

**Criminal Revision**Present: **The Hon'ble Justice Ashim Kumar Roy**

Judgment on: 05.03.2010

**C.R.R. No. 4335 of 2009****Uttam Das @ Uttam Kr. Das****versus****Smt. Rakhi Roy & Anr.****Point:**

**MAINTENANCE:** Proceeding under Section 125 of the Criminal Procedure Code for maintenance-Strict proof of marriage whether necessary-Matrimonial Suit pending whether ground for stay of the said maintenance proceeding - Code of Criminal Procedure, 1973 S. 125.

**Fact:** The petitioner / husband, by filing the instant application, has challenged a proceeding under Section 125 of the Code of Criminal Procedure on the ground, that challenging the legality and validity of the marriage and for a declaration that the marriage is a nullity, he has moved a Title Suit before the appropriate Court and the said suit is pending.

**Held:**

A proceeding under Section 125 of the Code of Criminal Procedure and a civil suit praying for declaration the marriage is a nullity arises out of two different cause of actions and merely because, a suit is pending for declaration the marriage is a nullity that cannot be ground for stalling a proceeding under Section 125 of the code of Criminal Procedure. In a maintenance proceeding under Section 125 of the Code, no strict proof of marriage is necessary and if the wife/opposite party is able to establish that both of them were living together as husband and wife for some period and they were accepted as such by the society then in that case the wife is always entitled to maintenance in the said proceeding. Moreover, there cannot be any blanket stay of maintenance proceeding on the ground of pendency of a matrimonial suit, where the marriage itself is under

challenge, more so, when, consequent upon a decision of a competent Civil Court, any order made under Section 125 of the Code may always be cancelled or varied. (Paragraph – 2)

For Petitioner : Mr. Musharraf Alam Sk.

The Court: A proceeding under Section 125 of the Code of Criminal Procedure has been challenged in this criminal revision, only on the ground, that challenging the legality and validity of the marriage and for a declaration the marriage is a nullity, the petitioner/husband has moved a Title Suit before the appropriate Court and the said suit is pending.

2. Having heard the Learned Counsel appearing on behalf of the petitioner, I am unable to sustain his contentions. A proceeding under Section 125 of the Code of Criminal Procedure and a civil suit praying for declaration the marriage is a nullity arises out of two different cause of actions and merely because, a suit is pending for declaration the marriage is a nullity that cannot be ground for stalling a proceeding under Section 125 of the code of Criminal Procedure. In a maintenance proceeding under Section 125 of the Code, no strict proof of marriage is necessary and if the wife/opposite party is able to establish that both of them were living together as husband and wife for some period and they were accepted as such by the society then in that case the wife is always entitled to maintenance in the said proceeding. Moreover, there cannot be any blanket stay of maintenance proceeding on the ground of pendency of a matrimonial suit, where the marriage itself is under challenge, more so, when, consequent upon a decision of a competent Civil Court, any order made under Section 125 of the Code may always be cancelled or varied.

3. This criminal revision has no merit and accordingly stands dismissed. Interim order, if any, stands vacated.

4. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

**( Ashim Kumar Roy, J. )**