IN THE HIGH COURT OF TRIPURA
A G A R T A L A

CRL.REV.P. NO.89 OF 2016

Shri Subal Das,
son of late Jahar Das,
resident of Sachindra Nagar Colony,
P.S. Jirania, District: West Tripura

..... Petitioner

– Vs –

1. **Smti. Mousumi Saha (Das),**
wife of Sri Subal Das,
daughter of Sri Shakti Ranjan Saha,

2. **Miss Chadni Das,**
daughter of Sri Subal Das,
being minor represented by the petitioner No.1 [as mother]

-both are residents of Khudiram Palli, P.O. Amarpur,
P.S. Birganj, District: Gomati Tripura

..... Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. R. Dutta, Advocate

For the respondents : Mr. S. Sarkar, Advocate

Date of hearing : **02.02.2017**

Date of judgment & order : **25.07.2017**

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

By means of this petition filed under Section 397 read with Section 401 of the Cr.P.C., the order dated 22.09.2016

delivered in Case No. Misc.08 of 2015 by the Sub-Divisional Magistrate [SDJM] Amarpur, Gomati has been questioned inasmuch as according to the petitioner, the claim of the respondent No.1 for monthly maintenance allowance under Section 125(1) of the Cr.P.C. is barred under Section 125(4) of the Cr.P.C. as the respondent No.1 herein had withdrawn herself from the society of the petitioner along with her daughter without any reasonable excuse or lawful reason.

02. It is no denying fact that by the judgment dated 25.03.2016 delivered in T.S. (RCR) 31 of 2015, the Judge, Family Court, Agartala, West Tripura has clearly declared that the respondent No.1 being the lawfully married wife of the petitioner had withdrawn herself from the society of the petitioner along with her daughter without any lawful excuse. The said judgment dated 25.03.2016 has not been challenged by the respondent No.1 and thus the decree of restitution of conjugal rights directing the respondent No.1 to restitute conjugal life with the petitioner has reached its finality.

03. It is not in the pace of controversy that the respondent No.1 is legally married wife of the petitioner and the respondent No.2 is their daughter borne in their wedlock. It is not in dispute as well that the respondent No.1 with her daughter left the matrimonial home for incongenial matrimonial circumstances on 27.09.2014. The petitioner has also acceded that against him the respondent No.1 had filed the complainant in the police station for beating her mercilessly

on unlawful demand. The allegations are no less even against the respondent No.1. It has been observed in the impugned order dated 22.09.2016 as under:

> **"From the averments, I also find that many cases has been filed by the Petitioner and which was ultimately withdrawn by way of amicable settlement, thus, it is proved that a mental torture was going on since long and Petitioner has been residing in her parents house though recently it has been ordered by the Ld. Family Court to reside petitioner with OP."**

04. Having recorded the evidence, the SDJM has granted maintenance allowance for the respondents herein, who were the petitioners in the petition filed under Section 125 of the Cr.P.C. being case No.Misc.08 of 2005. The said order dated 22.09.2016 whereby the petitioner was directed to pay the respondents a sum of Rs.5,000/- every month as maintenance allowance has been questioned solely on the premise that since by the judgment dated 26.03.2016 [Exbt.D] the competent civil court has declared that the respondent No.1 has deserted the petitioner without reasonable excuse and as such the respondent No.1 is not entitled to have maintenance under Section 125(1) of the Cr.P.C. by operation of Section 125(4) which reads as under:

> **"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, <u>without any sufficient reason, she refuses to live with her husband</u>, or if they are living separately by mutual consent."** [Emphasis added]

