

Justice V.R.Krishna Iyer has rightly identified the underlying philosophy of the Chapter dealing with maintenance provisions in the Criminal Procedure Code when he wrote thus:

"The point must be clearly understood that the scheme of complex provisions in Chapter IX of the Criminal Procedure Code has a social purpose. Ill-used wives and desperate divorcees shall not be driven to utter and moral degradation to seek sustenance in the streets."<sup>1</sup>

The learned judge also reminded the courts of their duty to stick with the Constitutional objectives. He declared

"No construction which leads to frustration of the statutory project can secure validation if the court is to pay true homage to the Constitution."<sup>2</sup>

Keeping this serene objective in juxtaposition with the reasoning resorted to by the various courts it can not be said that our courts have actually captured the imagination of the fathers of the Code or the framers of our Constitution. Courts are very often prone to give a very narrow interpretation to the provision. For example, in fixing the amount payable by way of maintenance to a divorced wife, in determining the eligibility to claim maintenance etc., Indian courts are usually holding a rigid and narrow view. One of such views taken by the courts is with respect to the relevance of validity of marriage while entertaining a maintenance application filed by a wife. Courts usually take the stand that only a legally wedded wife is entitled to maintenance under Section 125 of the Criminal Procedure Code. An attempt is made in this paper to analyse the correctness of such a stand in view of the philosophy underlying Chapter IX of the Criminal Procedure Code and latest developments in that aspect.

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<sup>1</sup> *Bai Tahira v. Ali Hussain Fidaai Chohan* (1979) 2 S.C.C.316, p. 321.

<sup>2</sup> *Ibid.*

The Criminal Procedure Code is silent with respect to the issue whether marriage needs to be valid for enabling the 'wife' to claim maintenance under its provisions. Therefore the responsibility to decide the issue fell on the court. In *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav*<sup>3</sup> the apex court of India took the view that only wife a valid marriage is entitled to maintenance under Section 125 of the Criminal Procedure Code. In that case the second wife of a Hindu applied for maintenance under Section 11 of the Hindu Marriage Act. The second marriage of a Hindu is a bigamous marriage and hence void. As a result of it the 'husband' and 'wife' do not attain the status of husband and wife.

The question that was to be answered in that case was whether the expression 'wife' used in Section 125 of the Criminal Procedure Code would be interpreted to mean only a legally wedded wife not covered under Section 11 of the Hindu Marriage Act or not. The word is not defined in the Criminal Procedure Code except indicating in the explanation that it includes a divorced. The Supreme Court took the rigid stand that the Section was introduced in the interest of the wife and those who intended to take benefit under the section needed to establish the necessary condition that she was the wife of the person concerned. The reason for this decision was two-fold. One reason was that the provision extending the benefits of the section to a divorced wife itself was indicative of the fact that there have to be a marriage first.<sup>4</sup> The other reason was that the Parliament, while including specific provisions for extending the benefit of the section to a divorced woman and an illegitimate child, did not do so with respect to a woman who is not lawfully married.<sup>5</sup>

The court also expressed the feeling that whether Section 125 is attracted or not could not be answered except by reference to the appropriate law governing the parties.<sup>6</sup> In other words, only when an applicant established her status or relationship with reference to the personal law that an application could be maintained.<sup>7</sup>

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<sup>3</sup> (1988) 1 S.C.C. 530. Before this decision various High Courts have taken the stand that for determining the question of maintenance under Section 125 of the Criminal Procedure Code a strict proof of marriage is not essential. See for example *Bali Narayan Pawye v. Siddheswari Morang* 1981 Cri.L.J. 674; *Soudamini Devi v. Bhagirathi Raj* 1982 Cri.L.J. 539 etc.

<sup>4</sup> *Id.*, 535.

