relied Upon.

(2014) 1 S.C.R. 120—**Distinguished**

Code of Criminal Procedure, 1973—Revisional jurisdiction—High Court has no power to reassess evidence and substitute its own finding in regard to positive finding regarding validity of the marriage or paternity of the child, unless there is patent perversity of finding of the fact or error of jurisdiction or that of law, but in case of negative finding of Court in regard to validity of marriage or paternity of child, High Court is required even in revisional jurisdiction to re-evaluate the evidence and come to a conclusion whether the findings or conclusions reached by the Family Court are legally sustainable or not, because on account of negative finding, the child is bastardized and wife is branded as unchaste woman.

(Para 51)

Code of Criminal Procedure, 1973—Section 125—living in adultery and committing adultery—living in adultery denotes a continuous course of conduct and not isolated acts of immorality—one or two lapses from virtues would be acts of adultery but would be quite insufficient to show that the woman was “living in adultery” —a mere lapse, whether it is one or two, and a return back to a normal life cannot be said to be living in adultery—if lapse is continued and followed up by a further adulterous life, the woman can be said to be “living in adultery.

(Para 39)

2025 SCC Online Guwahati 259 ; 2018 SCC Online Madhya Pradesh 1687 ; 2011 SCC Online Madhya Pradesh 2249 ; 1999 SCC Online Kerala 64 ; 1997 SCC Online Bombay 264 —**Relied Upon.**

Held - The impugned order set aside and respondent directed to pay monthly maintenance to his wife and minor son.

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... .. Respondent

Appearance :

For the Petitioners : Mr. Pankaj Kumar Dubey, Advocate.

For the State : Mr. Chandra Sen Prasad Singh, APP

For the O.P. No.2 : Mr. Ranjeet Kumar Pandey, Advocate

Amicus Curiae : Mr. Ajay Kumar Thakur, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

Date : 18-03-2025

The present revision petition has been preferred by the
petitioners against the impugned order dated 22.06.2019, passed



by learned Principal Judge, Family Court, Gopalganj, in Maintenance Case No. 156 of 2013, C.I.S. Reg. No.751 of 2013, whereby learned Principal Judge has dismissed the application of the petitioners under Section 125 Cr.PC for maintenance.

2. The factual background of the case is that the petitioners herein filed one application bearing Misc. Case 156 of 2013 under Section 125 Cr.PC on 12.08.2013 in the Court of Principal Judge, Family Court, Gopalganj, against the Opposite Party No. 2 herein seeking maintenance, stating therein that the petitioner No. 1 is married to Opposite Party No. 2 on 6.3.2012 as per Hindu rites and customs and petitioner No. 2 is the son born out of the wedlock.

3. As per further statement, petitioner No. 1 joined the matrimonial home of her husband/Opposite Party No. 2 on 8.3.2012. On 21.8.2012, she was taken by her husband/Opposite Party No. 2 to Mumbai where he was working in Indian Navy having monthly Salary of Rs. 35,000/-. After birth of the son/petitioner No. 2, the Opposite Party No. 2/husband started harassing her in different ways. He used to even abuse and beat her. The Opposite Party No. 2 also developed illicit relationship with one lady. He subjected the petitioner No. 1/wife to beating on several occasions and ultimately on 19.01.2013, she along



with her son was ousted from the matrimonial home. Thereafter, she went back to her *Maikey*. Subsequently, one *panchayati* was held at the house of Opposite Party No. 2 and there was a settlement between both parties. As per settlement, the petitioner No. 1 along with her son again started living with her husband, but again on 18.04.2013, she was ousted from the matrimonial home by the Opposite Party No. 2/husband and since then she is living at her parent's house.

4. It is also stated that the petitioners have no means to maintain themselves, whereas the Opposite Party No.2 is a government employee earning 35,000/- rupees per month and also having ten *bighas* of agricultural land earning annual income of Rs. 2,00,000/- from the cultivation. The Opposite Party No. 2 has also market place in Lucknow getting monthly rent or Rs. 25,000/-. The petitioners have claimed for 20,000/- per month for their maintenance from O.P. No. 2.