05. Mr. R. Dutta, learned counsel appearing for the petitioner has stated that the respondent No.1 has left the matrimonial home without any reasonable cause and having being approached several times by the petitioner she refused to restitute the conjugal life. The petitioner herein had finally instituted the suit for restitution of conjugal rights being T.S. (RCR) 31 of 2005. The said petition was allowed by this said judgment dated 25.03.2016. According to Mr. Dutta, learned counsel appearing for the petitioner, in view of the provisions of Section 125(4) of the Cr.P.C. and on the face of the definite finding returned by the Judge, Family Court, Agartala, West Tripura by the judgment dated 25.03.2016 that the respondent No.1 has withdrawn herself from the society of the petitioner, she is not entitled to get any maintenance. Mr. Dutta, learned counsel has further referred to the provisions of Section 125(5) of the Cr.P.C. which authorises the Magistrate to cancel the order of maintenance, if it is found that any wife without any sufficient reason refuses to live with her husband. In the considered view of this court, for purpose of sub-section 5 of the Section 125 of the Cr.P.C., the petitioner ought to have approached the Magistrate to pass the appropriate order if any, as warranted in the circumstances but the petitioner did not approach the Magistrate, he has challenged the order dated 22.09.2016 directly by filing this revision petition on the ground that the finding of the competent civil court was not considered by the Magistrate while passing the impugned order.

06. Mr. Dutta, learned counsel appearing for the petitioner has referred to the cross-examination of the respondent No.1 in the proceeding for restitution of conjugal rights to demonstrate that the respondent No.1 had stated that she could not go to her matrimonial house. To buttress the ground of objection, Mr. Dutta, learned counsel has referred **David Daniel vs. Mrs. Chinnamma Daniel** reported in **1973 Cri.L.J. 91**, **Teja Singh vs. Smt. Chhoto** reported in **1981 Cri. L.J. 1467**, **Sayyed Jabbar Ali vs. Mst. Saheba Fatima** reported in **2002 Cri.L.J. 1332**, **Smt. Sanchita Jain vs. Naresh Jain** [judgment and order dated 06.05.2015 in MCRC.2481/10: Madhyapradesh High Court], **Subal Chandra Saha vs. Pritikana Saha** reported in **(2003) 2 GLR 576** and **Murlidhar Chintaman Waghmare vs. Smt. Pratibha Murlidhar Wagmare and Another** reported in **1986 Cri. L.J. 1216.**

07. From the other side, Mr. S. Sarkar, learned counsel appearing for the respondents has submitted that literal interpretation would not serve the object sought to be achieved by the provisions of Section 125(1) vis-a-vis Section 125(4) of the Cr.P.C. He has fervently submitted that 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 advance the cause of derelicts [**Captain Ramesh Chander Kaushal vs. Mrs. Veena**

Kaushal and Others reported in **(1978) 4 SCC 70**]. He sought for a purposive interpretation and contended that in a proceeding under Section 125 which is discretionary in nature and it is not necessary for the court to ascertain as to wrong or the minute detail of matrimonial discord between husband and wife need not to be gone into. In this regard, he has placed his reliance on **Sunita Kachwaha and Others vs. Anil Kachwaha** reported in **(2014) 16 SCC 715**. In that case the apex court as contended by Mr. Sarkar, learned counsel appearing for the respondents has clearly laid down the province of consideration. The wife must positively aver and prove that she is unable to maintain herself and in addition to that fact that husband has sufficient means to maintain her and he has neglected to maintain her. Having referred a decision of the apex court in **Kaiminiben Hirenbhai Vyas and another vs. Hirenbhai Rameshchandra Vyas** reported in **(2015) 2 SCC 385**. Mr. Sarkar, learned counsel appearing for the respondents has contended that the purpose of the provision is to prevent vagrancy and destitution in society and the court should apply its mind to the option having regard to the facts of the particular case. Thereafter, referring a decision of Madhyapradesh High Court in **Babulal vs. Sunita** reported in **1987 Cri.L.J. 525**, Mr. Sarkar, learned counsel has further contended that even when the wife does not comply the decree for restitution of conjugal rights she can maintain a petition under Section 125. That apart, Mr. Sarkar, learned counsel has relied

some more decisions viz. **Charan Singh vs. Jaya Wati and another** reported in **I(1996) DMC 169** [Allahabad High Court], **Sanjay Chopra vs. Shyama** reported in **II (1999) DMC 382** [Punjab and Haryana High Court], **Haizaz Pashaw vs. Gulzar Banu and Another** reported in **2002 Cri.L.J. 3282** and **K. Narayan Rao vs. Bhagyalakshmi** reported in **1984 Cri.L.J. 276** [Karnataka High Court].

