

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S).232-233 OF 2015

DR. SWAPAN KUMAR BANERJEE

APPELLANT(S)

VERSUS

THE STATE OF WEST BENGAL & ANR.

RESPONDENT(S)

J U D G M E N T

DEEPAK GUPTA, J.

The short question raised in these appeals is whether a wife, who has been divorced by the husband, on the ground that the wife has deserted him, is entitled to claim maintenance under Section 125 of the Code of Criminal Procedure, 1973 (Cr.P.C.).

We may refer to the relevant portion of Section 125 of the Code of Criminal Procedure:-

"125. Order for maintenance of wives, children and parents.- (1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

x x x

x x x

x x x

x x x

x x x

x x x

x x x

x x x

x x x

Explanation.- For the purposes of this Chapter, -

x x x

x x x

x x x

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

(2) x x x

x x x

x x x

(3) x x x

x x x

x x x

(4) No Wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, 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.

x x x

x x x

x x x"

It is the contention of Mr. Debal Banerjee that in terms of sub-section (4), no wife, who has deserted her husband can claim maintenance under Section 125 of the Cr.P.C. His further submission is that since in terms of the explanation wife includes a divorced woman, therefore, even a wife who has been divorced on the ground of desertion would not be entitled to maintenance in view of sub-section (4). Mr. Debal Banerjee has very candidly placed before us three judgments of this Court which take a view contrary to the one being canvassed by Mr. Banerjee before us.

In Vanamala Vs. H.M. Ranganatha Bhatta¹, this Court

1. (1995) 5 SCC 299

dealt with a similar issue and held as follows:

"3. Section 125 of the Code makes provision for the grant of maintenance to wives, children and parents. Sub-section (1) of Section 125 inter alia says that if any person having sufficient means neglects or refuses to maintain his wife unable to maintain herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife not exceeding Rs 500 in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct. Clause (i) of the Explanation to the sub-section defines the expression 'wife' to include a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. In the instant case it is not contended by the respondent that the appellant has remarried after the decree of divorce was obtained under Section 13-B of the Hindu Marriage Act. It is also not in dispute that the appellant was the legally wedded wife of the respondent prior to the passing of the decree of divorce. By virtue of the definition referred to above she would, therefore, be entitled to maintenance if she could show that the respondent had neglected or refused to maintain her. Counsel for the respondent, however, invited our attention to sub-section (4) of Section 125, which reads as under:

125.(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.

On a plain reading of this Section it seems fairly clear that the expression 'wife' in the said sub-section does not have the extended meaning of including a woman who has been divorced. This is for the obvious reason that unless there is a relationship of husband and wife there can be no question of a divorcee woman living in adultery or without sufficient reason refusing to live with her husband. After divorce where is the occasion for the woman to live with her husband? Similarly there would be no question of the husband and wife living

separately by mutual consent because after divorce there is no need for consent to live separately. In the context, therefore, sub-section (4) of Section 125 does not apply to the case of a woman who has been divorced or who has obtained a decree for divorce. In our view, therefore, this contention is not well founded."

Thereafter, in Rohtash Singh Vs. Ramendri & Ors.²

this Court took a similar view:

"11. 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."

This view, which was taken by two-Judge Benches has been confirmed in Manoj Kumar Vs. Champa Devi³ by a three judge bench, though, no specific reasons have been recorded in the judgment. Mr. Debal Banerjee urged that the matter requires reconsideration. We are not in

2. (2000) 3 SCC 180

3. (2018) 12 SCC 748

agreement with him for two reasons. Firstly, the view taken in the first two judgments has been confirmed by a three-judges Bench and, therefore, we cannot refer it to a larger Bench.

Even otherwise, this view has been consistently taken by this Court and the said view is in line with both the letter and spirit of the Cr.P.C.