5. On notice, the Opposite Party No. 2 appeared and filed his written statement wherein he has taken objection that the petitioners are not entitled to get any maintenance, claiming that the petitioner No. 1/wife was already pregnant prior to the marriage with someone else and she concealed her previous pregnancy from him at the time of her marriage with him and



petitioner No. 2 is born out of that pregnancy and hence, he is not his legitimate son. After the birth of petitioner No. 2, DNA test was conducted which confirmed that he is not his son. It is also claimed that his wife/petitioner No. 1 is still living in adultery.

6. He has admitted that he is doing service in Indian Navy in class 'D', but he has denied that his monthly income is of Rs. 35,000/- and claims that his take home salary is only Rs.10,000/- after all deductions and payment of installment of bank loan. He has also claimed that his wife is a beautician and runs a beauty parlour having monthly income of Rs. 25,000/-.

7. He has also stated that he has filed one matrimonial petition under Section 12 of the Hindu Marriage Act for annulment of the marriage.

8. During trial following witnesses have been examined on behalf of the petitioner:-

- (i) P.W.-1 – Pradeep Gupta, who is brother of Petitioner No. 1.
- (ii) P.W.-2 - Pawan Kumar Gupta, who is also brother of Petitioner No. 1.
- (iii) P.W.-3 – Suman Devi, Petitioner No. 1 herself.
- (iv) P.W.-4 – Dilip Kumar Gupta is also brother of Petitioner No. 1.

9. Opposite Party No. 2 examined the following witnesses in his defence:-



- (i) O.P.W.-1 – Rajendra Gupta who is brother of Opposite Party No. 2 herein.
- (ii) O.P.W.-2 – Chhote Lal Gupta, Opposite Party No.2 himself.
- (iii) O.P.W.-3 - Chhote Lal Gupta, Opposite Party No. 2 himself has been again examined.

10. He has also exhibited the following two documents:

- (i) **Ext. A** – DNA Test Report
- (ii) **Ext. A/1** – Hospital Discharge Slip

Finding and order of the Family Court

11. As per the evidence and relevant materials on record, learned Court below, i.e. Family Court came to the finding that the petitioner no. 1 Suman Devi @ Suman Gupta is the legally wedded wife of O.P. No. 2/Chote Lal Gupta. However, she was having adulterous life since prior to the marriage and O.P. No. 2 is not the biological father of petitioner no. 2/Ansh Kumar and hence, both the petitioners were denied maintenance from O.P. No.2.

Evidence of the Petitioners

12. Both the petitioners herein were applicants before the Family Court for maintenance from O.P. No. 2/Chote Lal Gupta.

13. Petitioner No. 1/Suman Devi @ Suman Gupta has been examined herself as **P.W.-3**. In her **examination-in-**



chief, she has supported her case reiterating her statements as made in her petition. In her **cross-examination**, she has deposed that one divorce petition has been filed by her husband, which is pending in the Court of Gopalganj. She has further deposed that her son Ansh Kumar was born on 16.11.2012 in a Navy hospital. She is not aware whether DNA test of her son was conducted and she is ready for DNA test of her child. She has denied the suggestion that she has illicit relationship with another person.

14. P.W.-1, Pradeep Kumar, is brother of the petitioner no. 1/Suman Devi. In his **examination-in-chief**, he has also supported the case of his sister/petitioner. In his **cross-examination**, he has deposed that there was no dispute between his sister/petitioner and his brother-in-law/O.P. No. 2 till the birth of the son of the petitioner. He is also not aware whether any DNA test of son of the petitioner has been conducted. Her sister-petitioner lived in *sasural* only for two months and thereafter, she was ousted from the matrimonial home.

15. P.W.-2, Pawan Kumar Gupta, is also brother of Suman Devi. In his **examination-in-chief**, he has also supported the case of his sister-petitioner. In his **cross-examination**, he has deposed that his sister Suman Gupta is a housewife and she



is not a beautician.

16. P.W.-4, Dilip Kumar Gupta, is also brother of Suman Devi. In his **examination-in-chief**, he has also supported the case of his sister. In his **cross-examination**, he has deposed that his sister is inter pass and she has not taken up any training regarding sewing. He has further deposed that till the birth of the child, there was no dispute between his sister and brother-in-law. He has further deposed that no DNA test has been conducted on petitioner no. 2/Ansh Kumar.