08. Mr. Sarkar, learned counsel appearing for the respondents has finally contended that the apex court in **Mst. Zohara Khatoon vs. Mohd. Ibrahim** reported in **AIR 1981 SC 1243** has observed that Section 488 [corresponding old provision of Section 125] carves out an independent sphere of its own and is a general law providing a summary machinery for determining the maintenance to be awarded by the Magistrate under the circumstances mentioned in the section. The provisions may not be inconsistent with other parallel Acts in so far as maintenance is concerned, but the section undoubtedly excludes, to a greater extent, the application of any other Act. Thus, Mr. Sarkar, learned counsel has submitted that the decision in the other proceeding may not be imported in the proceeding under Section 125 of the Cr.P.C.

09. Having considered the contentions raised by the learned counsel for the parties the following pertinent questions have emerged for consideration:

(i) *Whether mere existence or non-compliance of a decree of restitution of conjugal life by itself would debar the wife from getting an order of maintenance under Section 125(1) of the Cr.P.C.?*

(ii) *Whether it is the circumstance averred and proved by the petitioner would determine the extent of the application of Section 125(4) of the Cr.P.C.? and*

(iii) *Whether to achieve the purpose of Section 125(1) of the Cr.P.C. being prevention of vagrancy and destitution, the Magistrate is entitled to have a purposive interpretation of Section 125(4) of the Cr.P.C., having regard to the constitutional empathy towards the women and children?*

10. Before this court embarks on appreciating the framed questions, it would be apposite to shed light on the purpose and import of Section 125 of the Cr.P.C. The apex court in **Chaturbhuj vs. Sita Bai** reported in **(2008) 2 SCC 316,** has observed as under:

> **"The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain herself" in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors. AIR (1978) 4 SSC 70 falls within constitutional sweep**

> **of Article 15(3) reinforced by Article 39 of the Constitution of India, 1950 (in short the 'Constitution'). It is meant to achieve a social purpose. <u>The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat and Ors.: (2005) 3 Supreme 636.”</u>**
>
> [Emphasis added]

Further, it has been observed in **Chaturbhuj** (supra) that the test is whether the wife is in a position to maintain herself in the way she was used to, in the place of her husband. **In Bhagwan Dutt v. Kamla Devi**, reported in **(1975) 2 SCC 386** it was observed that the wife should be in a position to maintain standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression "unable to maintain herself" does not mean that the wife should absolutely be destitute before she can apply for maintenance under Section 125(1) of the Cr.P.C. With this view, there cannot be any amount of difference and for that reason perhaps no opinion of difference has been expressed in the subsequent decisions of the apex court. What is fundamentally raised in this case is that while passing the order dated 22.09.2016 in Case No.Misc.08 of 2015, the Judicial Magistrate did not appreciate the judgment dated 25.03.2016 passed in T.S.(RCR) 31 of 2015, whereby the respondent No.1 was directed to reside with the petitioner. By the said order dated 22.09.2016, the petitioner has

been asked to pay Rs.5,000/- for maintenance of the respondent No.1 and her daughter.

(I) **WHETHER MERE EXISTENCE OR NON-COMPLIANCE OF A DECREE OF RESTITUTION OF CONJUGAL LIFE BY ITSELF WOULD DEBAR THE WIFE FROM GETTING AN ORDER OF MAINTENANCE UNDER SECTION 125(1) OF THE CR.P.C.?**

11. Mr. Dutta, learned counsel appearing for the petitioner has emphatically submitted that when the respondent No.1 has been directed by a decree for restituting the conjugal right and it appears to the competent court that such non-compliance was deliberate then the Magistrate shall cancel the order of maintenance that he passed earlier or shall not pass any order of maintenance having due regard to the provisions of Section 125(4) of the Cr.P.C.

12. Kerala High Court in **David Daniel** (supra) has observed that:

> **"The law as it stands, gives no power to the Court to enforce a decree for restitution of conjugal rights. But a wife with the least moral conscience in her should obey the decree, and join her husband. The respondent evidently is not of such a type. She wants to fight the husband even after her defeat in the Court. Such a wife. I think cannot claim with any grace or justification, separate maintenance from the husband.**
>
> **A decision in a suit against the wife for restitution of conjugal rights is equivalent to a decision by a competent Civil Court that the wife had no sufficient reason for refusing to live with her husband.**
>
> **The wife had obtained an order for maintenance under Section 488. Subsequently the husband obtained a decree for restitution of conjugal rights against the wife.**

