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**(2006) 11 AHC CK 0193**

**Allahabad High Court**

**Case No:** Criminal M.A. No. 13162 of 2006

Amit Agarwal

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

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**Date of Decision:** Nov. 1, 2006

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 482
- Hindu Marriage Act, 1955 - Section 5

**Citation:** (2007) 3 ACR 3007 : (2007) 2 CivCC 706 : (2007) 5 RCR(Criminal) 525

**Hon'ble Judges:** Barkat Ali Zaidi, J

**Bench:** Single Bench

**Advocate:** Samar Singh, for the Appellant; A.G.A., for the Respondent

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

Barkat Ali Zaidi, J.

The applicant-husband has come to this Court u/s 482, Cr. P.C. with a request that proceedings in Case No. 76 of 2005, Bobby Rani v. Amit Agarwal, u/s 125, Cr. P.C., pending in the court of J.M. (C.B.I.) Ghaziabad be quashed.

2. The ground on which he seeks termination of the proceedings is that he was 20 years old at the time of marriage with opposite party No. 2 Bobby Rani and had, therefore, not attained the age of majority and the marriage was, therefore, void in accordance with the provisions of Section 5(iii) of the Hindu Marriage Act, 1955. Section 5(iii) of the Hindu Marriage Act is as follows:

5 (iii) the bridegroom has completed the age of (twenty-one years) and the bride, the age of (eighteen years) at the time of the marriage.

3. The applicant says that he has filed a suit for declaration of marriage being void, which is pending.
4. The matter is being decided at the stage of admission, after hearing his counsel Sri Samar Singh and notice has not been issued to the Respondent-wife.
5. Even assuming for the sake of argument that the applicant was 20 years old at the time of marriage and that his marriage is not in accordance with Hindu Marriage Act and may even void, the, applicant cannot escape liability for the payment of maintenance u/s 125, Cr. P.C. Section 125, Cr. P.C. proceeds on the basis of de facto marriage and not on marriage de-jure, because the foundation for payment of maintenance u/s 125, Cr. P.C. is the existence of conjugal relationship as held in Bhirari Singh v. State of U.P., 1990 Cri LJ 844 (All).
6. Reference may also be made to the case of [Sarabjit Singh Vs. Charanjit Kaur](#), wherein, it has been held that husband is liable for payment of maintenance despite the pendency of a case of annulment of marriage. This was a case under Hindu Law but the question was about payment of maintenance and the same principle mutatis mutandis shall apply applicable to grant of maintenance u/s 125, Cr. P.C.
7. It may also be mentioned here that interpretation of laws which are enacted as measures of Social Welfare has to be made in a manner so as to give effect to their enforcement irrespective of minor curial obstacles. Section 125, Cr. P.C. is a Social Welfare Legislation mend for benefit of destitute women and the operation of the same should not be allowed to be obstructed or hindered because of pleas about marriage being void, viodable or irregular.
8. An indication to such perspective can be culled out from Explanation (b) to Sub-clause (i) of Section 125, Cr. P.C., which is as follows:

Wife includes a woman who has been divorced by, or has obtained divorce from, her husband and has not remarried.
9. It will appear that Section 125, Cr. P.C. has been made applicable to a wife who has been divorced. It is an indication that the validity of the marriage will not be a ground for refusal of maintenance if the other requirements for grant of maintenance u/s 125, Cr. P.C. are fulfilled.
10. The petition must, therefore, fail and is accordingly dismissed. The Court shall proceed with the case u/s 125, Cr. P.C. Post-Haste.
11. Let a copy of this order be sent immediately by the Registry to the Court of the concerned Magistrate, through District Judge, Ghaziabad for information and compliance.