<sup>5</sup> *Id.*, 536.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

It would be pertinent at this juncture, to note that under the Hindu Marriage Act a marriage is rendered void not only under Section 11 but also under Section 7 when essential ceremonies are not performed.<sup>8</sup> In such a case where marriage could be rendered void due to non-performance of ceremonies, the Supreme Court recently has taken a different view. In *Dwarika Prasad Satapathy v. Bidyut Prava Dixit*<sup>9</sup> the appellant, a bachelor, was the close friend of the elder brother of the respondent and was frequently visiting their house in connection with a social and cultural organization of the village. He fell in love with the respondent. The appellant was proposing pre-marital sexual relationship to the respondent, which was persistently refused by her. Thereafter, the appellant took a vow in the name of Lord Nilamadhab Bije to marry her and thereby won the confidence of the respondent. As a result of the cohabitation the respondent conceived and she started insisting for a marriage. The respondent refused it on one pretext or the other. The respondent then complained to various authorities and finally launched a hunger strike in front of the office of the appellant. Thereafter, on the intervention of the Sub-Divisional Officer and other persons, their marriage was arranged in the temple of Nayagari in the presence of witnesses. After the marriage the respondent was taken to the house of the appellant. On the way she was persuaded to stay at the parental house on the ground that his father may not accept her as a bride. She was in an advanced stage of pregnancy. She stayed at her parental house and gave birth to a female child. The parties continued to live separately as before. Then the wife filed petition for maintenance for herself and for the child.

In the proceedings under Section 125 of the Criminal Procedure Code the appellant denied pre-marital sexual relations with the respondent. He asserted that he was forced to undergo some sort of a marriage with respondent at the point of a knife. He alleged that the marriage was forcefully carried out without his consent and hence there was no valid marriage in the eye of law.

In this case the court held that validity of the marriage for the purpose of summary proceedings under Section 125 of the Criminal Procedure Code was to be determined on the basis of the evidence brought on record by the parties. The

<sup>8</sup> *Bhaoran Shankar Lokhande v. State of Maharashtra* A.I.R. 1965 S.C. 1564.

<sup>9</sup> (1999) 7 S.C.C. 675.

standard of proof of marriage in such proceedings, the court felt, was not as strict as was required in a trial of offence under Section 494 of the Indian Penal Code. The court reassured:

"If the claimant in proceedings under Section 125 of the Code succeeds in showing that she and the respondent have lived together as husband and wife, the court can presume that they are legally wedded spouses, and in such a situation, the party who denies the marital status can rebut the presumption."<sup>10</sup>

The court went on to add:

"Once it is admitted that the marriage procedure was followed then it is not necessary to further probe into whether the said procedure was complete as per the Hindu rites in the proceedings under Section 125 Criminal Procedure Code."<sup>11</sup>

The court in this case tried to distinguish *Anantrao's Case*. In *Anantrao's Case* the marriage was null and void because it was a second marriage. What the Supreme Court held in that case was that marriage of a woman in accordance with Hindu rites with a man having a living spouse is a complete nullity in the eye of law and she was not entitled to the benefit of Section 125 of the Criminal Procedure Code. But the Supreme Court in *Dwarika Prasad Satapathy's Case* felt that the judgment of *Anantrao's Case* had no bearing on the facts of that case since it was neither a case of a *de facto* marriage nor of a marriage, which is void *ab initio*. According to the Supreme Court "it is a case where it is contended that at the time of marriage essential ceremonies were not performed".<sup>12</sup>

The court held that an application under Section 125 of the Criminal Procedure Code does not determine the rights and obligations of the parties and it is enacted with a view to provide a summary remedy for providing maintenance to a wife, children and parents. While distinguishing the present case from the decision in *Bhaorao Shanker Lokhande v. State of Maharashtra*<sup>13</sup> the court took

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<sup>10</sup> *Id.*, 679.

<sup>11</sup> *Id.*, 679-80.

<sup>12</sup> *Id.*, 680.

<sup>13</sup> *Supra* n. 8.

the view that though for convicting a person under Section 494 of the Indian Penal Code for bigamy, it is necessary to take into consideration the fact whether the essential ceremonies of marriage are really performed in the first or second marriage it is not so insisted in the case of an application under Section 125 of the Criminal Procedure Code which is of a summary nature. The court correctly upheld the stand that the provision under Section 125 was not to be utilized for defeating a right, conferred by the legislature on the destitute women, children or parents who are victims of the social environment.

