

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.678 of 2024

Arising Out of PS. Case No.- Year-0 Thana- District- Kaimur (Bhabua)

Sangeeta Devi W/o Pawan Kumar Singh R/o vill - Damodarpur (Jigani), Post - Manihari, P.S. - Bhabhua, Distt. - Kaimur Bhabhua

... ... Petitioner/s

Versus

1. Pawan Kumar Singh S/o Late Jamuna Singh R/o vill - Damodarpur (Jigani), Post - Manihari, P.S. - Bhabhua, Distt. - Kaimur Bhabhua
2. Veer Kumar Singh S/o Pawan Kumar Singh Minor Represented through their mother namely Sangeeta Devi, R/o vill - Sikandarpur (Jigani), Post - Manihari, P.S. - Bhabhua, Distt. - Kaimur Bhabhua
3. Virat Kumar Singh S/o Pawan Kumar Singh Minor Represented through their mother namely Sangeeta Devi, R/o vill - Sikandarpur (Jigani), Post - Manihari, P.S. - Bhabhua, Distt. - Kaimur Bhabhua

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Parth Gaurav, Advocate
		Mr. Manogya Singh, Advocate
		Mr. G. R. Shahi, Advocate
		Mr. Ashutosh Kumar Pandey, Advocate
For the Respondent/s	:	Mr. Pankaj Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

CAV JUDGMENT

Date : 10-07-2025

1. The present criminal revision has been filed by the petitioner/revisionist, challenging the order, dated 20.06.2024, passed by learned Principal Judge, Family Court, Kaimur at Bhabhua in Maintenance Case No. 76(M) of 2022, whereby and whereunder, the learned court below dismissed the application under Section 125 Cr.P.C., filed by the petitioner, holding the same to be not maintainable on the ground that the petitioner is not the legally wedded



wife of the Opposite Party No.1.

2. The brief fact giving rise to the present revision is that the petitioner claims to have been married with O.P. No. 1 in June, 2010 at Village-Damodarpur, P.S.-Bhabhua, and out of the said wedlock, two sons, namely, Veer Kumar Singh and Virat Kumar Singh, were born. The petitioner contends that the O. P. No. 1 is posted as a Constable in Bihar Police at District-Aurangabad, drawing salary of Rs. 45,000/- per month.

3. It has been alleged by the petitioner that for the last six years, O. P. No.1 has abandoned the petitioner and the children has not provided any maintenance, and has severed all contacts. The petitioner, a *pardanashin* lady, has been surviving with the aid of her aged and ailing father, who is now unable to continue supporting her. This compelled her to file the maintenance petition under Section 125 Cr.P.C.

4. Upon receiving notice of the said maintenance case on 22.08.2022, O. P. No.1 filed a divorce petition under Section 13 of the Hindu Marriage Act, 1955, bearing Matrimonial Case No. 244 of 2022 before the



Principal Judge, Family Court, Kaimur at Bhabhua. However, interestingly, on the very date of filing the objection to the maintainability of the maintenance petition i.e., on 05.12.2023, O.P. No. 1 withdrew the divorce petition with liberty to file a fresh petition under a different provision.

5. In his reply filed in the maintenance case, the O. P. No. 1 denied the marriage with the petitioner, asserting that the petitioner is in fact his brother's widow and hence, the marriage, if any, falls within the prohibited degrees of relationship under Hindu Law and is void ab initio. On this basis, he sought dismissal of the petition.

6. The petitioner averred that their marriage was solemnized as per long-standing Hindu customs prevailing in their community, where it is acceptable for a widow to marry the younger brother of the deceased husband. Such customs, it was contended, have been socially recognized and followed since time immemorial.

7. The learned Family Court, however, failed to appreciate two crucial aspects:

(i) First, that the question before it was not a



declaration of validity of marriage but rather whether the petitioner had a *prima facie* right to claim maintenance under Section 125 Cr.P.C.

(ii) Second, that the plea of custom, specifically concerning the practice of levirate marriages, had been raised by the petitioner and is required to be examined before outright dismissal.

8. It is a settled position of law that in proceedings under Section 125 Cr.P.C., strict proof of marriage is not necessary, and a person who has lived with the opposite party as wife, and where the relationship is accepted socially and within the family, may be granted maintenance even if the marriage is disputed — especially when children are born out of the said relationship and their welfare is at stake.

9. The Hon'ble Supreme Court in ***Chanmuniya v. Virendra Kumar Singh Kushwaha***, reported in **(2011) 1 SCC 141**, has held that “a broad and expansive interpretation should be given to the term 'wife' under Section 125 Cr.P.C.” The same principle applies here, where the petitioner has made a *prima facie* case of being



treated as the wife and having been abandoned by the respondent without reasonable cause.

10. This Court will first deal with the legality of Levirate Marriage.

11. Section 5(iv) of the Hindu Marriage Act, 1955 prohibits marriage within the degrees of prohibited relationship unless the custom or usage governing both parties permits such a marriage.

“... unless the custom or usage governing each of them permits a marriage between the two.”

