

İ»¿CASE NO.:
Special Leave Petition (crl.) 2763 of 1999

PETITIONER:
ROHTASH SINGH

RESPONDENT:
SMT. RAMENDRI AND ORS.

DATE OF JUDGMENT: 02/03/2000

BENCH:
S. SAGHIR AHMAD & D.P. WADHWA

JUDGMENT:
JUDGMENT

2000 (2) SCR 58

The Judgment of the Court was delivered by

S. SAGHER AHMAD, J. This Special Leave Petition was dismissed by us on 10.9.1999. We, hereinbelow, give our reasons for dismissing the Special Leave Petition.

The petitioner who is a member of the Indian Army was married with the respondent on 10th of May, 1990. Since the petitioner was posted away from his home, he left the respondent with his parents living jointly with his elder brother and his family at the family house in Village Kota, Police Station Galaoti, Tehsil and District Meerut. This, according to the petitioner, was not liked by the respondent who insisted that the petitioner should take leave from Army and stay with her at her parent's house. It is said that in 1991, the respondent left the petitioner's family house and went away to her father's house. She refused to come back to the family house of the petitioner in spite of petitioner's father and elder brother having gone to the respondent to persuade her to come back. On her refusal to come back, a notice was sent to the respondent on 5th of August, 1991 for restitution of conjugal rights but the respondent still did not come back to the petitioner's family house in District Meerut and, therefore, in 1993, the petitioner filed a petition under Section 13 of the Hindu Marriage Act for dissolution of the marriage on the ground of desertion. The respondent in her defence raised various pleas including mal-treatment and cruelty as also a demand by the petitioner for a sum of Rs. 21,000 and a scooter. It was pleaded by her that she was always prepared to come back to the petitioner but she was ill-treated by the petitioner's parents who used to lock her up in a room as the demand for a cash amount of Rs. 21,000 and a scooter was not met by the respondent. The Family Court, Meerut, decreed the suit of the petitioner on 15th of July, 1995 and passed the decree of divorce on the ground of desertion by the respondent.

During the pendency of the suit for divorce, the respondent had filed an application for maintenance under Section 125 of the Code of Criminal Procedure on 28th of May, 1993 which was allowed by the Family Court, Meerut on 13th of March, 1997 in spite of the fact that the judgment by which a decree for divorce was passed in favour of the petitioner on the ground of respondent's desertion was brought to the notice of the Family Court. The Judgment passed by the Family Court, Meerut was challenged by the petitioner in a Revision tiled in the High Court but the Revision was dismissed on 23rd of March, 1999. It is against this judgment that the present petitioner has been filed.

The principal contention raised by the learned counsel for the petitioner is that a decree for divorce having been passed under Section 13 of the Hindu Marriage Act on the ground of desertion by the respondent, an order

for maintenance could not have been passed in favour of the respondent on account of Sub-section (4) of Section 125 Cr. P.C.

Sub-section (4) of Section 125 Cr. P.C. provides as under :-

"(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent."

Under this provision, a wife is not entitled to any Maintenance Allowance from her husband if she is living in adultery or if she has refused to live with her husband without any sufficient reason or if they are living separately by mutual consent. Thus, all the circumstances contemplated by Sub-section (4) of Section 125 Cr. P.C. presuppose the existence of matrimonial relations. The provision would be applicable where the marriage between the parties subsists and not where it has come to an end. Taking the three circumstances individually, it will be noticed that the first circumstance on account of which a wife is not entitled to claim Maintenance Allowance from her husband is that she is living in adultery. Now, adultery is the sexual intercourse of two persons, either of whom is married to a third person. This clearly supposes the subsistence of marriage between the husband and wife and if during the subsistence of marriage, the wife lives in adultery, she cannot claim Maintenance Allowance under Section 125 of the Code of Criminal Procedure.

