

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.262 of 2020

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

Avadh Kishore Sah @ Awadhesh Sah Son Of Birendra Prasad Sah Resident Of Village - Akoriya, P.O.- Kunouni, P.S. And District - Banka At Present R/O Mohalla - New Colony, Ward No. 09, Naya Bazar, Saharsa, P.S. And Distt.- Saharsa

... .. Petitioner/s

Versus

1. The State of Bihar
2. Soni Devi Wife of Sri Awadhesh Sah @ Avadh Kishore Sah D/o Dharendra Prasad Sah, Resident of Mohalla - Kalapganj, Mirjanhat, P.S.- Mojahidpur, Distt.- Bhagalpur.
3. Gudiya Kumari Daughter of Awadhesh Sah @ Avadh Kishore Sah Minor daughter, Under guardianship of her mother namely Soni Devi Resident of Mohalla - Kalapganj, Mirjanhat, P.S.- Mojahidpur, Distt.- Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner	:	Mr. Ranjan Kumar Jha, Advocate Mr. Mirtunjay Kumar Mishra, Advocate Mr. Rana Pratap Singh, Advocate Ms. Nitu Kumari, Advocate
For the State	:	Mr. Upendra Kumar, APP
For the O.P. No. 2 & 3	:	Mr. Sanjeev Kumar Mishra, Sr. Advocate Ms. Manini Jaiswal, Advocate Mr. Binay Krishna, Advocate Mr. Manas Rajdeep, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

Date : 07-05-2025

The present revision petition has been preferred by the petitioner against the impugned order dated 14.01.2020 passed by learned Principal Judge, Family Court, Bhagalpur, whereby learned Principal Judge has directed the petitioner to pay Rs.3,000/- per month to his wife/O.P. No.2 and Rs.2,000/- per month to his daughter/O.P. No.3 towards their maintenance.



The maintenance to the daughter is payable till her marriage as per the impugned order and arrears of the maintenance amount is directed to be paid in three installments within six months.

2. The factual background of the case is that on 26.07.2012, O.P. Nos. 2 and 3 filed Misc. Case No. 96 of 2012 under Section 125 Cr.PC for their maintenance against the petitioner and his parents. However, it appears that later on parents were deleted from the array of the Opposite Parties before the Court below.

Case of Soni Devi as per the Maintenance Petition

3. As per the allegation made in the maintenance petition, the marriage between the petitioner and Soni Devi was solemnized on 18.03.2010 as per Hindu Rites and Customs and out of the wedlock, O.P. No.3 was born. As per further allegation, on account of non-fulfillment of demand of additional dowry, O.P. No.2/wife of the petitioner was subjected to physical assault, on account of which, she was constrained to leave the matrimonial home and live at her maik. It is further alleged that petitioner-husband was having illicit relationship with one lady viz., Khushbu Kumari and hence, he was subjecting his wife/O.P. No. 2 to torture. O.P. No.2/Soni Devi has also alleged that her husband and her parents-in-law wanted



her to die, so that her husband could remarry Khushbu Kumari and get handsome dowry. It is further alleged that Soni Devi/O.P. No.2 has no source of income to maintain herself and her daughter and despite demand, her husband or her parents-in-law did not pay even a single penny for her maintenance and that of her daughter and she has been living a miserable life at her *maike*. It is also stated that she has been ready to live with her husband but her husband has not been ready to keep her in his matrimonial home. Regarding income of her husband, it is alleged that her husband is in Government job and his income from cultivation and business is Rs.24,000/- per month.