12. The Petitioner and the Opposite Party No. 1 belong to a community where levirate marriage (marriage of a widow with the younger brother of the deceased husband) is a long-established and socially accepted custom. The Petitioner has specifically pleaded in her rejoinder to the objection, dated 05.12.2023 that customary marriage was solemnized as per the local and caste-based traditions, practiced since generations, following the death of her husband.

13. Section 5 (iv) of the Hindu Marriage Act states:



“The parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits a marriage between the two.”

14. Section 3(a) defines "custom" as:

“A rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family.”

15. In simple terms, if a recognized, long-standing, and reasonable custom exists in a particular community that allows levirate marriage (a widow marrying her deceased husband's brother), such a marriage may be legally valid despite otherwise being within a prohibited relationship.

16. In ***Gokal Chand v. Parvin Kumari***, reported in **(1952) 1 SCC 713**, the Hon'ble Supreme Court held that once a custom is pleaded, Courts are duty-bound to examine its existence before rejecting the claim. A summary dismissal without framing issues or leading evidence is not only contrary to law but amounts to denial of justice.



17. In ***Badri Prasad v. Dy. Director of Consolidation***, reported in **(1978) 3 SCC 527**, the Hon'ble Supreme Court laid down that long-standing cohabitation gives rise to a strong presumption of valid marriage, especially where society treats the couple as husband and wife.

18. It is evident from the record that the Petitioner and O. P. No.1 have resided together for a significant period, long enough to give birth to two children-both of whom are acknowledged by the family. Their social acceptance is visible in how the children are recognized as legitimate by the kin, even if the marital bond of the mother is now being questioned. The glaring inconsistency in disowning the Petitioner on the sole ground of the marriage being a *levirate marriage*, while accepting her children as part of the family, reflects not just a legal contradiction but a moral and social injustice.

19. The Hindu Marriage Act, under Section 5(iv), clearly allows for a valid marriage within prohibited degrees if backed by custom. In the present case, such a custom has not only been pleaded but is evident in



practice-acknowledgment by the family, cohabitation, and parenthood. The denial of the wife's status in this context is an unjust act disguised as a legal technicality, and if accepted, would set a dangerous precedent where a woman who has fulfilled the role of a wife and mother is discarded without remedy, solely due to patriarchal convenience.

20. In such circumstances, social justice and the welfare of the children must prevail over rigid technical interpretations. The welfare of the child is paramount under Indian Law, and the security of the mother-his primary caregiver-cannot be separated from this consideration. Further, gender justice and constitutional morality, as endorsed by the Hon'ble Supreme Court in various rulings, require that maintenance and recognition of such women be protected, especially when the man and his family have benefited from such a union for years.

21. Therefore, this Court is of the firm view that the marriage, being validated by custom, cohabitation, social acceptance, and the birth of children, must be treated as valid in law for the purposes of Section 125



Cr.P.C. Disregarding such a union would not only be legally unsound but would also send a regressive message to society, undermining the dignity of women and the security of children born from such relationships.

22. In **Bhola Ram vs. Mukesh Devi**, decided on **21st October, 2022**, the Punjab & Haryana High Court acknowledged that some communities (e.g. Yadavs) have historically practiced *kareva* to protect widows.

23. Section 125 Cr.P.C. is a welfare-oriented provision, not confined to the strict contours of personal law. The Hon'ble Supreme Court in **Sukhdev Singh v. Sukhbir Kaur**, reported in **2025 SCC OnLine SC 299** held that a spouse whose marriage has been declared void under Section 11 of the 1955 Act is entitled to seek permanent alimony or maintenance from the other spouse by invoking Section 25 of the 1955 Act. Whether such a relief of permanent alimony can be granted or not always depends on the facts of each case and the conduct of the parties. The grant of relief under Section 25 is always discretionary.

24. The Petitioner, having lived as wife, borne



children, and been deserted without support, falls within the protective umbrella of Section 125 CrPC. The technical plea of invalidity of marriage, in this case, cannot be a valid ground to deny her maintenance.

25. The existence of children born out of the union further strengthens the presumption of valid marriage, or at minimum, a relationship akin to marriage, entitling the petitioner to maintenance under Section 125 Cr.P.C.

26. Thus, the findings of the learned Principal Judge, rejecting the maintenance petition solely on the ground of marriage being void without proper trial into the custom or factum of cohabitation, and without considering the welfare of the children, are legally unsustainable and liable to be set aside and is accordingly set aside.

27. The impugned order, dated 20.06.2024, passed in Maintenance Case No.76(M) of 2022 by the Ld. Principal Judge, Family Court, Kaimur at Bhabhua, is hereby quashed.

28. The instant criminal revision is allowed.



29. The matter is remanded back to the Family Court, Kaimur at Bhabhua with a direction to restore the maintenance petition to its original number and proceed in accordance with law, giving due opportunity to both parties to lead evidence, particularly on the question of custom and cohabitation.

(Bibek Chaudhuri, J)

skm/-

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