17. However, she has not adduced any documentary evidence.

Evidence of O.P. No. 2/Chote Lal Gupta

18. Chote Lal Gupta was opposite party before the Family Court and maintenance petition was filed by his wife and son against him. He has examined himself as **O.PW.-2**. He has admitted that he is married with petitioner no. 1/Suman Devi and after the marriage, his wife/Suman Devi has joined his matrimonial home. On 16.11.2012, the son/Ansh Kumar was born to his wife. He got DNA test conducted on the child and as per the report, he is not the biological father of petitioner no. 2/Ansh Kumar. He called Pradeep Kumar, brother of his wife, and said about the report and thereafter, Pradeep Kumar claimed



that the report is false and he has got it by giving bribe and fresh DNA test would be conducted through the Court which he admitted. Thereafter, Suman Devi came to his house and started living there and he went to his place of posting. He has filed a divorce petition in Bombay against his wife and thereafter, the divorce petition has been transferred to the Court of Gopalganj. Thereafter, on 22.08.2013, Suman Devi went back to her maik, leaving his matrimonial home. On 09.11.2014, Suman Devi again came to his house and since then, she has been living at his house along with her son. She is also working in a private school getting Rs. 2,000/- per month. The expenditure on her food etc. is being borne by his mother and brother/Pradeep Kumar. In his **cross-examination**, he has deposed that he gets total Rs. 11,000/- salary. Again, he has deposed that he is getting Rs. 13,000 to Rs. 14,000/- per month towards his salary. He has also deposed that one child is born to his wife after 250 days after the marriage and she is living at his house and hence, there is no question of giving any maintenance amount to her. He gets salary through bank account. He has 30 *katthas* landed property and *pakka* house where his wife is living. He has denied the suggestion that he has illicit relationship with miss of his sister-in-law, namely, Pramila Gupta and since then he used to beat his



wife and she has been ousted his wife from his matrimonial home.

19. O.P.W.-1, Rajendra Gupta, is brother of **O.P. No. 2**. In his **examination-in-chief**, he has supported the case of his brother. In his **cross-examination**, he has deposed that Suman Devi is teaching in school, but he has admitted that he has not seen any document in this regard. He has denied the suggestion that Suman Gupta is living at her *maike*.

20. One DNA Test Report and Hospital Discharge slip have also been exhibited by the Court below which are Ext.-A and Ext.-A/1 respectively, on the request of opposite party vide order dated 27.09.2016. These documents have been exhibited not on account of admission of the petitioners. Not even objection was invited from the petitioners. These documents are also not tendered through any witness.

21. I further find that application of opposite party has been rejected by the Family Court for DNA test of Ansh Kumar vide order dated 5.9.2016 on the ground that opposite party had given contradictory statements before the Court and this rejection order is not challenged by O.P. No. 2. Hence, it attained finality.

22. I heard learned counsel for the petitioners, learned



APP for the State, learned counsel for the O.P. No.2 and learned Amicus Curiae.

23. Learned counsel for the petitioners submits that learned Court below has not properly appreciated the evidence on record and erroneously dismissed the maintenance petition filed by the petitioners, who are wife and legitimate child of the O.P. No.2.

24. He further submits that the petitioner No.1/wife was not having any pregnancy prior to her marriage with O.P. No. 2., nor has she been living in adultery and hence she is entitled to maintenance from her husband under Section 125 Cr.PC. Learned Court below has committed error of law by holding that she is living in adultery and she is not entitled to get maintenance.

25. He further submits that even petitioner No. 2/son is born out of the wedlock between the petitioner-wife and opposite party/husband during the subsistence of the marriage and hence, he is legitimate son of the petitioner-wife and opposite party/husband. There is no evidence on record to prove that petitioner No. 2 is not son of O.P. No. 2. DNA report and the hospital discharge slip are not legal evidence.