Case of Avadh Kishore Sah as per his show cause

4. On notice, petitioner/husband of Soni Devi appeared before the Family Court and filed his show cause contesting the maintenance petition filed by his wife and his daughter. Regarding marriage, it is stated by the petitioner that his marriage was forcibly solemnized with Soni Devi at Bababudha Nath Temple, Bhagalpur. He has also disputed the paternity of Gudiya Kumari, the daughter of Soni Devi. He has stated that Gudiya Kumari was born to Soni Devi on 08.08.2010, whereas his marriage with Soni Devi was solemnized on 18.03.2010. As such, Gudiya Kumari was born



just after about 4 and ½ months of his marriage with Soni Devi. It is further claimed by Awadhesh Sah that his wife/Soni Devi is having illicit relationship with her brother-in-law viz., Vishnudeo Sah and she is not interested to continue her matrimonial life with him. Regarding his employment and income, he has stated that he is employed in the office of Collectorate, Saharsa on contract as Executive Assistant in the month of January, 2010 and his monthly income is only Rs.11,000/-. He is also willing to keep his wife in his matrimonial home and despite his efforts, she did not come to matrimonial home. He has denied the allegation of demand of dowry and torturing therefor.

Trial and order of the Family Court

5. During trial, the following four witnesses were examined on behalf of the petitioner-wife before the Family Court : (i) **P.W.-1 - Soni Devi**, who is one of the petitioners herself, (ii) **P.W.-2 - Dhirendra Prasad Sah**, who is father of Soni Devi, (iii) **P.W.-3, Pawan Kumar Sah**, who is brother of Soni Devi and (iv) **P.W.-4, Vishnudeo Sah**, who is acquainted with both the parties. O.P. No. 2/Soni Devi has also filed one salary slip of her husband as **Ext. 1**.

6. The opposite party/husband before the Family



Court, who is petitioner herein, has examined the following two witnesses in support of his case : (i) **O.P.W-1, Avadh Kishore Sah**, who is opposite party himself before the Family Court and (ii) **O.P.W-2, Birendra Prasad Sah**, who is father of Avadh Kishore Sah. However, no documentary evidence has been filed on behalf of opposite party/husband.

7. As per the evidence on record and submissions of the parties, learned Family Court has passed the impugned order, whereby he has allowed the maintenance to the O.P No. 2/wife and O.P. No. 2/daughter @ Rs. 3,000/- and Rs. 2,000/- per month respectively from the date of filing of the maintenance petition i.e. 26.07.2012.

Submissions of the parties

8. I heard learned counsel for the petitioner, learned APP for the State and learned counsel for the O.P. Nos. 2 and 3.

9. Learned counsel for the petitioner herein submits that the impugned order is not sustainable in the eye of law and the same is liable to be set aside.

10. To substantiate his submission, learned counsel for the petitioner further submits that O.P. No. 2/Soni Devi is not legally wedded wife of the petitioner because his marriage with her was forcibly solemnized.



11. He further submits that O.P. No. 2/wife is also not entitled to get maintenance on account of her illicit relationship with her brother-in-law viz., Vishnudeo Sah and the petitioner/husband is not biological father of even O.P. No. 3, who is born to O.P. No. 2, out of illicit relationship, since prior to the marriage. O.P. No. 3 was born within about 4 and ½ months of the marriage. The marriage was solemnized on 18.03.2010, whereas O.P. No. 3 was born on 08.08.2010, just after 4 months and 10 days of the marriage. Hence, there is no legal liability of the petitioner to maintain even O.P. No.3 who is illegitimate child born to O.P. No.2 due to her illicit relationship since prior to the marriage.

12. He further submits that O.P. No. 2/wife is not entitled to get maintenance also because she has left the matrimonial home on her own on account of her illicit relationship with brother-in-law viz., Vishnudeo Sah, whereas the petitioner was willing to keep her in the matrimonial home and his all efforts to bring her in matrimonial home failed on account of her refusal to join him at his matrimonial home.

13. He also submits that the marriage between the petitioner and O.P. No. 2/wife is already dissolved by decree of divorce dated 01.03.2025, passed by learned Principal Judge,



Family Court, Munger in Matrimonial Case No. 88 of 2014 which was filed by the petitioner/husband for dissolution of marriage under Section 13(1)(1-A)(1-B) of Hindu Marriage Act. He also filed a copy of the judgment/decreed dated 01.03.2025, passed by learned Family Court, Munger across the Board and the same was taken on record.

14. Learned counsel for petitioner also submits that even quantum of maintenance is not sustainable in view of the income of the petitioner/husband, which is Rs. 11,000/- per month.