The second ground on which she would not be entitled to Maintenance Allowance is the ground of her refusal to live with her husband without any sufficient reason. This also presupposes the subsistence of marital relations between the parties. If the marriage subsists, the wife is under a legal and moral obligation to live with her husband and to fulfil the marital obligations. She cannot, without any sufficient reason, refuse to live with her husband. "Sufficient reasons" have been interpreted differently by the High Courts having regard to the facts of individual cases. We are not required to go into that question in the present case as admittedly the marriage between the parties came to an end on account of a decree for divorce having been passed by the Family Court. Existence of sufficient cause on the basis of which the respondent could legitimately refuse to live with the petitioner is not relevant for the present case. In this situation, the only question which survives for consideration is whether a wife against whom a decree for divorce has been passed on account of her deserting the husband can claim Maintenance Allowance under Section 125 Cr. P.C. and how far can the plea of desertion be treated to be an effective plea in support of the husband's refusal to pay her the Maintenance Allowance.

Admittedly, in the instant case, the respondent is a divorced wife. The marriage ties between the parties do not subsist. The decree for divorce was passed on 15th of July, 1995 and since then, she is under no obligation to live with the petitioner. But though the marital relations came to an end by the divorce granted by the Family Court under Section 13 of the Hindu Marriage Act, the respondent continues to be "wife" within the meaning of Section 125 Cr.P.C. on account of Explanation (b) to Sub-section (1) which provides as under :-

"Explanation. - For the purposes of this Chapter -

(a)

(b) "wife" includes woman who has been divorced by, or has obtained a divorce from her husband and has not remarried."

On account of the Explanation quoted above, a woman who has been divorced by her husband on account of a decree passed by the Family Court under the Hindu Marriage Act, continues to enjoy the status of a wife for the limited

purpose of claiming Maintenance Allowance from her ex-husband. This Court in Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Others, AIR (1978) SC 1807, observed as under :-

"9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Art. 39. We have no doubt that, sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause-the cause of the derelicts."

Claim for maintenance under the first part of Section 125 Cr.P.C. is based on the subsistence of marriage while claim for maintenance of a divorced wife is based on the foundation provided by Explanation (b) to Sub-section (1) of Section 125 Cr. P.C. If the divorced wife is unable to maintain herself and if she has not remarried, she will be entitled to Maintenance Allowance. The Calcutta High Court had an occasion to consider an identical situation where the husband had obtained divorce on the ground of desertion by wife but she was held entitled to Maintenance Allowance as a divorced wife under Section 125 Cr.P.C. and the fact that she had deserted her husband and on that basis a decree for divorce was passed against her was not treated as a bar to her claim for maintenance as a divorced wife. See : Sukumar Dhibar v. Smt. Anjali Dasi, (1983) CrL. L.J. 36. The Allahabad High Court also, in the instant case, has taken a similar view. We approve these decisions as they represent the correct legal position.

Learned counsel for the petitioner then submitted that once a decree for divorce was passed against the respondent and marital relations between the petitioner and the respondent came to an end, the mutual rights, duties and obligations should also come to an end. He pleaded that in this situation, the obligation of the petitioner to maintain a woman with whom all relations came to an end should also be treated to have come to an end. This plea, as we have already indicated above, cannot be accepted as a woman has two distinct rights for maintenance. As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125(4). In another capacity, namely, as a divorced woman, she is again entitled to claim maintenance from the person of whom she was once the wife. A woman after divorce becomes a destitute. If she cannot maintain herself or remains unmarried, the man who was, once, her husband continues to be under a statutory duty and obligation to provide maintenance to her.

Learned counsel for the petitioner then contended that the Maintenance has been allowed to the respondent from the date of the application. The application under Section 125 Cr.P.C. was filed by the respondent during the pendency of the civil suit for divorce under Section 13 of the Hindu Marriage Act. It is contended that since the decree of divorce was passed on the ground of desertion by respondent, she would not be entitled to Maintenance for any period prior to the passing of the decree under Section 13 of the Hindu Marriage Act. To that extent, learned counsel appears to be correct. But for that short period, we would not be inclined to interfere.

It was for these reasons that the Special Leave Petition, being without merit, was dismissed on September 10, 1999.