> **Held that the subsequent decree for restitution of conjugal rights is a binding decision to the effect that the wife had no sufficient ground to refuse to live with the husband and that therefore the previous order for maintenance must be cancelled. Tarak Nath v. Sneharani AIR 1949 Cal 87 : 49 Cri LJ 757. There the order of maintenance passed was cancelled the moment a decree for restitution of conjugal rights was passed by the Court. Such a wife, I think, cannot the Civil Court. So also in the present case the decree for restitution of conjugal rights must prevail and it is a good answer to the wife's claim for separate maintenance. The order of the learned Magistrate, therefore, cannot be sustained. Such orders will give the incentive to a refractory and rebellious wife to flout Court's orders and claim maintenance from the husband who derives no benefit from her. The order of the learned Magistrate is hence set aside, and this revision is allowed. If the respondent still thinks that as the marrige subsists, she is entitled in law to get maintenance she may fight out her claim in a Civil Court."**
>
> [Emphasis added]

13. In **Teja Singh** (supra), the Punjab & Haryana High Court has observed that:

> **"4. Sub-section (4) of Section 125 of the Code of Criminal Procedure, which is in the following terms :**
>
> **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.**
>
> **envisages that a wife shall not be entitled to receive any allowance from her husband under Section 125 of the Code of Criminal Procedure inter alia if she refuses to live with her husband.**
>
> **5. The Civil Court had clearly found that it was she who had deserted her husband that means it was she who had been refusing to live with him. Such being the case by virtue of Sub-section (4) of Section 125 of the Code of Criminal Procedure, she would not be entitled to any allowance.**

> **6. The next question that calls for consideration is as to whether finding in a judgment of Civil Court between the parties would be binding upon the Magistrate trying the petition under Section 125 of the Code of Criminal Procedure. In this regard Sub-section (2) of Section 127 of the Code of Criminal Pro- cedure deserves notice and it reads as under:**
>
> **Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under Section 125 should be cancelled or varied, he shall cancel the order or, as the case may be vary the same accordingly.**
>
> **7. A perusal of this sub-section would show that even if an order granting maintenance had been passed in favour of the wife and if thereafter a decision between the parties happens to be rendered by the Civil Court which has a bearing on the question which came up for consideration earlier before the Court dealing with the petition under Section 125 of the Code of Criminal Procedure, it has to give effect to the Civil Court order by cancelling the order granting maintenance, if such is the import of the judgment of the Civil Court."**
>
> [Emphasis added]

14. Bombay High Court in **Sayyed Jabbar Ali** (supra) while appreciating the similar objection, had occasion to observe as under:

> **"In spite of a decree for conjugal rights, the original applicant without justifiable reason did not join him and on account of this fact, the applicant cannot claim maintenance. It was pointed out by the Punjab and Haryana High Court in Sampuran Singh v. Gurdev Kaur and Anr., reported in 1985 Cri.LJ. 1072 that the rule that in the presence of decree for restitution of conjugal rights against the wife, she has no right to claim maintenance has a qualification and that the wife can still claim maintenance in the presence of decree for restitution of conjugal rights against her, if the conduct of the husband is such which obstructs her to obey such a decree and the presence of another women in his house or another wife can be a valid ground for her to remain away from him."**
>
> [Emphasis added]

15. In **Dattatrey vs. State of Maharastra** reported in **1993 Cri LJ 2181** by observing that where wife has no justification for withdrawal from the company of her husband, grant of maintenance is liable to be set aside, Bombay High Court has observed as under:

> **"8. In Mangula Arvind Chavan v. Arvind Shantaram Chavan and Anr., 1994 (I) Mh.LR. 617, the husband has sought restitution of conjugal rights, but the wife resisted the demand putting certain conditions. The Civil Court had found that the contention of wife regarding ill-treatment to her was baseless. Restitution of conjugal rights had been ordered in favour of the husband. The wife did not join her husband. It was held that if the wife did not want to cohabit with her husband despite her failure to prove her case for alleged ill-treatment, it could hardly be said that the wife was wrongfully neglected and denied separate maintenance allowance by the husband."**