15. Learned APP for the State and learned counsel for the O.P. Nos. 2 and 3, however, defend the impugned order submitting that there is no illegality or infirmity in it and the present Criminal Revision petition is liable to be dismissed.

Relevant statutory provisions and case laws

16. However, before I consider the rival submissions of the parties, it would be imperative to refer to relevant statutory provisions and case laws. Section 125 Cr.PC deals with order for maintenance of wife, children and parents and 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)

17. As such, as per Section 125 Cr.PC, 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. As per case laws, here wife means only a legally



wedded wife. One may refer to the following judicial precedents in this regard:

(i) **Yamunabai A. Adhav Vs. Anantrao S. Adhav**
(1988) 1 SCC 530

(ii) **Savitaben S. Bhatiya Vs. State of Gujarat**
(2005) 3 SCC 636

18. As per the **Explanation 2 to Section 125(1) Cr.PC**, it also transpires that “wife” includes a woman who has been divorced by her husband, but has not remarried.

19. From **Section 125(1)(b) Cr.PC**, it also clearly transpires that any legitimate or illegitimate minor child whether married or not but unable to maintain himself/herself is entitled to get maintenance from his/her father.

20. 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 for 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 in 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)

21. 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 satisfaction about the marital status of the party and such decision regarding the marital status is tentative finding subject to final order in any civil proceeding, observing 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)

22. It is also settled principle of law that finding regarding 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**
AIR ONLINE 2025 SC 57
- (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



23. Similar view has been taken by **Hon'ble Supreme Court** in **Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit, (1999) 7 SCC 675**, holding 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)

24. 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. Here one may refer to **Pravati Rani Sahoo Vs. Bishnupada Sahoo, (2002) 10 SCC 510**, wherein Hon'ble Supreme Court has held 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)

Evidence of the petitioners before the Family Court



25. Now coming to the evidence of the parties, I find that the evidence adduced on behalf of O.P. Nos. 2 and 3, who were petitioners before the Family Court, is as follows:-

(i) **P.W.-1 - Soni Devi**, who is one of the petitioners herself, in her **examination-in-chief**, has reiterated her statements as made in her maintenance petition. She has also deposed that she has filed one Criminal Case bearing No. 1711 of 2011, which is pending consideration before learned Court of S.D.J.M., Bhagalpur. In her **cross-examination**, she has deposed that her daughter was born on 08.08.2010 and she lived in her sasural for 1.5 years. She knows Khusbu Kumari for the last five years, but she does not know about her domicile, parentage and caste. One divorce petition filed by her husband is also pending in the Court of Munger. She came to know about the illicit relationship of her husband two years back. She has not seen the appointment letter of her husband and as per the document, monthly income of her husband is Rs. 9,000/-. She has no information about the agricultural land of her husband, nor could she give any details of the land belonging to her husband.

(ii) **P.W.-2 - Dharendra Prasad Sah**, who is father of Soni Devi, in his **examination-in-chief**, has supported the



averments as made by his daughter in her maintenance petition.

In his **cross-examination**, he has deposed that Soni Devi and her daughter is living with him for six year and during this period, her husband Avadh Kishore had not taken her to his home. He has further deposed that his daughter has no source of income, whereas her husband Avadh Kishore has monthly income of Rs. 25,000/- to 30,000/- as Computer Operator in ACP office, Saharsa and her daughter has lodged one criminal case against her husband and her husband has also filed one divorce petition, which is pending at Munger. He has further deposed that if her husband withdraws his divorce petition, she is ready to live with him.

(iii) **P.W.-3, Pawan Kumar Sah**, who is brother of Soni Devi, in his **examination-in-chief**, has also supported the maintenance petition of his sister. In his **cross-examination**, he has deposed that his sister is living separately from her husband for the last 8 years and her husband does not want to keep her in his matrimonial home, whereas his sister wants to live with him. The daughter of his sister is eight years old and one dowry case has also been lodged against the husband of his sister. The husband of his sister works in ACP office and have monthly income of Rs. 18,000/- per month and his sister wants to live



with her husband.