26. He further submits that the petitioner No. 1/wife



was married with O.P. No. 2 on 06.03.2012 and petitioner No. 2/son was born on 16.11.2012 during the subsistence of the marriage and the marriage is still subsisting. Hence, he is legitimate son of O.P. No. 2 and entitled to get maintenance under Section 125 Cr.PC from his father.

27. *Per contra*, learned APP for the State and learned counsel for the O.P. No.2/husband submit that there is no illegality or infirmity in the impugned order, whereby the maintenance has been denied to both the petitioners.

28. To substantiate his claim, leaned counsel for the O.P. No. 2 submits that the petitioner No. 1/wife is found to be living in adultery and petitioner No. 2 is found not to be the son of O.P. No. 2, as per the DNA report. He further submits that after the petitioner No. 1/wife has joined the opposite party in his matrimonial home on 08.03.2012, whereas she gave birth to petitioner No. 2 on 16.11.2012, i.e. after 252 days, whereas the gestation period of the born child as per the discharge slip was 278 days, which clearly shows that the child was conceived 26 days prior to the marriage. It implies that the petitioner No. 1/wife was carrying pregnancy prior to the marriage with someone else and this previous pregnancy has been concealed from him.



29. Hence, the opposite party has also filed one Matrimonial Suit for annulment of his marriage with petitioner No. 1 and same has been also allowed, though appeal against annulment of the marriage is pending consideration of this Court.

30. He also refers to and relies upon **Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik & Anr.** as reported in **(2014) 1 S.C.R. 120.**

31. Learned Amicus Curiae submits that a legally wedded wife who is living separately from her husband with reasonable cause, but not living in adultery, is entitled to get maintenance from her husband, if he has no means to sustain herself. He also submits that a child born to the wife is legitimate son of her husband and he is also entitled to get maintenance from the husband of his mother during his minority having no means of income. He also submits that in case of negative finding regarding validity of marriage or paternity of the child, Revisional Court is empowered to re-appreciate the evidence and substitute the finding by its own.

32. I considered the submissions advanced by the parties and perused the materials on record.

33. I find that undisputedly petitioner No. 1/Suman



Devi @ Suman Gupta was married with O.P. No. 2/Chote Lal Gupta on 06.03.2012 and she joined the matrimonial home of her husband on 08.03.2012 and she gave birth to the petitioner No. 2/son on 16.11.2012 at Navy Hospital during the subsistence of the marriage between the petitioner No. 1 and O.P. No. 2. It is also not a case of the husband/O.P. No. 2 that he had “no access” to his wife/petitioner No. 1 subsequent to their marriage.

34. I further find that learned Family Court has denied the maintenance to the petitioner-wife on the ground that she was having adulterous life since prior to the marriage. Maintenance to petitioner No. 2 was also denied by learned Family Court finding that O.P. No. 2 is not his biological father.

35. However, in view of rival submissions of the parties, it would be pertinent to refer to Section 125 Cr.PC, which deals with order for maintenance of wife, children and parents. It reads as follows:

“125. Order for maintenance of wives, children and parents.- (1) If any person having sufficient means neglects or refuses to maintain -

- (a) his wife, unable to maintain herself, or
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
- (d) his father or mother, unable to maintain himself or



herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct :

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation. - For the purposes of this Chapter, -

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority.

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not re-married.

(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:



Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. - If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

(Emphasis supplied)

36. As such, a legally wedded wife is entitled to get maintenance from her husband, if she is living separately from her husband with sufficient reason, but not living in adultery, and she has no means to maintain herself and the husband, despite having sufficient means, neglects or refuses to maintain her.

37. In the case on hand, I find that as per claim of the husband/O.P. No. 2, his petitioner/wife had illicit relationship with someone else prior to the marriage and due to such illicit



relationship, she was pregnant and due to previous pregnancy, she gave birth to the petitioner No. 2 during subsistence of the marriage. It is also alleged that even after the marriage, the petitioner/wife is living in adultery. On the basis of such pleading and evidence on record learned Family Court came to the finding that the wife/petitioner was indulged in adulterous life with some one else prior to the marriage. Learned court below has not found that the petitioner/wife was living in adultery after marriage.

