

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL REVISION No.1300 of 2019**

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

=====

Nathuni Paswan S/O Late Shrilal Paswan Resident of Village- Labhgaon,  
P.S.- Gangaur, District- Khagaria.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Renu Kumari D/O Late Mahendra Chaudhary At Present residing at Qr.  
Near Sadar Hospital, P.S.- Chitragupta Nagar, Khagaria, District- Khagaria.

... ... Respondent/s

=====

*Code Of Criminal Procedure, 1973—Section 125—maintenance—petitioner was directed to pay maintenance amount to Opposite Parties (Second wife and daughter)—petitioner taken plea of invalidity of his marriage with the second wife on account of bigamy either of himself or the petitioner/wife, he is required to prove his allegation of the previous marriage of himself or the petitioner/wife with strict proof—petitioner failed to prove that opposite party was already married to someone else—second wife before the Family Court, has prima facie proved that petitioner married her in Temple as per Hindu rites and customs, concealing from her his previous marriage with first wife--hence, he cannot take plea of his previous marriage with first wife to show that his marriage with second wife is not legally valid—petitioner not implead so-called husband of his second wife in the proceeding, because he was necessary party and without his presence in the proceeding, his marital status with second wife could not be declared—second wife (opposite party) is legally wedded wife of petitioner and daughter is born out of their wedlock and daughter is a minor—hence, both opposite parties are entitled to get maintenance from petitioner as per law—both opposite parties are living in the government quarter allotted in the name of petitioner and rent is being deducted from the salary of petitioner—petition allowed in part, modifying the impugned order.*

**(Paras 55 to 60)**

*(1988) 1 SCC 530; (2005) 3 SCC 636; (2014) 1 SCC 188; (1991) 2 SCC 375; (1998) 8 SCC 447; (1999) 7 SCC 675; (2002) 10 SCC 510; (2011) 1 SCC 141; (2011) 12 SCC 189; (2019) 11 SCC 491; (2002) 5 SCC 422; 2003 SCC Online Patna 1083; (2021) 13 SCC 99; (2010) 10 SCC 469—Relied Upon.*

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.1300 of 2019**

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

Nathuni Paswan S/O Late Shrilal Paswan Resident of Village- Labhgaon,  
P.S.- Gangaur, District- Khagaria.

... .. Petitioner/s

Versus

- 1. The State of Bihar
- 2. Renu Kumari D/O Late Mahendra Chaudhary At Present residing at Qr.  
Near Sadar Hospital, P.S.- Chitragupta Nagar, Khagaria, District- Khagaria.

... .. Respondent/s

**Appearance :**

For the Petitioner/s	:	Mr. Rajesh Sinha, Advocate Mr. Chandan Kumar Singh, Advocate
For the State	:	Mr. Chandra Sen Prasad Singh, APP
For the O.P. No. 2	:	Mr. Binod Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR**  
**CAV JUDGMENT**

**Date : 18-03-2025**

The present Criminal Revision petition has been preferred by the petitioner against the final order dated 14.08.2019, passed by learned Principal Judge, Family Court, Khagaria in Maintenance Case No. 32M of 2014, whereby the petitioner has been directed to pay the O.P. No. 2/Renu Kumari and her daughter Pihu Kumari @ Ruchi Kumari @ Rs. 10,000/- and Rs. 5,000/- respectively per month.

2. The relevant facts of the case are that O.P. No. 2/Renu Kumari had filed Maintenance Case No. 32M of 2014 under Section 125 Cr.PC on 03.07.2014 for her maintenance as well as maintenance to her 2 & ½ years old daughter Pihu



Kumari @ Ruchi Kumari, claiming that she is legally wedded wife of the petitioner and her daughter Pihu Kumari @ Ruchi Kumari is born out of the wedlock. As per her claim, her marriage with the petitioner/Nathuni Paswan was solemnized on 25.06.2002 at Shiv Temple, Deoghar as per Hindu Rites and Customs.

3. It has been further alleged by O.P. No. 2/Renu Kumari that the petitioner/Nathuni Paswan had concealed his first marriage with Gulabi Devi and sexually exploited her at Government quarter of Sadar Hospital, Khagaria on the pretext of providing assistance to her in getting a Government job. When she was carrying pregnancy of her daughter Pihu Kumari @ Ruchi Kumari, the petitioner/Nathuni Paswan married her at Shiv Temple, Deoghar. She has further claimed that the petitioner is a Government servant and his annual income is Rs. 8,00,000/-.

4. It is also alleged that when she came to know about the first marriage of the petitioner/Nathuni Paswan, the petitioner stated to her that he had deserted his first wife and he would be with her. Thereafter, he left Renu Kumari and her daughter Pihu Kumari @ Ruchi Kumari at Government quarter, Khagaria. When she again met Nathuni Paswan, she was



assaulted by him and she filed Criminal Case bearing Mahila P.S. Case No. 23 of 2013, for offence punishable under Sections 498A, 494 and 506 of the Indian Penal Code, which is still pending consideration of the Court. Despite her persistent demand for maintenance, she was not being maintained by the petitioner/Nathuni Paswan and she herself is unable to maintain herself and her daughter Pihu Kumari @ Ruchi Kumari as she had no means of any income. She has also claimed that Nathuni Paswan has also opened LIC Policy bearing No. 529208601 in the name of his daughter.