Though the decision of the Supreme Court in *Dwarika Prasad Satapathy's Case* is a commendable one, which succeeded in upholding the purpose of Section 125 of the Criminal Procedure Code, it resulted in certain anomalies. The way the court distinguished the case at hand from *Anantrao's Case* is not at all convincing. In *Anantrao's Case* the marriage was null and void under Section 11 of the Hindu Marriage Act. In *Dwarika Prasad Satapathy's Case* the allegation was that the marriage was not valid due to non-performance of essential ceremonies. To distinguish both these cases simply on this ground is highly unjust and is an example of the court upholding formal equality principle. In both these cases the marriage is void and there is no reason for distinguishing one from the other. If they are differentiated that differentiation is not reasonable and would thus result in arbitrariness and denial of the fundamental right of equality.

Is there any rationality in saying that for claiming maintenance under the Criminal Procedure Code legality of marriage is a pre-requisite? The Law Commission felt that it is not so and expressed its opinion in its 48th Report.<sup>14</sup> The Commission stated:

"One of the anomalies of Section 488 is that while the mother of an illegitimate child is entitled to take proceedings for maintenance for the benefit of the child, there is no independent right vested in her to take proceedings for her own maintenance. Moreover, a girl who has been seduced by a male and is subsequently left by the male cannot claim maintenance for herself, even if pregnancy follows. Such

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<sup>14</sup> Law Commission of India: 48<sup>th</sup> Report on some questions under the Code of Criminal Procedure Bill, 1970, pp.21-22.

cases, fortunately rare so far are bound to increase with growing urbanization and changes in social structure. If there is justification for an illegitimate child being allowed to proceed under Section 488, there is greater justification for allowing the seduced girl who has been rendered pregnant. The additional condition that pregnancy must have followed is suggested mainly as an evidentiary safeguard. We, therefore, recommend that the scope of Section 488 should be extended to cases mentioned just now, namely (1) mother of an illegitimate child and (2) an unmarried girl with whom a male has had intercourse leading to pregnancy."<sup>15</sup>

The Report of the Law Commission thus clearly suggests that it is the responsibility of law to protect women who are the mother of illegitimate children. If a man is to maintain a girl whom he has seduced, what is the rationality in saying that he need not maintain a woman with whom he has undergone a fake marriage?

If a statutory provision is capable of being interpreted in two ways, it is the rule of interpretation of statutes that the interpretation, which is favourable to the weaker, should be followed. Therefore while interpreting Section 125 of the Criminal Procedure Code the Supreme Court should have stated that legality of marriage is not an impediment for claiming the benefits under the Code of Criminal Procedure, 1973. In deciding the issue whether a wife is entitled to maintenance under Section 125 of the Criminal Procedure Code the legality of the marriage should not be a deciding factor. The reason for such view is that the provision under the Criminal Procedure Code is meant for the protection of the destitute persons. But there should be some criteria for deciding whether a woman is entitled to maintenance from a man. It is, therefore, submitted that in cases where a man or a woman lived as husband and wife or a man seduced a woman promising to her or there is a de facto marriage, the man is bound to maintain the woman. Otherwise it will result in injustice because the law will be assisting the man to trap a woman to feigned marriages and thereafter to shirk any

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<sup>15</sup> *Id.*, p.22.

responsibility of maintaining her. Even though the Criminal Procedure Code has been amended recently<sup>16</sup> bringing in substantial changes into Section 125 this defect in the law was not rectified.

In the present day India, most of the women are not aware of the legal implications of the validity of marriage. Neither do they know about the conditions, which would invalidate their marriages. Therefore it should not be the aim of the law of any civilized nation to punish such illiterate, ignorant and destitute women. Our judges should listen to the elderly advice rendered by Justice V.R.Krishna Iyer who administered the caution thus:

"The conscience of social justice, the corner stone of our Constitution will be violated and soul of the scheme of Chapter IX of the Code (Criminal Procedure Code) a secular safeguard of British Indian vintage against jetsam women and flotsam children, will be defiled if judicial interpretation sabotages the true meaning and reduces a benign protection into a damp squib."<sup>17</sup>

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<sup>16</sup> The Code of Criminal Procedure (Amendment) Act, 2001.

<sup>17</sup> *Fuzlunbi v. Khader Vall* (1980) 4 S.C.C.125, p.128.