No doubt, as urged by Mr. Debal Banerjee, explanation II to Section 125 of the Cr.P.C. by deeming fiction includes a divorced woman to be a wife and, therefore, a woman who has been divorced by her husband can still claim maintenance under Section 125 of the Cr.P.C. The question is how we should read the provisions of sub-section (4) in this regard, especially when we deal with those women, against whom a decree for divorce has been obtained on the ground that they have deserted their husband. Once the relationship of marriage comes to an end, the woman obviously is not under any obligation to live with her former husband. The deeming fiction of the divorced wife being treated as a wife can only be read for the limited purpose for grant of maintenance and the deeming fiction cannot be stretched to the illogical extent that the divorced wife is under a compulsion to live with the ex-husband. The husband cannot urge that he can divorce his wife on the ground that she has deserted him and then deny maintenance which should otherwise be payable to her on the ground that even after divorce she

is not willing to live with him. Therefore, we find no merit in the contention of Mr. Debal Banerjee.

Coming to the merits of the case, the matrimonial dispute started with the husband filing a petition of judicial separation in 1992, though, it was alleged that since 1987 the wife had deserted him. In 1997 a petition for divorce was filed and the divorce was granted in 2000. During this period from 1987 to 2000 when the wife was living separately from her husband she did not file any petition for grant of maintenance. Even during the divorce proceedings though an application under Section 24 of the Hindu Marriage Act, 1955 was filed but it seems that the same was either dismissed for non-prosecution or was not pressed. It was not decided on merits in any event.

After the divorce was granted, according to the appellant he got remarried after a year and it was only thereafter that the wife filed a petition for grant of maintenance. That, according to us, will make no difference because it is for the wife to decide when she wants to file a petition for maintenance. She may have felt comfortable with whatever earnings she had upto that time or may be she did not want to precipitate matters till she was contesting the divorce petition by filing a claim for maintenance. Whatever be the reason, the mere fact that the wife did not file a petition for grant of maintenance during the pendency of the matrimonial

proceedings, is no ground to hold that she is not entitled to file such a petition later on.

The next issue raised was that the wife being a qualified architect from a reputed university i.e. Jadavpur University, Calcutta would be presumed to have sufficient income. It is pertinent to mention that as far as the husband is concerned, his income through taxable returns has been brought on record which shows that he was earning a substantial amount of Rs.13,16,585/- per year and on that basis Rs.10,000/- per month has been awarded as monthly maintenance to the wife. No evidence has been led to show what is the income of the wife or where the wife is working. It was for the husband to lead such evidence. In the absence of any such evidence no presumption can be raised that the wife is earning sufficient amount to support herself.

In this view of the matter, we find no merit in the appeals, which are accordingly dismissed.

Pending application(s), if any, stands disposed of.

.....J.
(DEEPAK GUPTA)

.....J.
(ANIRUDDHA BOSE)

New Delhi;
September 19, 2019

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s).232-233/2015

DR. SWAPAN KUMAR BANERJEE

Appellant(s)

VERSUS

THE STATE OF WEST BENGAL & ANR.

Respondent(s)

Date : 19-09-2019 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DEEPAK GUPTA
HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Appellant(s)

Mr. Debal Banerjee, Sr. Adv.
Mr. Amit Pawan, AOR
Mr. Abhishek Amritanshu, Adv.
Mr. Anand Nandan, Adv.
Mr. Akshat Srivastava, Adv.
Mr. Hassan Zubair Waris, Adv.
Mr. Rohit Rajershi, Adv.

For Respondent(s)

Mr. Suhaan Mukerji, Adv.
Ms. Astha Sharma, Adv.
Mr. Amit Verma, Adv.
Mr. Abhishek Mandhanda, Adv.
Ms. Kajal Dalal, Adv.
Mr. Naveen Kumar, Adv.
M/S. Plr Chambers And Co., AOR

Mr. Sudip Sanyal, Adv.
Mr. Arun K. Sinha, AOR
Mr. Sinha Shrey Nikhilesh, Adv.
Mr. Nayon Dubey, Adv.
Mr. Rakesh Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed order.

Pending application(s), if any, stands disposed of.

(ARJUN BISHT)
COURT MASTER (SH)

(RENU KAPOOR)
BRANCH OFFICER

(signed order is placed on the file)