5. On notice, the petitioner/ Nathuni Paswan herein appears before the Family Court and files his show cause, wherein he denies all the allegations made by Renu Kumari against him. He denies that he has ever married Renu Kumari and he is biological father of her daughter Pihu Kumari @ Ruchi Kumari. He also states that he belongs to Scheduled Castes community, whereas Renu Kumari is a Bhumihar by caste and she has been already married with one Dheeraj Singh, resident of village Sadanandpur, P.S. Baliya, District – Begusarai. He also states that she is a trained A.N.M. and she had desire to get a Government job by taking advantage of reservation showing herself as wife of Nathuni Paswan. He also



states that he has been already married with one Gulabi Devi and out of their wedlock, he has 32 years old son and 36 years old daughter. He denies that he has annual income of Rs. 8,00,000/-. He, however, admits that one Criminal Case has been filed against him on account of his failure to cooperate with her in getting a job in Health Department. He states that Renu Kumari is a trained A.N.M and has been working in a private nursing home earning Rs. 10, 000/- per month. He also claims that he is not aware about any LIC Policy in the name of the daughter of Renu Kumari.

6. During trial, the following witnesses have been examined on behalf of the applicant, Renu Kumari.

(i) **Renu Kumari** herself as **P.W.-1**.

(ii) **Veena Devi** as **P.W.-2**, who is working as Asha Didi, Sadar Hospital at Khagaria for last one year and also as maid at Sadar Hospital, Khagaria.

(iii) **Anjula Devi** as **P.W.-3**, who runs a tea stall near the Government quarter of Renu Kumari at Sadar Hospital, Khagaria.

(iv) **Pihu Kumari** as **P.W.-4**, who is daughter of Renu Kumari.

(v) **Mithilesh Devi** as **P.W.-5**, who is mother of Renu Kumari.

7. She has also adduced the following documents during the trial:



(i) **Ext.-1-** Voters Identity Card in the name of Renu Kumari showing Nathuni Paswan as her husband and the card being issued on 23.01.2016.

(ii) **Ext.-2-** Adhar Card in the name of Renu Kumari showing Nathuni Paswan as her husband. However, it does not carry the date of issue on the face of it.

(iii) **Ext.-3-** Photocopy of Khagaria Mahila P.S. Case No. 23 of 2013 registered on 26.08.2013 against Nathuni Paswan for offence punishable under Sections 498A, 494 and 506 of the Indian Penal Code.

(iv) **Ext.-4-** Photocopy of charge-sheet bearing No. 39 of 2013 dated 30.11.2013 filed in Mahila P.S. Case No. 23 of 2013 against Nathuni Paswan for offence punishable under Sections 498A, 494 and 506 of the Indian Penal Code.

(v) **Ext.-5-** Order dated 18.07.2018 passed by learned S.D.J.M., Khagaria in G.R. No. 1839 of 2013.

(vi) **Ext.-6-** Order dated 07.03.2014 passed by Patna High Court in Cr. Misc. No. 47490 of 2013, whereby Nathuni Paswan has been directed to be released on anticipatory bail with direction to pay Rs.1200/- per month to Renu Kumari towards her maintenance.



**Evidence of Renu Kumari****(Applicant before the Family Court and O.P. No.2 herein)**

8. Coming to the evidence of **Renu Kumari (P.W.-1)**, who was applicant before Family Court, I find that she has supported her application by reiterating her statement in her examination-in-chief. In her **cross-examination** held on 24.01.2017, she has deposed that she has been living separately from her husband for last 4 years and her daughter is 5 years old. She also claimed that she has photo of birthday of her daughter and he has also document of LIC Policy opened in the name of her daughter and her daughter was born in nursing home regarding which she has a certificate. She has also deposed that there is a Government quarter allotted in the name of her husband and she has been living in that quarter. She has also deposed that her Adhar card also bears the name of Nathuni Paswan as her husband. Her bank account also bears the name of Nathuni Paswan as her husband. She has also Rashan Card. She has further deposed that her parental district is Begusarai and she went to Khagaria in the year 2002 in search of job. She has denied the suggestion that she has obtained caste certificate showing her as Scheduled Caste and this certificate bears No. KSG/2011/CST/8602 dated 19.07.2011. She has further deposed



that Gulabi Devi, who is the wife of Nathuni Paswan, has filed a criminal case against her to get caste certificate using the name of her husband Nathuni Paswan. She has also deposed that all the photo and receipt regarding her marriage at the temple are with Nathuni Paswan and that is why she could not file such documents in the Court. She has further deposed that she met Nathuni Paswan for the first time in the year 2002 in Khagaria Hospital in search of job. The date of birth of her daughter is 09.02.2012. She has further deposed that she has not filed any criminal case against Nathuni Paswan for sexual exploitation by him, because he married her. The LIC Policy in the name of her daughter Pihu Kumari @ Ruchi Kumari was purchased by her husband Nathuni Paswan which is presently closed. She has denied the suggestion that she has got the LIC Policy in the name of her daughter to show Nathuni Paswan as her husband. She does not remember the year of getting Adhar Card issued, but she has denied the suggestion that deliberately she is concealing the date of issuance of Adhar Card, because Adhar Card has been obtained by her after filing the present case. She has also denied the suggestion that she was already married with Dheeraj Singh S/o late Sarandhar Singh, R/o Village- Sadanpur of District- Begusarai, which she is concealing. She has also





denied the suggestion that she is working in Minu Nurshing Home at Khagaria. She has denied the suggestion that no marriage was solemnized between Nathuni Paswan and her and Gulabi Devi is the wife of Nathuni Paswan. She has also denied the suggestion that Nathuni Paswan is not father of her daughter.

**9. P.W.-2 Veena Devi** has also supported the case of Renu Kumari in her examination-in-chief. She has also deposed that Renu Devi and Nathuni Paswan are living together for 10-11 years and their marriage was solemnized at Deoghar and she is living in the Government quarter, which is allotted to Nathuni Paswan. In her cross-examination, she has also deposed that she is working at Khagaria Hospital as Asha Didi for lost one year and prior to that she has worked for about 15 years in the Sadar Hospital as a maid. She knows Renu Devi since 2002. She had heard that Renu Devi and Nathuni Paswan had solemnized marriage in the year 2002. She has denied the suggestion that Renu Devi was married with Dheeraj Singh in the year 2002, which she is concealing.