38. Here, it would be pertinent to mention that adultery is an offence against one's spouse. If a married person establishes sexual relationship with someone other than his/her spouse, he/she commits adultery. Under Section 125 Cr.PC wife/petitioner is disqualified for getting maintenance from her husband if she is living in adultery. Here, first and foremost requirement for "living in adultery" is that the lady should be married with him. Hence, physical relationship of any unmarried lady with someone else prior to her marriage is beyond the reach of the disqualification as provided under Section 125 Cr.PC on the basis of "living in adultery".

39. Moreover, "living in adultery" is distinct from "committing adultery". "Living in adultery" denotes a



continuous course of conduct and not isolated acts of immorality. One or two lapses from virtues would be acts of adultery but would be quite insufficient to show that the woman was “living in adultery”. A mere lapse, whether it is one or two, and a return back to a normal life can not be said to be living in adultery. If the lapse is continued and followed up by a further adulterous life, the woman can be said to be “living in adultery”. In this regard, one may refer to the following judicial precedents:

- (i) **Hitesh Deka Vs. Jinu Deka**
2025 SCC OnLine Gau 259
- (ii) **Sukhdev Pakharwal Vs. Rekha Okhale**
2018 SCC OnLine MP 1687
- (iii) **Ashok Vs. Anita**
2011 SCC OnLine MP 2249
- (iv) **Sandha Vs. Narayanan**
1999 SCC OnLine Ker 64
- (v) **Pandurang Barku Nathe Vs. Leela Pandurang Nathe & Anr.**
1997 SCC OnLine Bom 264

40. But in the case at hand, I find that the husband has only made one line bald allegation that even after the marriage, his wife is living in adultery. But no details thereof with reference to time, place and adulterer are given in his pleadings. Even evidence has not been adduced by O.P. No. 2 to prove that his wife/petitioner No. 1 is living in adultery. Hence, I find that finding of learned Family Court that she was living in adultery



is erroneous in the eye of law.

41. I further find that learned Family Court on the basis of Ext. A (DNA Report) and Ext. A/1 (Hospital Discharge Slip) had come to the conclusion that O.P. No. 2 is not the father of petitioner No. 2/Ansh Kumar and hence, petitioner No. 2 is not the legitimate son of O.P. No. 2 and therefore, he is not entitled to get maintenance from him.

42. From the perusal of the lower Court record, I find that Ext. A (DNA Report) and Ext. A/1 (Hospital Discharge Slip) have been exhibited by learned Family Court only on the request of learned counsel for the opposite party. At the time of the Exhibition of these two documents, even objection was not invited from the petitioners. I further find that none of the witnesses of O.P. No. 2 including O.P. No. 2 has proved these documents. They have not even deposed that they identify these documents which were issued by such and such authorities, let alone deposing about when and how the documents were created and who were authors of these documents. No author of these documents or any one acquainted the authors and contents of these documents was examined by O.P. No. 2 to prove these documents. Here, it would be pertinent to mention that any document may be brought on record during trial either by way



of admission by the other party or through a witness. But neither of the modes has been adopted by O.P. No. 2 to bring these documents on record by way of exhibiting. Consequently, the petitioners did not get any opportunity to object to the exhibition of the documents on record, or to cross-examine regarding the veracity and the contents of the documents.

43. I also find as per the evidence that the petitioner-wife and her witnesses are not aware of any DNA report or hospital discharge slip.

44. Hence, I find that the DNA report (Ext. A) and hospital discharge slip (Ext. A/1) could not be considered as legal evidence. They have to be excluded from the consideration of this Court while adjudicating the dispute between the parties.

45. After exclusion of Ext. A and Ext. A/1, i.e., DNA report and hospital discharge slip respectively, there is no evidence to prove that the petitioner No. 2 was conceived by petitioner No. 1 prior to her marriage with O.P. No. 2 with someone else. Undisputedly, petitioner No. 1 was married with petitioner No. 2 on 06.03.2012 and she joined her husband in his matrimonial home on 08.03.2012 and gave birth to petitioner No. 2 on 16.11.2012 when the marriage was subsisting. It is not a case of the O.P. No. 2 that he had “no access” to his wife



subsequent to their marriage. As per Section 112 of the Evidence Act, the fact that a person is born during continuance of a valid marriage between his mother and any man, it shall be conclusive proof that he is the legitimate son of that man.

