

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 715 OF 2010
[arising out of SLP(CRL.) No. 7197 of 2008]

GOBARDHAN PANDIT

.....

APPELLANT

VERSUS

STATE OF BIHAR & ANR.

.....

RESPONDENTS

O R D E R

1. Leave granted.

2. This appeal has been filed by the husband impugning the judgment of the High Court of Judicature at Patna dated 14th August, 2008, whereby while noticing that the wife had re-married has nevertheless rejected the application of the husband, calling upon the Court to set aside the order of maintenance ordered by the courts below under Section 125 of the Code of Criminal Procedure. The learned counsel for the appellant has argued that in the light of the documents

and record which have been referred to in the paper book, it was clear that subsequent to the divorce obtained by the appellant-husband, the wife had remarried and had also borne a child from the second husband. The learned counsel for the respondent-wife has, however, submitted that there was no evidence to suggest that such marriage had indeed taken place or that a child had been born out of the second marriage.

3. We notice from the impugned order that the question of the wife's marriage had indeed been raised before the High Court for the first time but had been rejected on the ground that there was no evidence placed to show the factum of the second marriage or otherwise. We are, however, of the opinion that in the light of the documents that have come on record and in the light of the provisions of Section 125 Cr.P.C., it would be appropriate that the factum of the second marriage be examined after the leading of evidence as the maintenance under Section 125 Cr.P.C. would depend on the factum of the second marriage as also the fact as to whether the child that has allegedly been born to the respondent-wife was in or outside wedlock. We, accordingly, allow this appeal, set aside the impugned order and remit the case to the trial

court for decision afresh in accordance with law. The parties would be entitled to lead evidence in support of their respective cases and we request the trial court to take a quick decision in the matter as it has been pending since long. We also clarify that any remarks made in this judgment would not be taken as a reflection on the merits of the case. As an interim arrangement, more particularly, keeping in view the explanation under Section 125(1) of the Cr.P.C., we direct that till the trial court takes a decision in the matter, the maintenance that is being paid to the respondent-wife would be continued to be paid.

4. The appeal is allowed in the aforesaid terms. Parties shall appear before the trial court on 11th August, 2010. There would be no order as to costs.

.....J
[HARJIT SINGH BEDI]

.....J
[R.M. LODHA]

NEW DELHI
APRIL 06, 2010.