**10. P.W.-3 is Anjula Devi.** She runs Tea Stall near Government quarter of Renu Devi. She has also supported the case of Renu Devi in her examination-in-chief. In her cross-examination, she has deposed that she has been acquainted with



Renu Devi for last 5 years. She has denied the suggestion that Renu Devi was married with Dheeraj Singh of Begusaria and she is working in a private nursing home and earning Rs. 10 to 15 thousand per month.

**11. P.W.-4 is 7 years old Pihu Kumari**, the daughter of Renu Kumari. In her examination-in-chief, she has deposed that her mother and father are not living together and her father does not provide food, clothes etc to her mother, though he provides such things to her and her mother does only house hold work and she is studying at Paradise School, Khagaria. She does not know who had got her admitted in the school but her father had gone to her school with her. In her cross-examination, she has deposed that one uncle comes to her house but she does not know his name. She is left at her school by her mother. Fee is deposited by her father. She has denied the suggestion that Nathuni Paswan is not her father and he does not deposit her fee. She has also deposed that Nathuni Paswan never comes to her house. She has denied the suggestion that she has deposed as tutored by her mother.

**12. P.W.-5 Mithelesh Devi** who is mother of Renu Kumari. In her examination-in-chief, she has also supported the case of her daughter Renu Kumari. In her cross-examination,



she has deposed that she has never visited the house of Nathuni Paswan nor has she met any member of his family. She belongs to a Bhumihar Caste. She does not know Dheeraj Singh S/o Sarandhar Singh. She has denied the suggestion that Renu Kumari was married with him.

**13.** The petitioner herein/Nathuni Paswan has also examined the following witnesses in support of his show cause:-

- (i) Hareram Singh as OP.W.-1, who is a co-villager of Dheeraj Singh.
- (ii) Ashok Yadav as OP.W.-2, who is a co-villager of Nathuni Paswan.
- (iii) Sanjay Kumar as OP.W.-3, who is son of Nathuni Paswan.
- (iv) Nathuni Paswan himself as OP.W.-4.

**Evidence of Nathuni Paswan**

**(Opposite Party before the Family Court and Petitioner herein)**

**14.** Nathuni Paswan has examined himself as O.P.W.-4. In his examination-in-chief, he has deposed that he was married to Gulabi Devi in the year 1974 and he has 36 years old daughter and 32 years old son, out of the wedlock and his wife Gulabi Devi is living with him. He knows Renu Devi for last 12-13 years. He got acquainted with her at Sadar Hospital, Khagaria through one Jai Prakash. Renu Devi was working as private Nurse in Sadar Hospital. It is wrong to say that he has



married Renu Devi and he is father of her daughter. He is a heart patient for about 20 years. In his cross-examination, he has deposed that his monthly salary is Rs.70,000/- and no Government quarter is allotted to him in Khagaria. When 6 years old Pihu Kumari @ Ruchi Kumari was shown to him, he denied that she is his daughter. He has also deposed that he has no landed property. He has only one residential house at Labhgaon in Khagaria District. He is not aware whether the name of Renu Devi is listed as a member of his family and Adhar Card is issued in her name. He has also denied the suggestion that his wife Gulabi Devi has made a complaint to Civil Surgeon, Khagaria to the effect that he has solemnized second marriage with Renu Devi and he is keeping her in his Government quarter. He has also denied the suggestion that on his asking, the nursing home had issued certificate in regard to birth of daughter Renu Devi showing him as father. When he was confronted with one photo with Renu Devi, he admitted that photo. He has denied the suggestion that he has got LIC Policy issued in the name of Renu Devi and he has paid some installments also. He has also deposed that he had informed Civil Surgeon of Khagaria Sadar Hospital that he had vacated the Government quarter which was allotted to whom at



Khagaria. However, he has admitted that District Magistrate, Khagaria had issued a written order that Renu Kumari would live in the Government quarter vacated by him and the monthly rent would be deducted from his salary. He has also denied the suggestion that he had got admitted Pihu Kumari in Paradise school situated near the Government quarter and his name has been shown as her father. However, he has deposed that he has no objection if DNA test is conducted to test the paternity of Pihu Kumari.

**15. O.P.W.-1 is Hareram Singh.** He is resident of Sadanandpur of District- Begusaria and he is an agnet of Dheeraj Singh S/o Sarandhar Singh. On his date of examination i.e. on 29.05.2019, he has deposed that about 20 years back Dheeraj Singh had married Renu Devi D/o Mahendra Chaudhary, R/o Diha and after the marriage, Renu Devi had joined his matrimonial home at Sadanandpur and lived there for 3 to 4 years and thereafter, she left the matrimonial home to go with Jai Prakash @ J.P. and thereafter, she never came back to Dheeraj Singh who is still living at his home and his mental condition is not good. In his cross-examination, he has deposed that in the marriage of Renu Devi with Dheeraj Singh, his brother Siyaram had joined the marriage ceremony, but he could



not say the exact age of Renu Devi at the time of marriage. He is not aware whether there is matrimonial relationship between Renu Devi and Nathuni Paswan. He has deposed that he does not know whether Nathuni Paswan has sexually exploited Renu Devi on the pretext of giving employment and thereafter Nathuni Paswan married Renu Devi and started keeping her in his Government quarter.

**16. O.P.W. No.2- is Ashok Yadav.** He has deposed in his examination-in-chief that he has been acquainted with Renu Devi. He had visited Sadar Hospital, Khagaria in the year 2016 when his daughter was expecting child and she was admitted there for delivery and he has gone to Sadar Hospital, Khagaria on the asking of one Jai Prakash who had told him about Renu Kumari who was working as A.N.M. in Minu Nursing Home at Gausala Road. During that period, Renu Kumari had asked for some money from him stating that she is earning only Rs. 8 to 10 thousand from nursing home. She had also told him that her sasural was at Sadanandpur situated in Begusarai district. He is also acquainted with Nathuni Paswan, because he is his co-villager. The name of his wife is Gulabi Devi and he has also one son and one daughter. During his cross-examination, he has deposed that Nathuni Paswan works in Health Department, but



he does not know about his exact salary amount. Nathuni Paswan lives in his house and not in Government quarter. He is also not aware whether Nathuni Paswan has any landed property. He has denied the suggestion that on account of being a friend of Nathuni Paswan, he has deposed falsely. He has also denied the suggestion that he has active role in solemnizing marriage between Nathuni Paswan and Renu Kumari. He has also denied the suggestion that Renu Kumari has no source of income.