(iv) **P.W.-4, Vishnudeo Sah**, in his **examination-in-chief**, has deposed that he is acquainted with both the parties. He has also supported the maintenance petition filed by Soni Devi against her husband. In his **cross-examination**, he has deposed that Soni Devi is his sister-in-law and she is living at her maik for the last 7 to 8 years. He has further deposed that her husband always asks for money and on account of non-fulfillment of the same, he is not willing to keep in his matrimonial home. One daughter is also born out of the wedlock between Soni Devi and her husband and the child is living with her mother. He has further deposed that husband of Soni Devi is a Government servant and has monthly income of Rs. 20,000/- to 25,000/-, whereas Soni Devi has no source of income.

26. Soni Devi has also filed one salary slip of her husband (**Ext. 1**) as per which, last date of payment was 13th September and as per the salary slip, the payment for 13th October and 13th November is Rs. 18,000/- on account of multiplication of Rs. 9000 by 2.

Evidence on behalf of the opposite party before the Family Court

27. The evidence of opposite party before the Family Court, who is petitioner herein, is as follows:-

(i) **O.P.W-1, Avadh Kishore Sah**, who is opposite



party himself before the Family Court, in his **examination-in-chief**, has reiterated his statement as made in his show cause. He has also stated that he is a contractual employee getting Rs. 11,000/- per month and earlier, he was getting Rs. 9,000/- and Rs. 6,000/-. In his **cross-examination**, he has deposed that his father is working in the office of the Commissioner Saharsa for 25 years. He was appointed in the year, 2010 on contract and no salary slip is prepared and earlier payment was made through bank draft, but presently payment is made directly in his bank account and in his village, there is some cultivable land in the name of his father in Korea village of Banka District. He has further deposed that he is not aware of the name of his daughter, who is living with her mother and the name of school where she was studying at. He has further deposed that he had gone twice to her sasural for compromise and taking his wife to his matrimonial home. He has denied the suggestion that his monthly income is Rs. 30,000/-.

(ii) **O.P.W-2, Birendra Prasad Sah**, who is father of Avadh Kishore Sah, in his **examination-in-chief**, has also supported the case of his son, who is contesting the maintenance petition filed against him. In his **cross-examination**, he has deposed that Avadh Kishore Sah is his only



son and he is posted at Saharsa ACP office and has monthly salary of Rs. 11,000/-. He has one bigha of agricultural land in his village. He has further deposed that marriage of his son with Soni Devi was forcibly solemnized. When he was confronted with the photograph of marriage of his son, he admitted that there is no police person in the photograph. He has denied the suggestion that the marriage was done forcibly. He has further deposed that Soni Devi has one daughter who is nine years old.

28. No documentary evidence has been filed on behalf of opposite party/husband. However, in the course of argument, learned counsel for the petitioner has filed a copy of the judgment/decreed dated 01.03.2025 passed by learned Principal Judge, Family Court, Munger, whereby learned Family Court has dissolved the marriage between the petitioner/ Avadh Kishore Sah and O.P. No.2 herein/Soni Devi. From perusal of the judgment, it transpires that petitioner herein/ Avadh Kishore Sah has filed divorce petition under Section 13(1)(1-A) and (1-B) of Hindu Marriage Act against his wife-Soni Devi for divorce on the ground of cruelty and desertion. However, learned Family Court had dissolved the marriage between the two on the ground of cruelty but plea of desertion of the petitioner-husband was rejected.



Findings of this Court

29. As such, I find, as per the evidence on record, that Avadh Kishore Sah, who is petitioner herein, has taken plea that Soni Devi is not his legally wedded wife on the ground that his marriage with her was forcibly solemnized. However, I find that, as per the evidence adduced on behalf of Soni Devi, her marriage with Avadh Kishore Sah was solemnized as per Hindu Rites and Customs at Temple without any application of force. Moreover, I find that petitioner/Avadh Kishore Sah has never filed any matrimonial petition for annulment of his marriage with Soni Devi, either under Section 11 or 12 of the Hindu Marriage Act. I further find that he has filed only a divorce petition under Section 13 of the Hindu Marriage Act against Soni Devi and it goes without saying that divorce petition is filed by the husband only against his legally wedded wife. Hence, the plea of the petitioner that Soni Devi was not his legally wedded wife, has no substance.