16. Madhya Pradesh High Court in **Smt. Sanchita Jain** (supra) had occasion to hold as under:

> **"In such circumstances, the decree passed the trial court in the matter of restitution of conjugal rights had to be followed by the petitioner but till today she is not willing to live with her husband, which shows that she is already weighing in mind to avoid the company of her husband without any reasonable cause. In such circumstances, the decisions cited by the counsel for the petitioner would not render any assistance to him being distinguished on facts of the present case."**

17. Gauhati High Court in **Subal Chandra Saha** (supra) has however observed that the literal construction may not be allowed to interpret Section 125(4) of the Cr.P.C. In that case "living in adultery" had been constructed as under:

> **"The living together with another man by the wife in the present case appears to be not a stray incident nor a casual one, but having intention of continuing living with another man as husband and wife, they took rent of the house where they in fact started living together as husband and wife."**

In **Subal Chandra Saha** (supra) it has been observed further that the ingredients required under Section 125(4) of the Cr.P.C. are to be strictly met and it can be safely held that the wife started living together with another man with a definite intention to continue the same and in fact, they continued living in adultery.

18. In **Murlidhar Chintaman Waghmare** (supra), the Bombay High Court has enunciated the law by reproducing a decision of the Allahabad High Court in **Ram Singh vs. State of UP** reported in **AIR 1963 Allahabad 355,** where it had been observed as under:

> **"The right of maintenance under section 488, Cr.P.C. is a special right given under the Code. The mere fact that similar analogous remedy is available under the Hindu Adoptions and Maintenance Act in a Civil Court, does not take away the jurisdiction of the Magistrate under S. 488, Cr.P.C. to order maintenance to a Hindu wife.**
>
> **The provisions of S. 488, Cr.P.C. are by no means any text, rule or interpretation of Hindu law or any custom or usage as part of that law; nor are they in any manner repugnant to, or inconsistent with the provisions of the Hindu Adoptions and Maintenance Act. Hence S. 4 of that Act cannot override S. 488, Cr.P.C. There is nothing in the Hindu Adoptions and Maintenance Act to suggest expressly or by necessary implication that the Act is intended to be a substitute for the provisions of Section 488, Cr.P.C. In fact the provisions of Section 18 of the Act cannot be a substitute for Section 488, Cr.P.C. The latter provision is general and is applicable to a wife, irrespective of her religion, but the former is applicable to the case of Hindus only."**
>
> [Emphasis added]

19. The plea of Mr. Dutta, learned counsel appearing for the petitioner is clear and it holds out that the order of maintenance be interfered with and set aside as the respondent No.1 in compliance of the direction given by the civil court in the suit for restitution of conjugal rights has not joined the petitioner. It is a clear demonstration by her conduct that she had deserted the company of the husband forever without any reasonable excuse. Therefore, the rigors of Section 125(4) shall apply and the respondent No.1 shall be denied the maintenance.

20. From the other side, as stated earlier Mr. S. Sarkar, learned counsel appearing for the respondents has in order to repel the said analogy, asserted that the brooding presence of constitutional empathy for the weaker sections like women and children shall be the very basis of interpretation. Perhaps Mr. Sarkar, learned counsel was keen to argue that the constitutional philosophy cannot be overshadowed by interpretation of a specis law or by providing a literal construction. The interpretation therefore shall be purposive and always to be made to achieve the object. Mr. Sarkar, learned counsel has referred a few decision as indicated above.

21. In **Captain Ramesh Chander Kaushal** (supra), it has been asserted by the apex court that 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 Article 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 advance the cause--the cause of the derelicts.

22. In **Sunita Kachwaha** (supra), the apex court had occasion to observe how to exercise the discretionary jurisdiction under Section 125 of the Cr.P.C. In **Sunita Kachwaha** (supra), it was observed as under:

> **"6. The proceeding under Section 125 Cr.P.C. is summary in nature. In a proceeding under Section 125 Cr.P.C., it is not necessary for the court to ascertain as to who was in wrong and the minute details of the matrimonial dispute between the husband and wife need not be gone into. While so, the High Court was not right in going into the intricacies of dispute between the appellant-wife and the respondent and observing that the appellant-wife on her own left the matrimonial house and therefore she was not entitled to maintenance. Such observation by the High Court overlooks the evidence of appellant-wife and the factual findings, as recorded by the Family Court.**
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> It has been further observed that:
>
> **7. Inability to maintain herself is the pre-condition for grant of maintenance to the wife. The wife must positively aver and prove that she is unable to maintain herself, in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. In her evidence, the appellant-wife has stated that only due to help of her retired parents and brothers, she is able to maintain herself and her daughters. Where the wife states that she has great hardships in maintaining herself and the**

daughters, while her husband's economic condition is quite good, the wife would be entitled to maintenance."