**17. O.P.W.-3 is Sanjay Kumar S/o Nathuni Paswan.**

In his examination-in-chief, he has deposed that the name of her mother is Gulabi Devi and she was married with his father in the year 1974. He knows Renu Devi because she belongs to Bhumihaar caste but she has obtained caste certificate showing herself as Scheduled Caste to get Government job and showing his father as husband. Once his mother came to know about her certificate, his mother had lodged one Criminal Complaint against Renu Kumari in Chitragupt Police Station, Khagaria. He has also deposed that his mother has never lodged any case against his father Nathuni Paswan. In his cross-examination, he has also shown ignorance about the girl who was claimed to be his daughter. He has denied the suggestion that he and his



mother have given any joint application to local Mukhiya regarding second marriage of his father with Renu Devi. He has also denied the suggestion that he and his mother have given application to Civil Surgeon, Khagaria for action because his father had entered into second marriage with Renu Devi. He has not gone to Maike or Sasural of Renu Devi. He has denied the suggestion that when Renu Devi was going to get employment as A.N.M., his father had given one application to the effect that Renu Devi has married him during the life time of her first husband.

**Findings and the order of the Family Court**

18. As per the evidence and material on record, learned Family Court came to the finding that Nathu Paswan has married Renu Kumari concealing from her his first marriage with Gulabi Devi and out the wedlock between Renu Devi and Nathu Paswan, a female child, Pihu Kumari was born to them. Learned Family Court has also found that Renu Kumari has no means to maintain herself and her minor daughter whereas Nathuni Paswan has admittedly monthly salary of Rs. 70,000/-. Hence, learned Family Court directed Nathuni Paswan to pay Rs. 10,000/- per month to Renu Kumari and Rs. 5,000/- per month to Pihu Kumari towards their maintenance since the date





filing of the application i.e 03.07.2014 till Renu Devi gets remarried and Pihu Kumari gets married.

**Submissions of the parties**

19. I heard learned counsel for the petitioner, learned APP for the State and learned counsel for the O.P. No. 2.

**Submission on behalf of Nathuni Paswan**

20. Learned counsel for the petitioner submits that the impugned order is not sustainable in the eye of law. He further submits that the petitioner/Nathuni Paswan has never married Renu Kumari, nor is he biological father of Pihu Kumari @ Ruchi Kumari, the daughter of Renu Kumari.

21. He also submits that the petitioner is in Government service and belongs to Scheduled Castes community. He was a Clerk in a Government Sadar Hospital, Khagaria and Renu Kumari is a trained A.N.M and she was looking for a job in that Hospital. She sought his help to get a government job. She has made concocted allegation to get a certificate of Schedule Castes as wife of the petitioner and to get maintenance from him.

22. He further submits that there is no material on record to prove that a marriage was ever solemnized between the petitioner and the O.P. No. 2. But without any evidence on



record, learned Family Court has erroneously held that O.P. No. 2/Renu Kumari is legally wedded wife of the petitioner/Nathuni Paswan and Pihu Kumari @ Ruchi Kumari is his daughter and awarded maintenance in favour of them.

**23.** He further submits that the petitioner was already married and have two grown up children. Renu Kumari is also already married with one Dheeraj Singh and hence her alleged marriage with Nathuni Paswan is not a valid marriage on account of bigamy to her knowledge.

**24.** Hence, it is submitted on behalf of Nathuni Paswan that he has no legal liability to maintain Renu Kumari and her daughter, Pihu Kumari.

**25.** Learned counsel for the petitioner also submits that the quantum of the maintenance granted to Renu Kumari and her daughter is also on higher side in view of his income and the number of his dependents.

**Submissions on behalf of State and Renu Kumari**

**26.** Learned APP for the State and learned counsel for the O.P. No. 2 vehemently defend the impugned order submitting that there is no illegality or infirmity in the impugned order. They further submit that there is sufficient material on record to show that Renu Kumari was legally wedded wife of



the petitioner/Nathuni Paswan and Pihu Kumari @ Ruchi Kumari is his daughter.

27. To substantiate their submissions, they further submit that all the witnesses including Renu Kumari have consistently deposed that the marriage was solemnized at Shiv Temple, Deoghar. Mother of Renu Kumari has also deposed that after marriage, she started living with her husband/Nathuni Paswan in Government quarter at Sadar Hospital, Khagaria. He further submits that one criminal case under Section 498A of the Indian Penal Code has been also lodged in which cognizance has been taken against the petitioner. In the Anticipatory Bail Order dated 07.03.2024 passed by a Bench of this Court in Cr. Misc. No. 47490 of 2023, the petitioner has been directed to keep Renu Kumari with full dignity and to pay maintenance @ Rs. 1200/- per month till any higher maintenance is awarded by the High Court. He further submits that Voter I.D. Card has been issued on 23.01.2016 and as per that card, Nathuni Paswan has been shown as husband of Renu Kumari. Aadhar Card has been also issued in the name of Renu Kumari. As per the Aadhar Card, Nathuni Paswan is her husband. He refers to deposition of P.W.-4 Pihu Kumari @ Ruchi Kumari in which she has denied the suggestion that Nathuni Paswan is not her father and she has



also deposed that her school fee is deposited by papa.