30. Even the plea of the petitioner that Soni Devi is now divorced and she is not entitled to get maintenance under Section 125 Cr.PC is liable to be rejected. As per Explanation (b) to Section 125(1) Cr.PC, wife includes even divorced wife and she is entitled to get maintenance under Section 125 Cr.PC,



if she has not remarried and it is not a case of the petitioner that his divorced wife has remarried.

31. As per further plea of the petitioner that Soni Devi/O.P. No.2 herein is not entitled to get maintenance from her husband because she has been in illicit relationship with her brother-in-law prior and subsequent to the marriage is not sustainable. Here it is pertinent to point out that adulterous life is no doubt disqualification for any wife to get maintenance from her husband under Section 125 Cr.PC. However, any physical relationship of a lady with any person prior to her marriage does not come within the definition of “adultery” because adultery is an offence against one’s spouse. However, adulterous life of any wife subsequent to her marriage is undoubtedly a disqualification for any married wife to get maintenance from her husband. However, “Living in adultery” denotes a continuous course of conduct and not isolated acts of immorality. One or two lapses from virtues may be acts of adultery, but would not be sufficient to show that the woman was “living in adultery”. A few moral lapse 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

32. But in the case on hand, I find that the petitioner-husband has not made any specific pleadings regarding adulterous life of his wife-Soni Devi. He was required to give details of the adulterous life of his wife with reference to time and place beside giving the name of the adulterer. But I find that in his pleadings and evidence, except bald allegation that his wife was having illicit relationship with her brother-in-law, viz., Vishnudeo Sah prior and subsequent to the marriage, there is no specific details regarding such life of his wife. Even, conduct of petitioner/husband during the subsistence of the marriage does not show that he was serious about his such allegation, because I find that no such allegation has been made in his divorce petition which was filed not on the ground of adultery but on the ground of cruelty and desertion. Moreover, as per his pleadings, he was always ready to keep his wife with him. Such



willingness on the part of a husband is not possible if he believes that his wife has been indulged in adulterous life. Hence, the petitioner has not proved that his wife-Soni Devi was living in adultery.

33. I further find that petitioner has also failed to prove that his wife was living at her *maike* without any rhyme and reason. As per the claim of the wife-Soni Devi, her husband-petitioner herein was having illicit relationship with another lady viz., Khushbu Kumari and hence, he was subjecting her to ill-treatment/cruelty and she was constrained to leave her matrimonial home to live at her maike along with the child. Even in the divorce proceeding, the petitioner-husband could not prove his allegation of desertion by his wife. Moreover, one criminal case filed by wife for alleged cruelty is still pending for consideration in the Court of S.D.J.M., Bhagalpur. Hence, I find that Soni Devi was living at her maike with her minor daughter with sufficient reason.

34. Regarding source of income, I find that as per pleading and evidence of Soni Devi on record, she has no means to maintain herself and her daughter living with her, whereas her husband has monthly income from government job as well as cultivation. Even the husband/petitioner herein has not pleaded



or adduced any evidence that his wife has any source of income and admittedly, he has been in government job.

35. Hence, I find that there is no doubt about entitlement of Soni Devi to get maintenance from her husband/petitioner herein.

36. As far as entitlement of O.P. No.3/Gudiya Kumari to get maintenance from the petitioner herein is concerned, it is pleaded on behalf of the petitioner that he is not her biological father. O.P. No.3/Gudiya Kumari is born to O.P. No.2/ Soni Devi on 08.08.2010, whereas his marriage with Soni Devi was solemnized on 18.03.2010, which shows that O.P. No.3/Gudiya Kumari is born just after 4 months and 10 days of his marriage with Soni Devi. Hence, it has been submitted on behalf of the petitioner that Gudiya Kumari/O.P. No.3 is not his legitimate daughter and she being born out of illicit relationship of Soni Devi with someone else, is illegitimate child of other man and hence, he is not liable to pay any maintenance to her.