46. Moreover, birth of a child within 255 days (6.3.2012 to 16.11.2012) is not unnatural or impossible. Premature birth of a child is an usual phenomenon.

47. Hence, I find that petitioners No. 2 is legitimate son of O.P. No. 2 and he is entitled to maintenance from his father/O.P. No. 2.

48. It is also relevant to point out that *vide* order dated 05.09.2016, the application of O.P. No. 2 for direction to conduct DNA test of petitioner No. 2/Ansh Kumar was rejected by learned Family Court on the ground of contradictory statements of O.P. No. 2 and that order has not been challenged and hence, it attains finality. As such, even reliance of O.P. No. 2 on **Nandlal Wasudeo Badwaik** (supra) is of no help to him.

49. There is also nothing on record to show that the marriage between the petitioner No. 1 and O.P. No. 2 is annulled, except the evidence that O.P. No. 2/husband has filed one Matrimonial Suit under Section 12 of the Hindu Marriage Act for annulment of his marriage with petitioner No. 1, which



is pending consideration of the Family Court, Gopalganj.

50. It is also settled principle of law that proceeding under Section 125 Cr.PC is summary in nature and meant to prevent the vagrancy and destitution of wife and children and provide a speedy remedy in the supply of food, clothing and shelter to them. Hence, strict standard of proof is not required in proceeding under Section 125 Cr.PC unlike matrimonial proceedings, where strict proof of marriage or paternity is essential. Here, judicial precedent of **Kamala v. M.R. Mohan Kumar, (2019) 11 SCC 491**, may be referred to and relevant para of the judgment of Hon'ble Supreme Court reads as follows:

“15. Unlike matrimonial proceedings where strict proof of marriage is essential, in the proceedings under Section 125 CrPC, such strict standard of proof is not necessary as it is summary in nature meant to prevent vagrancy. This Court has held that when the parties live together as husband and wife, there is a presumption that they are legally married couple for claim of maintenance of wife under Section 125 CrPC. Applying the well-settled principles, in the case in hand, Appellant 1 and the respondent were living together as husband and wife and had also begotten two children. Appellant 1 being the wife of the respondent, she and the children, Appellants 2 and 3 would be entitled to maintenance under Section 125 CrPC.”

(Emphasis supplied)

51. It is also settled principle of law that in revisional jurisdiction, the High Court has no power to reassess evidence and substitute its own finding in regard to positive finding



regarding validity of the marriage or paternity of the child, unless there is patent perversity of finding of the fact or error of jurisdiction or that of law. But in case of negative finding of Court in regard to validity of marriage or paternity of child, the High Court is required even in revisional jurisdiction to re-evaluate the evidence and come to a conclusion whether the findings or conclusions reached by the Family Court are legally sustainable or not, because on account of negative finding, the child is bastardized and wife is branded as unchaste woman.

52. Here, judicial precedent of **Pravati Rani Sahoo Vs. Bishnupada Sahoo, (2002) 10 SCC 510**, may be referred to and relevant para of the judgment reads as follows:

“5. Section 125 CrPC is intended to curtail destitution and also to ameliorate orphanacy. The High Courts should be slow to interfere with a positive finding in favour of marriage and paternity of a child. Hence in such instances this Court has pointed out that High Courts shall not interfere with such fact findings. But that principle cannot be imported in the present case where a child happened to be bastardised as a consequence of the order passed by the Magistrate and the claimant was in effect found to be a woman of unvirtuous morality. In such a situation the High Court should have entertained revision and re-evaluated the evidence and come to a conclusion whether the findings or conclusions reached by the Magistrate are legally sustainable or not. While maintaining the difference in the overall approach between an appeal and a revision, the jurisdiction of the court has to be exercised by the High Court in revision.

