

P.UBAID, J.

“ C.R”

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**R.P(FC) No.2 of 2014**

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Dated this the 24th July, 2014

O R D E R

Whether a wife, whose marriage stands annulled under Section 12 of the Hindu Marriage Act, is entitled to claim maintenance under Section 125 of Cr.P.C, is the question of law involved in this revision, and the said question is raised by the husband, despite a Division Bench decision of this Court in his own case, that such a lady also will come within the definition of 'wife' under Explanation (b) to Section 125 of Cr.P.C. The dispute between the revision petitioner and his wife came up before this Court in another proceeding, and the decision resolving the legal issue was reported in **[2012 (1) KLT 769]**. The facts are not in dispute, and the reasonableness or adequacy of the amount of maintenance is also not in dispute. What is involved in this revision is only the question of law, as to whether the respondent herein can claim maintenance under Section 125 of Cr.P.C, as wife defined under the law.

2. The respondent herein filed M.C No.191 of 2003

before the Family Court, Kannur, claiming maintenance from her husband under Section 125 of Cr.P.C. The revision petitioner resisted the claim on the contention that the wife has been residing separately without any reason or excuse, and that such a lady, who has left the company of her husband without any justifiable reason, cannot claim maintenance under Section 125 of Cr.P.C.

3. The trial court conducted enquiry in the proceedings and heard both sides on the factual aspects. None of the parties adduced any oral or documentary evidence. The trial court passed orders on 28.1.2005 in M.C No.191 of 2003, directing the revision petitioner herein to pay maintenance to his wife at the rate of ₹ 1000/- per month. On the same day, the trial court passed orders in O.P.431 of 2003, annulling the marriage under Section 12 (1) (a) of the Hindu Marriage Act on the ground of impotence of the husband. In view of the decree annulling the marriage on the ground of impotence, the husband, in stead of pursuing the proper and regular remedy, approached this Court with Writ Petition (C) No.36823 of 2008 with a prayer

to set aside the maintenance order on the ground that such an order is illegal and unenforceable. In the said proceeding, a Division Bench of this Court considered all the factual and legal aspects in detail and settled the dispute, that the respondent herein can claim maintenance under Section 125 of Cr.P.C, as wife, as defined under Explanation (b) to Section 125 (1) of Cr.P.C. Accordingly, the writ petition was dismissed by this Court.

4. Aggrieved by the dismissal of the writ petition, the revision petitioner herein approached the Hon'ble Supreme Court with an application for Special Leave, to challenge the decision of this Court . Leave was declined by the Hon'ble Supreme Court, and the revision petitioner was directed to pursue appropriate legal remedies available otherwise. Accordingly, he filed this revision petition under Section 19 (4) of the Family Courts Act, challenging the legality and enforceability of the order passed by the Family Court in the maintenance proceeding.

5. The learned counsel for the revision petitioner submitted that the decision of the Division Bench in Writ

Petition No.36823 of 2008 stands merged in the order of the Hon'ble Supreme Court in S.L.P (Crl) No. 2944 of 2012, and so, the parties are not bound by the Division Bench decision. Such an argument cannot be accepted because the decision of this Court, made by the Division Bench in the case between the very same parties stands not set aside, or overruled. So long as the said decision of the Division Bench stands not overruled by any subsequent decision or set aside by the Apex Court, the parties are bound by the said decision.

6. Of course, on facts, there is not much dispute. When the marriage stands annulled, the husband cannot have any defence except a possible defence that the wife has her own source of income. There is no such factual situation here. As regards the quantum of maintenance also, the revision petitioner cannot be heard to complain because it is only ₹ 1000/- per month. The revision petitioner is very much on the legal issue, whether the respondent can claim maintenance under Section 125 of Cr.P.C as a woman whose marriage stands annulled.

7. The learned counsel for the revision petitioner cited a decision of the Hon'ble Supreme Court in **Savitaben Somabhai Bhatiya v. State of Gujarat & Others** [2005 (3) SCC 636] and submitted that a wife whose marriage stands annulled will not come within the definition of 'wife' under Section 125 of Cr.P.C. Of course, in the said case, the Hon'ble Supreme Court held in the factual situation that the wife whose marriage is ab initio null and void, cannot claim maintenance under Section 125 of Cr.P.C. But, later the Hon'ble Supreme Court explained the legal position and held in **Badshah v. Sou.Urmila Badshah Godse** [**2013 (4) KLT 367 (SC)**] that in a case where the husband suppressed his previous marriage, and the wife happened to marry him without knowledge of previous marriage, the husband will have to pay maintenance to the wife despite the fact that the marriage is null and void on the ground of violation of clause (i) of Section 5 of the Hindu Marriage Act. The Apex Court explained that **Savitaben's case** would apply in those circumstances where a woman married a man with full knowledge of the first subsisting marriage. The

purport of the subsequent decision and the position of law settled by the Hon'ble Supreme Court in **Badshah's case** is that nullity of marriage or annulment of marriage will not by itself disentitle the lady to claim maintenance under Section 125 of Cr.P.C. In a case where the marriage happened to be annulled or declared null and void due to some mischief or wrong committed by the husband, he will have to pay maintenance under Section 125 of Cr.P.C despite declaration of nullity or annulment of marriage. Here is a case where the wife applied for annulment of marriage on the ground of impotence of the husband, which was suppressed by him. In such a situation, the decision of the Honb'ble Supreme Court in **Badshah v Sou. Urmila Badshah Godse [2013 (4) KLT 367 (SC)** can be followed. In such a factual situation, where the husband suppressed material facts, and the lady suffered for no fault or wrong of her, the decision in **Savitaben's case** cannot be applied.

8. In **[2012 (1) KLT 769]**, the case between the parties herein, this Court has discussed all the decisions on

the point including **Savitaben's** case and **Badshah's** case. This Court held in **[2012 (1) KLT 769]** that the respondent herein is entitled to claim maintenance under Section 125 of Cr.P.C. This is a case where marriage was annulled under Section 12 (1) (a) of the Hindu Marriage Act, and not a case where marriage was declared ab initio null and void under Section 11 of the Hindu Marriage Act. Of course, effect of both is the same, but legal consequences may not be the same. Nullity of marriage under Section 11 of the Hindu Marriage Act can be declared on the ground of violation of any of the conditions under Section 5 of the Hindu Marriage act. But, annulment under Section 12 of the Hindu Marriage Act can be made only on any of the grounds provided under Section 12 of the Hindu Marriage Act. Anyway, all these aspects were considered by this Court in detail in the Division Bench decision and this Court has settled the question of law in the case brought by the revision petitioner himself that, his wife is entitled to claim maintenance under Section 125 of Cr.P.C. The spirit and purport of the Supreme Court decision cited in **Badshah's**

case is that, what matters is not nullity or annulment, but the circumstance in which and the ground on which the marriage was annulled, or declared null and void. Applying the decisions of the Hon'ble Supreme Court, and also the Division Bench of this Court in **[2012 (1) KLT 769]**, I find that the respondent herein is entitled to claim maintenance from the revision petitioner under Section 125 of Cr.P.C. Accordingly, I find that this revision petition is liable to be dismissed. Of course, as discussed above, the quantum of maintenance does not require interference because it is very reasonable. The revision petitioner does not have any other defence, and there is nothing to show that the respondent has her own source of income.

In the result, this revision petition is dismissed. The parties will bear their respective costs.

**Sd/-
P.UBAID
JUDGE**

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P.S to Judge