37. Here, it would be pertinent to point out that as per Section 112 of Evidence Act that a child born during continuation of a valid marriage between his/her mother and any man, the child is held to be legitimate son/daughter of that man, unless it is shown by that man that he had no access to his wife



at any time when the child could have been conceived. Section 112 of the Evidence Act, 1872 reads as follows :-

“112. Birth during marriage, conclusive proof of legitimacy.—The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.”

38. Hon’ble Apex Court in para 34 of **Aparna Ajinkya Firodia v. Ajinkya Arun Firodia**, as reported in **(2024) 7 SCC 773**, has observed that Section 112 embodies the rule of law that the birth of a child during the continuance of a valid marriage or within 280 days (i.e., within the period of gestation) after its dissolution shall be “conclusive proof” that the child is legitimate unless it is established by evidence that the husband and wife did not or could not have any access to each other at any time when the child could have been conceived. The object of this provision is to attach unimpeachable legitimacy to children born out of a valid marriage. When a child is born during the subsistence of lawful wedlock, it would mean that the parents had access to each other. Therefore, the Section speaks of “conclusive proof” of the legitimate birth of a child during the period of lawful wedlock.

39. In para 37 of Aparna Ajinkya Firodia case



(supra), Hon'ble Apex Court has further observed that “access” or “non-access” does not mean actual cohabitation but means the “existence” or “non-existence” of opportunities for sexual relationship. Section 112 refers to point of time of birth as the crucial aspect and not to the time of conception. The time of conception is relevant only to see whether the husband had or did not have access to the wife. Thus, birth during the continuance of marriage is “conclusive proof” of legitimacy unless “non-access” of the party who questions the paternity of the child at the time the child could have been begotten is proved by the said party.

40. Hon'ble Apex Court in para 18 of **Thatchinamoorthy Vs. Sivagamy** as reported in **2010 (2) MWN (Civil) 337** has observed that law presumes strongly in favour of legitimacy of off-spring. Section 112 of Evidence Act embodies a rule of law that a child born during the continuance of a valid marriage or during 280 days (within the period of gestation), it shall be conclusive proof that it is legitimate unless it is proved by clear and strong evidence that the husband and wife did not and could not have any access at any time when the child could have been begotten.

41. Hon'ble Apex Court in para 9 of **Sham Lal**



Alias Kuldip Vs. Sanjeev Kumar & Ors. as reported in **(2009) 12 SCC 454** has observed that Section 112 of the Evidence Act is based on English Law. Section 112 reproduces the rule of English Law that it is undesirable to inquire into the paternity of a child when the mother is a married woman and the husband had access to her. Adultery on her part will not justify finding of illegitimacy if husband has had access.

42. Hon'ble Apex Court in para 21 of **Goutam Kundu Vs. State of West Bengal & Anr.** as reported in **(1993) 3 SCC 418** has observed that this section is based on the well-known maxim *pater est quem nuptiae demonstrant* (*he is the father whom the marriage indicates*). The presumption of legitimacy is this, that a child born of a married women is deemed to be legitimate, it throws on the person who is interested in making out the illegitimacy, the whole burden of proving it. The law presumes both that a marriage ceremony is valid, and that every person is legitimate. Marriage or filiation (parentage) may be presumed, the law in general presuming against vice and immorality.

43. In para 22 of **Goutam Kundu case (supra)**, **Hon'ble Apex Court** has further observed that it is a rebuttable presumption of law that a child born during the lawful wedlock



is legitimate, and that access occurred between the parents. This presumption can only be displaced by a strong preponderance of evidence, and not by a mere balance of probabilities.