6. The impugned order summarily dismissing the application for revision shows that the jurisdiction has not even been invoked by the High Court. The impugned order cannot therefore be sustained. Consequently, we set aside the order and remit the revision back to the High



Court for disposal of it afresh in accordance with law.”
(Emphasis supplied)

53. It is also settled principle of law that the validity of marriage or paternity of a child in a proceeding under Section 125 Cr.PC is tentative and not final, and it is always subject to order of any Civil Court or Family court, which are the Competent Courts to conclusively decide any marital status of a party or legitimacy or illegitimacy of a child, as emerges from Section 7, 8 and 20 of the Family Courts Act, 1984. In other words, if the Civil Court or the Family Court passes any decree in regard to the validity of the marriage or paternity of the child not in consonance with the finding of this Court in this proceeding under Section 125 Cr.PC, the decree of the Civil Court/Family Court would prevail and the party concerned would be at liberty to modify the order passed under Section 125 Cr.PC, by moving application under Section 127 Cr.PC, which provides for alteration or modification of the order in changed circumstances. Here, one may refer to the following judicial precedents:-

- (i) **Ivan Rathinam Vs. Milan Joseph**
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- (ii) **Balram Yadav Vs. Fulmaniya Yadav**
(2016) 13 SCC 308
- (iii) **Dwarika P. Satpathy Vs. Bidyut Prava Dixit**
(1999) 7 SCC 675
- (iv) **Santosh Vs. Naresh Pal,**
(1998) 8 SCC 447



54. Hence, I find that the impugned order dated 22.06.2019, passed by learned Principal Judge, Family Court, Gopalganj, in Maintenance Case No. 156 of 2013, is not sustainable in the eye of law. Both the petitioners are entitled to get maintenance from the O.P. No. 2.

55. I further find that the petitioner-wife is living at her parent's house along with her minor son, who is petitioner No. 2., because they have been ousted by the O.P. No. 2 from his matrimonial home. One criminal complaint for offence punishable under Section 498A is also lodged by the petitioner-wife against O.P. No. 2 which is pending consideration of the Court.

56. I further find that the petitioners have no source of income, whereas O.P. No. 2 is a government employee in Indian Navy and as per the claim of the petitioners, his monthly salary is Rs. 35,000/-, whereas O.P. No. 2 states that his monthly salary is only Rs. 13,000/- to Rs. 14,000/- after deductions. But he has not filed his salary slip on the record in support of his claim.

57. In view of such facts and circumstances, O.P. No. 2 is liable to pay Rs. 3,000/- per month to his wife/petitioner No. 1 and Rs. 3,000/- per month to his minor son/ the petitioner No. 2 towards their maintenance, since the date of filing of the



petition, i.e. 12.08.2013.

58. Hence, the impugned order is set aside and O.P. No. 2 is directed to pay monthly maintenance to his wife and minor son who are petitioners herein @ Rs.3,000/- per month each from 12.8.2013 i.e. the date of filing of the maintenance petition before the Family Court. O.P. No. 2 is also directed to pay a lump sum of Rs.50,000/- to the petitioners towards their litigation cost.

59. The present petition stands allowed, accordingly.

60. Before I part with the case, it would be pertinent to clarify that the finding of this Court in proceeding under Section 125 Cr.PC, regarding the marriage and paternity is tentative and subject to order of any Civil Court or Family Court. If the Family Court passes any decree which is not in consonance with the findings of this Court in this proceeding, the parties concerned are at liberty to file appropriate application before the Family Court under Section 127 Cr.PC which provides for alteration or modification of the order passed under Section 125 Cr.PC, under changed circumstances.

61. The assistance provided by learned *Amicus Curiae* is highly appreciated. Secretary, Patna Legal Services Committee is directed to pay Rs.10,000/- to learned *Amicus*



Curiae towards Honorarium. Office is directed to send a copy of this order to learned *Amicus Curiae* for his information and needful.

62. LCR be sent back to the court below without any delay.

63. Any interlocutory application, if pending, stands disposed of.

64. Learned Registrar General is directed to circulate a copy of this judgment/order amongst all the Family Courts of Bihar, and also send a copy of it to Bihar Judicial Academy to be discussed in the training programme for the Presiding Officers of the Family Courts.

(Jitendra Kumar, J)

S.Ali/shoaib

AFR/NAFR	AFR
CAV DATE	06.02.2025
Uploading Date	18.03.2025
Transmission Date	18.03.2025