### **Statutory Provisions and Judicial Precedents**

28. Before proceeding to consider the 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)

29. As such, under Section 125 Cr.PC wife is entitled to get maintenance but as per **Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav & Anr. Case (Supra)** and **Savitaben Somabhai Bhatiya Vs. State of Gujrat & Ors. Case (Supra)**, wife means “legally wedded wife”.

30. In **Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav & Anr. Case (Supra)**, Hon’ble Supreme Court has held as follows:

“4. The question, then arises as to whether the expression “wife” used in Section 125 of the Code should be interpreted to mean only a legally wedded wife not covered by Section 11 of the Act. The word is not defined in the Code except indicating in the Explanation its inclusive character so as to cover a divorcee. A woman cannot be a divorcee unless there was a marriage in the eye of law preceding that status. The expression must, therefore, be given the meaning in which it is understood in law applicable to the parties, subject to the Explanation (b), which is not relevant in the present context.”

.....

8. We, therefore, hold that the marriage of a woman in accordance with the Hindu rites with a man having a living spouse is a complete nullity in the eye of law and she is not entitled to the benefit of Section 125 of the Code.....”

(Emphasis supplied)

31. In **Savitaben Somabhai Bhatiya Vs. State of Gujrat & Ors. Case (Supra)**, Hon’ble Supreme Court has



held as follows:

**“15.** In *Yamunabai case* [(1988) 1 SCC 530 it was held that the expression “wife” used in Section 125 of the Code should be interpreted to mean only a legally wedded wife. The word “wife” is not defined in the Code except indicating in the Explanation to Section 125 its inclusive character so as to cover a divorcee. A woman cannot be a divorcee unless there was a marriage in the eye of the law preceding that status. The expression must therefore be given the meaning in which it is understood in law applicable to the parties. The marriage of a woman in accordance with Hindu rites with a man having a living spouse is a complete nullity in the eye of the law and she is therefore not entitled to the benefit of Section 125 of the Code or the Hindu Marriage Act, 1955 (in short “the Marriage Act”). Marriage with a person having a living spouse is null and void and not voidable.....

.....  
**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 a 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 Section 125 of the Code, there is no scope for enlarging its scope by introducing any artificial definition to include a woman not lawfully married in the expression “wife”.”

(Emphasis supplied)

**32.** In **Badshah Vs. Sou. Urmila Badshah Godse and Anr., (2014) 1 SCC 188**, Hon’ble Supreme Court has held that if a man during subsistence of his first marriage remarries another lady concealing from her his first surviving marriage, the second wife is entitled to maintenance. The man cannot be permitted to take advantage of his own wrong and raising plea of bigamy. *Yamunabai* and *Savitaben* cases (*supra*) would not apply in such cases. The relevant part of the judgment may be



referred to, which is as follows :

“13.2.....when the marriage between Respondent 1 and the petitioner was solemnised, the petitioner had kept Respondent 1 in dark about his first marriage. A false representation was given to Respondent 1 that he was single and was competent to enter into marital tie with Respondent 1. In such circumstances, can the petitioner be allowed to take advantage of his own wrong and turn around to say that the respondents are not entitled to maintenance by filing the petition under Section 125 CrPC as Respondent 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 CrPC, Respondent 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 Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav, (1988) 1 SCC 530 and Savitaben Somabhai Bhatiya v. State of Gujarat, (2005) 3 SCC 636 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 a 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 harmonised.”

(Emphasis supplied)

**33. In Vimala (K.) Vs. Veeraswamy (K.), (1991)**

**2 SCC 375, Hon’ble Supreme Court** has held that if the husband is taking plea that his marriage with the petitioner lady is void on account of his previous subsisting marriage, he is required to prove his previous marriage by tendering strict proof of his previous marriage, holding as follows:

“3. Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent





vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. When an attempt is made by the husband to negative the claim of the neglected wife depicting her as a kept-mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage. The term 'wife' in Section 125 of the Code of Criminal Procedure, includes a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. The woman not having the legal status of a wife is thus brought within the inclusive definition of the term 'wife' consistent with the objective. However, under the law a second wife whose marriage is void on account of the survival of the first marriage is not a legally wedded wife and is, therefore, not entitled to maintenance under this provision. Therefore, the law which disentitles the second wife from receiving maintenance from her husband under Section 125, CrPC, for the sole reason that the marriage ceremony though performed in the customary form lacks legal sanctity can be applied only when the husband satisfactorily proves the subsistence of a legal and valid marriage particularly when the provision in the Code is a measure of social justice intended to protect women and children. We are unable to find that the respondent herein has discharged the heavy burden by tendering strict proof of the fact in issue. The High Court failed to consider the standard of proof required and has proceeded on no evidence whatsoever in determining the question against the appellant. We are, therefore, unable to agree that the appellant is not entitled to maintenance."

(Emphasis supplied)

**34. In Santosh Vs. Naresh Pal, (1998) 8 SCC 447,**

**Hon'ble Supreme Court** has held that the Court is required to pass order for maintenance under Section 125 CrPC only after being prima facie satisfied about the marital status of the party and such decision regarding the marital status be tentative finding subject to final order in any civil proceeding, and hence, Hon'ble Supreme Court restored the order of the Magistrate and



set aside the order of the High Court. Learned Magistrate had found legal marriage between the parties holding that the respondent, Naresh Pal had already divorced his first wife and thereafter, he had entered into second marriage with the appellant, Smt. Santosh, who was also a divorcee, but the High Court had taken a contrary view holding that the marriage between the parties was not valid because the first marriage of the respondent, Smt. Santosh was not dissolved with her first husband, Satyendra. The observation of Hon'ble Supreme Court may be referred to, which is as follows:

“2. ....In a proceeding for maintenance under Section 125 CrPC the learned Magistrate was expected to pass appropriate orders after being prima facie satisfied about the marital status of parties. It is obvious that the said decision will be a tentative decision subject to final order in any civil proceedings, if the parties are so advised to adopt. Consequently, in our view the High Court was not justified in interfering with the pure finding of fact reached by learned Judicial Magistrate in a proceeding under Section 125 CrPC and therefore only on this short ground and without expressing any opinion on the marital rights of the parties which may have to be adjudicated in civil proceedings, the order of the learned Magistrate passed under Section 125 CrPC will have to be affirmed and the judgment and order of the High Court is set aside. The appeal is allowed. No costs..”