44. In the case on hand, I find that admittedly the O.P. No.3/Gudiya Kumari is born to Soni Devi (O.P. No.2 herein)/wife of petitioner-Avadh Kishore Sah during the subsistence of her marriage with him, though it is also not disputed that child is born just after 4 months and 10 days of the marriage of Soni Devi with petitioner-Avadh Kishore Sah. Hence, in view of the law, as provided in Section 112 of the Evidence Act, 1872, O.P. No.3/Gudiya Kumari is presumed to be legitimate daughter of the petitioner-Avadh Kishore Sah, because it has been already found that marriage between mother of Gudiya Kumari and the petitioner herein was valid and at the time of birth of the O.P. No.3/Gudiya Kumari, the marriage between his mother and the petitioner herein was subsisting. The presumption regarding the paternity of Gudiya Kumari could have been rebutted only by pleading and proving by Avadh Kishore Sah his non-access to Soni Devi, the mother of O.P. No.3/Gudiya Kumari at the time when the child Gudiya Kumari could have been conceived. But I find that there is no



such pleadings and evidence on behalf of the petitioner/Avadh Kishore Sah that before marriage, he had no access to or relationship with Soni Devi, except the bald allegation on his part that his wife was having illicit relationship with her brother-in-law viz., Vishnudeo Sah prior and subsequent to the marriage.

45. Moreover, I further find that the petitioner-Avadh Kishore Sah has never filed any matrimonial petition before Family Court or any Civil Court regarding declaration in regard to paternity of O.P. No.3/Gudiya Kumari. Hence, there is no declaration by any Family Court or Civil Court to the effect that O.P. No.3/Gudiya Kumari is not legitimate daughter of the petitioner or she is illegitimate daughter of any other man.

46. Moreover, I have already discussed and found in the previous paragraphs of this judgment 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 for the supply of food, clothing and shelter to them.

47. However, as it has been already discussed and found in previous paragraphs of the judgment, strict standard of proof is not required in a proceeding under Section 125 Cr.PC



unlike in matrimonial proceedings, where strict proof of marriage or paternity is essential. *Prima facie*, satisfaction of the Court regarding marital status of the parties and the paternity of the child is sufficient to pass order under Section 125 Cr.PC. It has been also discussed and found in the previous paragraphs of this judgment that any finding regarding marital status of the party or paternity of the 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 the marital status of the party or legitimacy or illegitimacy of the child.

48. In the case on hand, I find that as per the material on record O.P. No.3/Gudiya Kumari is born on 08.08.2010 to Soni Devi during continuation of her valid marriage with petitioner/Avadh Kishore Sah. Hence, there is mandatory legal presumption that O.P. No.3/Gudiya Kumari is legitimate daughter of the petitioner/Avadh Kishore Sah, and there is no pleading or evidence on record to rebut this conclusive proof.

49. As such, I find that O.P. No.3/Gudiya Kumari is also entitled to get maintenance from the petitioner/Avadh Kishore Sah as his legitimate minor daughter.

50. Now coming to the quantum of maintenance



awarded by learned Family Court to O.P. No.2 and O.P. No.3 @ of Rs. 3,000/- and 2,000/- per month respectively, I find that petitioner/Avadh Kishore Sah is in Government job working in the office of S.P., Saharsa. However, he has not adduced his salary slip before Family Court during trial and on the other hand, as per the evidence of P.W.2, his monthly income is Rs.25,000/- to 30,000/- and as per P.W.-3, his monthly income is Rs.18,000/- and as per P.W.-4, his monthly income is Rs.20,000/- to 25,000/-. However, Soni Devi has no source of income to maintain herself and her daughter.

51. In view of the aforesaid facts and circumstances, the quantum of maintenance awarded by Family Court is not excessive in view of the requirement of O.P. Nos. 2 and 3 as well as income of petitioner/Avadh Kishore Sah as per the evidence on record.

Order

52. As such, I do not find any perversity of finding of any fact, or error of law, requiring any interference in the impugned order. Hence, the petition is, accordingly, dismissed.

53. A copy of this order along with the LCR be sent to the Court below forthwith.

54. However, before I part with the case, it would be



pertinent to clarify that the finding of this Court regarding validity of the marriage between the parties and paternity of the child is tentative in nature, subject to any contrary finding of competent Civil Court or Family Court.

(Jitendra Kumar, J.)

ravishankar/shoaib

AFR/NAFR	AFR
CAV DATE	01.05.2025.
Uploading Date	07.05.2025.
Transmission Date	07.05.2025.

