

**Khilan Devi Vs. Amar Singh**

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**Court :** Madhya Pradesh

**Decided On :** Jan-10-1995

**Reported in :** II(1995)DMC122

**Judge :** A.S. Tripathi, J.

**Acts :** [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 125

**Appeal No. :** Crl. Revision No. 33 of 1992

**Appellant :** Khilan Devi

**Respondent :** Amar Singh

**Advocate for Def. :** S.P. Shrivastava and ; Deepak Shrivastava Advs.

**Advocate for Pet/Ap. :** Rakesh Saxena and ; K.S. Swarnakar, Advs.

**Disposition :** Revision allowed

**Judgement :**

**A.S. Tripathi, J.**

1. This revision is filed against the judgment and order dated 10th of January, 1992 passed by 1st Additional Sessions Judge of Bhind, whereby the revision of the non-petitioner was allowed and the order of the Trial Court granting maintenance to the petitioner was set aside. The application of the petitioner for

grant of maintenance Under Section 125 Cr.P.C. was dismissed.

2. The facts of the case are that the petitioner claims to be the wife of the non-petitioner. She had filed an application for maintenance Under Section 125 Cr.P.C. which was allowed by the Magistrate, granting maintenance at the rate of Rs. 300/- per month. Against that order a revision was preferred before the 1st Additional Sessions Judge of Bhind which was allowed and the petition of the petitioner Under Section 125 Cr.P.C. was dismissed.

3. The petitioner claims to be the wife of the non-petitioner. She was married with the non-petitioner sometime in the year 1954. She was living with the non-petitioner for quite sometime. She had no issue. Thereafter, the non-petitioner and was compelled to leave the house of the non-petitioner is said to have married with another lady and had four issues with her. According to the petitioner she was being ill treated by the second wife of the non-petitioner. She went to the house of her parents and lived there. She could not tolerate living for sometime, when her parents and brothers were maintaining her. Thereafter she had no means to maintain herself and then she applied for maintenance Under Section 125 Cr.P.C. The Trial Court had recorded the evidence and came to the conclusion that the marriage was proved on record which has been avoided by the non-petitioner. The Trial Court had also found that the petitioner was entitled to claim maintenance at the rate of Rs. 300/- per month from the date of the order. The application was allowed accordingly. In revision, the learned First Additional Sessions Judge found that the marriage was not properly proved. He had found that the petitioner herself had delayed her claim for several years and on that account, she was not entitled to claim maintenance. The revision was accordingly allowed and the application of the petitioner Under Section 125 Cr.P.C. was dismissed.

4. Aggrieved by the order of the Revisional Court, the present revision has been preferred by the petitioner/wife.

5. The first point raised was on the point of factum of marriage with the non-petitioner. The petitioner had herself appeared before the Trial Court and stated on oath that she was married with the non-petitioner 30 years back. She had no issue. Ten years back, the non-petitioner married second wife and had issues from

her. Petitioner was thereafter being ill-treated and she had left the house of the non-petitioner and was being maintained by her parents. She had claimed maintenance at the rate of Rs. 500/- per month. The other witness Mangalsingh was examined who is the brother of the petitioner. He stated that the petitioner was married to the non-petitioner. The non-petitioner had married a second wife and had issues with her. Thereafter, the petitioner was turned out and was unable to maintain herself. Another witness Chatursingh deposed the same facts.

6. On the other hand, the non-petitioner Amar Singh examined himself and stated that petitioner was not his wife. He produced two witnesses Daljeetsingh and Naib Singh, who stated that the petitioner was not the wife of the non-petitioner. Had the Appellate Court assessed the evidence and come to the conclusion that the marriage of the petitioner with non-petitioner was proved on record, mere denial of the marriage by the non-petitioner was simply to deprive the petitioner of her claim of maintenance.

7. The Revisional Court while disturbing the findings of the Trial Court on this point, did not give any reason as to why the statement of the petitioner herself and two witnesses produced by her was discarded. The Revisional Court had observed that the two witnesses produced by the non-petitioner are independent and the two witnesses produced by the petitioner are her relations. Therefore, the testimony of the independent witnesses of the non-petitioner were reliable. This finding is wholly incorrect and not acceptable on record. The two witnesses produced by the non-petitioner belong to the same village of the non-petitioner. They are his neighbours. They are equally interested in the welfare of the non-petitioner. In any way, they could not be said to be independent witnesses.

8. Moreover, the marriage of the petitioner with the non-petitioner is further proved by documentary evidence on record. Non-petitioner Amar Singh himself had moved an application Ex.P. 1 before the Tehsildar for quashing mutation claimed by the petitioner on the basis of a Will alleged to have been executed by the father of the non-petitioner Atar Singh in favour of the petitioner. In that application, the non-petitioner had not denied marriage with the petitioner. Simply a plea taken in that case was that his father Atar Singh had not executed any Will. Had this being

a fact that marriage of the petitioner was not solemnised with the non-petitioner, the same might have been denied and specifically alleged in the aforesaid application Ex.P.1. This application Ex.P.1 was presented by the non-petitioner himself, which shows that the petitioner was the legally married wife of the non-petitioner.

9. Further the non-petitioner has filed a copy of the judgment of the Tehsildar of the mutation proceedings in which the claim of the Will set up by the petitioner in the mutation proceedings was rejected. The certified copy of the judgment has been filed on record which indicates that the own witness of the non-petitioner Kishan Singh had stated in the mutation proceedings that the petitioner was the first wife of the non-petitioner and he had arranged a Panchayat for the maintenance of the petitioner. The own admission of the witness produced by the non-petitioner has further established the factum of marriage on record. In this view of the matter, the learned Trial Court had rightly held that the marriage of the petitioner with non-petitioner was fully established on record. The observations made by 1st Additional Sessions Judge are wholly uncalled for and against the weight of evidence.

10. So far as the point of maintenance is concerned, the Trial Court had allowed maintenance at the rate of Rs. 300/- per month from the date of the order. It has been pointed out that the non-petitioner is a retrenched army employee. He is getting only pension of Rs. 800/- per month. His agricultural income is hardly Rs. 3000/4000 per year. In this view of the matter, it was suggested that the maintenance allowed by the Trial Court at the rate of Rs. 300/- per month was excessive.

11. Learned Counsel for the petitioner has pointed out that Rs. 300/- per month is the minimum requirement for maintaining an individual in these hard days.

12. Considering the facts of the case and the meagre income of the non-petitioner, I think that it will be fair that maintenance at the rate of Rs. 200/- per month be granted to the petitioner.

13. On the point of arrears, no doubt there are lapses on the part of the petitioner herself. She was being maintained by her parents and brothers for quite some time. When she had felt that her parents and brothers were unable to maintain her, she had moved an application for maintenance. In these circumstances, for the delay in moving the Court, I think that the arrears of maintenance may not be allowed. Therefore, the petitioner is entitled to claim maintenance at the rate of Rs. 200/- per month from the date of order passed by this Court today.

14. The revision is allowed and the petitioner is granted maintenance at the rate of Rs. 200/- per month from the non-petitioner from today to be paid regularly every month.

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