(Emphasis supplied)

**35. In Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit, (1999) 7 SCC 675, Hon'ble Supreme Court** has held that burden of proof in respect of marriage in a proceeding under 125 Cr.PC is not as strict as it is required in a trial for



offence of bigamy under Section 494 IPC. Here, it was also held that the order passed under Section 125 Cr.PC does not finally determine the rights of the parties and such order is subject to order of a Civil Court. The relevant part of the judgment reads as follows:

“9. It is to be remembered that the order passed in an application under Section 125 CrPC does not finally determine the rights and obligations of the parties and the said section is enacted with a view to provide a summary remedy for providing maintenance to a wife, children and parents. For the purpose of getting his rights determined, the appellant has also filed a civil suit, which is pending before the trial court. In such a situation, this Court in S. Sethurathinam Pillai v. Barbara [(1971) 3 SCC 923 : 1972 SCC (Cri) 171] observed that maintenance under Section 488 CrPC 1898 (similar to Section 125 CrPC) cannot be denied where there was some evidence on which conclusion for grant of maintenance could be reached. It was held that order passed under Section 488 is a summary order which does not finally determine the rights and obligations of the parties; the decision of the criminal court that there was a valid marriage between the parties will not operate as decisive in any civil proceeding between the parties.

10. After not disputing the paternity of the child and after accepting the fact that the marriage ceremony was performed, though not legally perfect as contended, it would hardly lie in the mouth of the appellant to contend in a proceeding under Section 125 CrPC that there was no valid marriage as essential rites were not performed at the time of the said marriage. The provision under Section 125 is not to be utilised for defeating the rights conferred by the legislature on the destitute women, children or parents who are victims of the social environment.”

(Emphasis supplied)

**36. In Pravati Rani Sahoo Vs. Bishnupada Sahoo, (2002) 10 SCC 510, Hon’ble Supreme Court** has held that the High Court should be slow to interfere with a positive



finding in favour of marriage and paternity of a child holding as follows:

“5. .... Section 125 CrPC is intended to curtail destitution and also to ameliorate orphanage. 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)

### **37. In Chanmuniya Vs. Virendra Kumar Singh**

**Kushwaha, (2011) 1 SCC 141, Hon’ble Supreme Court** is of the view that “wife” under Section 125 Cr.PC should be given broad and expansive interpretation to include even those cases where a man and a woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a precondition for maintenance under Section 125 Cr.PC holding as follows:

“42. We are of the opinion that a broad and



expansive interpretation should be given to the term “wife” to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a precondition for maintenance under Section 125 CrPC, so as to fulfil the true spirit and essence of the beneficial provision of maintenance under Section 125. We also believe that such an interpretation would be a just application of the principles enshrined in the Preamble to our Constitution, namely, social justice and upholding the dignity of the individual. .”

(Emphasis supplied)

**38. In Pyla Mutyalamma Vs. Pyla Suri Demudu, (2011) 12 SCC 189, Hon’ble Supreme Court** has held that law leans in favour of legitimacy and frowns upon bastardy. It is also observed that law also presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for a long period . Here it has been also held that when a man takes a plea of his bigamy, the Court would insist on strict proof of his earlier marriage. The relevant part of the judgment reads as follows:

“ 1. Under the law, a second wife whose marriage is void on account of survival of the previous marriage of her husband with a living wife is not a legally wedded wife and she is, therefore, not entitled to maintenance under Section 125 CrPC for the sole reason that “law leans in favour of legitimacy and frowns upon bastardy [Mohabbat Ali Khan v. Mohd. Ibrahim Khan, (1928-29) 56 IA 201 : AIR 1929 PC 135] ”. But, the law also presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for a long number of years and when the man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary is clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage.

2. Several judicial pronouncements right from the



Privy Council up to this stage, have considered the scope of the presumption that could be drawn as to the relationship of marriage between two persons living together. But, when an attempt is made by the husband to negative the claim of the neglected wife depicting her as a kept-mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage and this is intended to protect women and children from living as destitutes and this is also clearly the object of incorporation of Section 125 of the Code of Criminal Procedure providing for grant of maintenance. ”

(Emphasis supplied)

**39. In Pyla Mutyalamma** case (supra), Hon’ble Supreme Court has also held that in Revisional jurisdiction, the High Court has no power to re-assess evidence and substitute its own findings. It has also held that the High Court is not required to interfere with the positive findings in favour of marriage and parentage of a child in a proceeding under Section 125 Cr.PC. The relevant part of the judgment reads as follows:.

“15. The High Court under its revisional jurisdiction is not required to enter into reappreciation of evidence recorded in the order granting maintenance; at the most it could correct a patent error of jurisdiction. It has been laid down in a series of decisions including Suresh Mandal v. State of Jharkhand [(2006) 1 AIR Jhar R 153] that in a case where the learned Magistrate has granted maintenance holding that the wife had been neglected and the wife was entitled to maintenance, the scope of interference by the Revisional Court is very limited. The Revisional Court would not substitute its own finding and upset the maintenance order recorded by the Magistrate.

16. In a revision against the maintenance order passed in proceedings under Section 125 CrPC, the Revisional Court has no power to reassess evidence and substitute its own findings. Under revisional jurisdiction, the questions whether the applicant is a married wife, the children are legitimate/illegitimate, being pre-eminently questions of fact, cannot be reopened and the Revisional Court cannot



substitute its own views. The High Court, therefore, is not required in revision to interfere with the positive finding in favour of the marriage and patronage of a child. But where finding is a negative one, the High Court would entertain the revision, re-evaluate the evidence and come to a conclusion whether the findings or conclusions reached by the Magistrate are legally sustainable or not as negative finding has evil consequences on the life of both the child and the woman. This was the view expressed by the Supreme Court in Santosh v. Naresh Pal [(1998) 8 SCC 447] , as also in Pravati Rani Sahoo v. Bishnupada Sahoo [(2002) 10 SCC 510 : 2004 SCC (Cri) 1140] . Thus, the ratio decidendi which emerges out of a catena of authorities on the efficacy and value of the order passed by the Magistrate while determining maintenance under Section 125 CrPC is that it should not be disturbed while exercising revisional jurisdiction.”

(Emphasis supplied)

#### **40. In Kamala v. M.R. Mohan Kumar, (2019) 11**

**SCC 491, Hon’ble Supreme Court** has against held that there is presumption of marriage where a man and a woman live as husband and wife for a considerable period of time entitling maintenance for woman and children born to them, holding 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.

16. It is fairly well settled that the law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for a number of



years.....”  
(Emphasis supplied)

41. From the statutory provisions of Section 125 Cr.PC and the judicial precedents discussed above, the legally wedded wife is entitled to get maintenance from her husband even if she is living separately for sufficient reason and she has no means to maintain herself and the husband, despite having sufficient means, neglects or refuses to maintain his wife.

42. It also emerges that unlike the matrimonial proceedings, where strict proof of marriage is essential, in the proceedings under Section 125 Cr.PC, such strict standard of proof is not necessary as it is summary in nature and meant to prevent the vagrancy and destitution of wife and provide a speedy remedy in the supply of food, clothing and shelter to the deserted/neglected wife. Refer to **Kamala Case** (supra)

43. It also emerges that if the man takes plea of invalidity of his marriage with the petitioner/wife on account of bigamy either of himself or the petitioner/wife, he is required to prove his allegation of the previous marriage of himself or the petitioner/wife with strict proof. Refer to **Vimala (K) Case** (supra).

44. It also emerges that if a man during subsistence of his first marriage remarries another lady concealing from her his





first surviving marriage, he is not permitted to take advantage of his own wrong raising plea of bigamy. In such situation, the second wife is entitled to maintenance. Refer to **Badshah Case** (supra).

45. It also emerges that in revisional jurisdiction, the High Court has no power to reassess evidence and substitute its own finding in regard to 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. Refer to **Pravati Rani Sahoo Case** (supra).

46. It also transpires from the statutory provisions of Section 125 Cr.PC that minor daughter, whether legitimate or illegitimate, married or unmarried is entitled to get maintenance from her father, if she is unable to maintain herself till her marriage. Such maintenance of minor daughter is also provided under Section 20 of the Hindu Maintenance and Adoption Act, which reads as follows:

“20. Maintenance of children and aged parents.—(1)Subject to the provisions of this section a Hindu is bound, during his or her life-time, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case



may be, is unable to maintain himself or herself out of his or her own earnings or other property.

Explanation.—In this section “parent” includes a childless step-mother.”

(Emphasis supplied)

**47. In Jagdish Jugtawat v. Manju Lata, (2002) 5**

**SCC 422, Hon’ble Supreme Court** has held as follows:

“4. Applying the principle to the facts and circumstances of the case in hand, it is manifest that the right of a minor girl for maintenance from parents after attaining majority till her marriage is recognized in Section 20(3) of the Hindu Adoptions and Maintenance Act. Therefore, no exception can be taken to the judgment/order passed by the learned Single Judge for maintaining the order passed by the Family Court which is based on a combined reading of Section 125 CrPC and Section 20(3) of the Hindu Adoptions and Maintenance Act. For the reasons aforesaid we are of the view that on facts and in the circumstances of the case no interference with the impugned judgment/order of the High Court is called for.”

(Emphasis supplied)

**48. In Subhas Roy Choudhary v. State of Bihar,**

**2003 SCC OnLine Pat 1083, this Court** after referring to Section 125 Cr.PC and Section 20 of the Hindu Adoption and Maintenance Act, 1956 has held as follows:

“ 7. Thus from reading of Section 125(1)(b) of the Act it is evident that former does not provide for maintenance to a major unmarried daughter whereas later does so. Thus there are two statutes which make provision for grant of maintenance. In my opinion when two statutes are dealing with the allied subjects both have to be read as complimentary to each other. If such a rule is applied same will avoid any apparent contradiction between the different statutes dealing with the same subject. It would not be a proper construction of law to hold that under Code a major unmarried daughter would not be entitled to maintenance, but the Act governing the same field, major



unmarried daughter would be entitled for maintenance. When I apply the said rule of construction it is evident that the right of major unmarried girl for maintenance from parents after attaining majority till her marriage flows from the combined reading of Section 125 of the Code and 20(3) of the Act.”

(Emphasis supplied)

**49. In Abhilasha Vs. Parkash, (2021) 13 SCC 99,**

**Hon’ble Supreme Court** after referring to Section 20 of the Hindu Adoption and Maintenance Act has held as follows:

“12. The 1956 Act was enacted to amend and codify the law relating to adoptions and maintenance among Hindus. A bare perusal of Section 125(1)CrPC as well as Section 20 of the 1956 Act indicates that whereas Section 125CrPC limits the claim of maintenance of a child until he or she attains majority. By virtue of Section 125(1)(c), an unmarried daughter even though she has attained majority is entitled for maintenance, where such unmarried daughter is by reason of any physical or mental abnormality or injury is unable to maintain herself. The scheme under Section 125(1)CrPC, thus, contemplates that claim of maintenance by a daughter, who has attained majority is admissible only when by reason of any physical or mental abnormality or injury, she is unable to maintain herself. In the present case, the Revisional Court has returned a finding that the appellant is not suffering from any physical or mental abnormality or injury due to which she is unable to maintain herself. The above findings are not even questioned before us. What is contended that even if she is not suffering from any physical or mental abnormality or injury, by virtue of Section 20 of the 1956 Act, she is entitled to claim maintenance till she is unmarried..”

(Emphasis supplied)

### **Present Case**

### **Appreciation of the Evidence and findings of this Court**

**50.** From the perusal of the evidence on record, I find that Renu Kumari, the Applicant before the Family Court, has



*prima facie* proved that Nathuni Paswan married her in the Shiv Temple at Deoghar on 25.06.2002 as per Hindu rites and customs, concealing from her his previous marriage with Gulabi Devi. Hence, he cannot take plea of his previous marriage with Gulabi Devi to show that his marriage with Renu Kumari is not legally valid. Refer to Badshah case (supra).

**51.** It is also *prima facie* proved that subsequent to the marriage, Renu Kumari joined the matrimonial home of Nathuni Paswan at his government quarter at Khagaria and out of their wedlock Pihu Kumari @ Ruchi Kumari was born on 09.02.2012 and she has been still living in the quarter along with her minor daughter, Pihu Kumari.

**52.** The pleading of Renu Kumari regarding her marriage with Nathuni Paswan has been supported not only by her own deposition but even by her witnesses examined during the trial. She could not produce the documentary proof or photographs of the marriage because the same were in possession of Nathuni Paswan. It has been also deposed that the school register and the LIC policy in the name of the daughter, Pihu Kumari also bear the name of Nathuni Paswan as her father. One joint photograph of Nathuni Paswan with Renu Kumari, when confronted to him during the trial, has been



admitted by him as true.

**53.** I further find that Nathuni Paswan has made a claim that prior to the alleged marriage of Renu Kumari with him, Renu Kumari was already married with Dheeraj Singh. However, as per law, Nathuni Paswan is required to prove the previous marriage of Renu Kumari with Dheeraj Singh by strict proof. But I find that he has failed to adduce such evidence in support of his claim. As per law, he was required to implead Dheeraj Singh in the proceeding, because he was necessary party and without his presence in the proceeding, his marital status with Renu Kumari could not be declared.

**54.** In this regard one may refer to **D. Velusamy Vs. D. Patchaiammal, (2010) 10 SCC 469**, which is held as follows:

“9. In our opinion, since Lakshmi was not made a party to the proceedings before the Family Court Judge or before the High Court and no notice was issued to her hence any declaration about her marital status vis-à-vis the appellant is wholly null and void as it will be violative of the rules of natural justice. Without giving a hearing to Lakshmi no such declaration could have validly be given by the courts below that she had not married the appellant herein since such a finding would seriously affect her rights. And if no such declaration could have been given obviously no declaration could validly have been given that the appellant was validly married to the respondent, because if Lakshmi was the wife of the appellant then without divorcing her the appellant could not have validly married the respondent.”

(Emphasis supplied)

**55.** I also find that no documentary proof or



eyewitness to the alleged marriage of Renu Kumari with Dheeraj Singh has been adduced by him during the trial. Hence, I find that Nathuni Paswan has failed to prove that Renu Kumari was previously married with Dheeraj Kumar.

**56.** Hence, I, *prima facie*, find that Renu Kumari is legally wedded wife of Nathuni Paswan and Pihu Kumari @ Ruchi Kumari is born out of their wedlock and Pihu Kumar is a minor. Hence, both Renu Kumari and Pihu Kumari are entitled to get maintenance from Nathuni Paswan as per law.

**57.** I also find that admittedly, Nathuni Paswan has monthly income of Rs. 70,000/- from his salary and Renu Kumari and Pihu Kumari have no means to sustain themselves, though they are living in the government quarter allotted in the name of Nathuni Paswan and rent is being deducted from the salary of Nathuni Paswan.

**58.** I also find that besides Renu Kumari and Pihu Kumari, one Gulabi Devi, another legally wedded wife of Nathuni Paswan, are dependents on Nathuni Paswan. Hence, in regard to quantum of compensation awarded by learned Family Court in favour of Renu Kumari and Pihu Kumari, I find that the maintenance granted is on higher side, in view the of number of the dependents of Nathuni Paswan as well as in view



of the fact that Renu Kumari and Pihu Kumari are living in the government quarter allotted in the name of Nathuni Paswan and the rent of the quarter is being deducted from his salary.

**59.** Hence, monthly payment of Rs. 5,000/- to Renu Kumari and that of Rs. 3,000/- to Pihu Kumari till her marriage towards their maintenance since the date of filing the maintenance petition i.e on 03.07.2014, will meet the ends of justice.

**60.** Accordingly, the present petition is allowed in part, modifying the impugned order dated 14.08.2019 passed by learned Principal Judge, Family Court, Khagaria in Maintenance Case No. 32M of 2014 directing the petitioner/Nathuni Paswan to pay maintenance to Renu Kumari and Pihu Kumari @ Rs. 5,000/- and Rs. 3,000/- per month respectively since 03.07.2014.

**61.** However, before I part with the case, it would be pertinent to clarify that the finding of this Court regarding the validity of the marriage between Renu Kumari and Nathuni Paswan and the paternity of Pihu Kumari is tentative in nature in this proceeding under Section 125 Cr.PC. Nathuni Paswan is at liberty to file appropriate matrimonial petition before Civil Court/Family Court for final declaration of matrimonial status



of Renu Kumari and paternity of Pihu Kumari.

**62.** Lower Court Record be sent back to the Court below forthwith.

**63.** Interlocutory Application, if any, 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.)**

Shoaib/  
Ravishankar/  
Chandan

AFR/NAFR	AFR
CAV DATE	10.12.2024.
Uploading Date	18.03.2025
Transmission Date	18.03.2025