[Emphasis added]

23. Madhya Pradesh High Court in **Babulal** (supra) has observed as under:

"10. There is no bar Under Section 125 Cr. P.C. to grant of maintenance to a wife against whom a decree for restitution of conjugal rights has been passed. There being no express prohibition, the Supreme Court in the case of Smt. Savitri (1986 Cri LJ 41) (supra) held that interim maintenance pending final disposal can be granted and observed that it is the duty of the court to interpret the provisions of Chapt. IX of the Code in such a way that the construction placed on them would not defeat the very object of the Legislation. In the absence of any express prohibition, it is appropriate to construe the provisions in Chap. IX as offering an implied power on the Magistrate to direct the person against whom an application is made Under Section 125 of the Code to pay some reasonable sum by way of maintenance to the applicant pending final disposal of the application.

11. In view of this liberal and the social object, which Section 125 seeks to serve and in absence of any express bar against ; entertaining of an application for maintenance of a wife, against whom a decree for restitution of conjugal rights Under Section 9 of the Hindu Marriage Act has been passed it is open to the Magistrate to entertain the application and decide the same, keeping in mind Section 125(3) Second proviso. In fact, such a proviso being there in the Act, supports the view propounded in the case of State of M. P. v. Yeshpal 1964 MPLJ (SN) No. 131 (supra) discussed above.

12. It would be incongruent to assume that a wife against whom a decree for restitution of conjugal rights has been passed is disentitled to move the Magistrate's Court Under Section 125 Cr. P.C. praying for maintenance, while a wife who has been divorced, can still move the Court. In this case the wife was at Indore and the husband filed the suit for restitution of conjugal rights at Burhanpur and obtained an ex parte decree. The wife, as stated by her, in her reply dt. 19-11-84 to the objection preferred by the husband, was sick and confined to bed and had to be hospitalised on 5-1-1984.

> **Placed in such circumstances, even if she wanted, helpless as she was, she could not have been able to contest the suit for want of money and ill health. A decision of the Karnataka High Court in K. Narayan Rao v. Bhagyalakshmi 1984 Cri LJ 276 (supra) was relied by the trial Court. In that case the wife was living in Udipi Taluqa of Karnataka, while the husband who was employed in a Spinning Mill in Salem district Tamil Nadu, obtained a decree for restitution of conjugal rights from the District Judge, Salem. The learned Judge of the Karnataka High Court, relying on a decision of the Supreme Court in Mst. Zohara Khatoon v. Mohd. Ibrahim 1981 Cri LJ 754 (supra) held "that the two proceedings, one Under Section 125 and the other under the respective Personal Law of the spouses operate in different spheres, though in a very limited area they do overlap. Generally they are intended to serve different purposes. The remedy Under Section 125 is purely a discretionary one. It is not so, to that extent, under the Personal Law. The aim and object of this provision (S. 125) and other provisions in Chap. IX of the Code is to help the weaker of the two to obtain assistance of the Court in getting maintenance, Discarded or helpless wives, deserted children and destitute parents can get much relief by invoking Section 125. The provisions may not be inconsistent with other parallel Acts in so far as maintenance is concerned, but the section undoubtedly excludes to some extent the application of any other Act. At the same time, it cannot be said that the personal law of the parties is completely excluded for all purposes. For instance, where the validity of a marriage or mode of divorce or cessation of marriage under the personal law of a party is concerned, that would have to be determined according to the said personal law. Thus, the exclusion by Section 488(125)extends only to the quantum of the maintenance and the circumstances under which it would be granted."**
>
> [Emphasis added]

24. In **Charan Singh** (supra), Allahabad High Court has made a very significant observation having reference to the particular conspectus of fact, which reads as under:

> **"More than 20 months have since passed but it does not appear that any step has been taken for getting it executed. It may be that decree for restitution of conjugal rights was obtained only with a view to deprive**

> **the wife from maintenance allowance to which she may be entitled. It would not be out of place to point out here that the petition for restitution of conjugal rights was filed in the year 1986 while application under Section 125 Cr.P.C. was filed in the year 1985 and from the judgment delivered in proceedings under Section 125 Cr.P.C. It would appear that according to the revisionist, Smt. Jaya Wati left his house in the month of August, 1985. The Court was however, of the opinion that the revisionist deserted her in the month of August, 1985. No petition for restitution of conjugal rights was filed before the date of the application under Section 125 Cr.P.C."**
>
> [Emphasis added]

25. In **Sanjay Chopra** (supra), Punjab & Haryana High Court has indicated to a unique feature vis-a-vis the decree of restitution of conjugal rights and this court has been persuaded by the analogy which reads as under:

> **"10. Learned Counsel for the respondent, on the other hand, submitted that in case the husband has got an ex parte decree of restitution of conjugal rights, it shall not be binding on the Criminal Court in exercise of its jurisdiction under Section 125, Cr.P.C, unless in the proceedings of restitution of conjugal rights a specific issue had been framed on the point as to whether without any sufficient reason, wife refused to live with the husband and the parties had been given an opportunity to lead evidence and, thereafter, a specific finding is recorded by the Civil Court. He sought to draw support for this submission from a Division Bench judgment of this Court reported as Ravi Kumar v. Santosh Kumari, 1997 (3) RCR (Criminal) 4=11 (1998) DMC 590 (DB). It has been submitted by learned Counsel for the respondent that the husband filed petition for restitution of conjugal rights at Delhi on 12.7.1995, when proceedings under Section 125, Cr.P.C. had been filed by the wife against him on 29.11.1994 and he had appeared before the Court on 16.1.1995. It has been submitted by him that proceedings for restitution of conjugal rights were filed by the husband mala fide with intent to defeat the wife's claim to maintenance. It was held in Jagdish Kumar v. Munish Kumari, 1986 (1) All India Hindu Law Reporter 410, that where husband filed petition for restitution of conjugal**

> **rights as counter- blast to the application filed against him under Section 125 of the Code of Criminal Procedure, husband's claim would be viewed as mala fide filed to avoid payment of maintenance to the wife. It has been further submitted that the mere obtaining of the decree for restitution of conjugal rights by the husband will not suggest that the wife has withdrawn from his society without reasonable cause or excuse. Husband is not shown to have called upon the wife through the process of executing the decree that she should be called upon to resume conjugal society. It has been submitted that if the husband had sought the execution of the decree and prayed that the wife be called upon to resume conjugal society with him and the wife had refused to resume conjugal society with him without any plausible cause, it could have been said that the withdrawal from the society of the husband on her part was unjustified and while husband was ready to take the wife to the matrimonial home. Husband, to my mind, has not called upon the wife to resume conjugal society with him after he had obtained the decree of restitution of conjugal rights and therefore, it cannot be said that the wife had withdrawn from his society without reasonable cause or excuse. In the execution proceedings also the wife could urge that her withdrawal from the society of the husband was for sufficient cause or excuse, more particularly when it was an ex parte decree.**
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> **11. In my opinion, in the facts and circumstances of the case, the obtaining of the decree for restitution of conjugal rights by the husband would have no effect on the wife's claim to maintenance."**
>
> [Emphasis added]

26. In **Haizaz Pashaw** (supra), the Kerala High Court had occasion to appreciate on the similar question as under:

> **"Admittedly the petitioner obtained a decree for restitution of conjugal rights against the 1st respondent in M.C. No. 5/96 on the file of the Civil Judge, Madikiri. Ext. D1 is the copy of the judgment in M.C. 5/96. It is gatherable from Ext. D1 that the decree was obtained ex parte. According to me, merely because the petitioner has obtained an ex parte decree for restitution of conjugal rights against the wife, her claim for maintenance cannot be rejected. No doubt, in Hem Raj v. Urmila Devi [1997 (2) Crimes 561] it has been held**

that once a civil court has considered the matter after contest by both the parties and come to a conclusion that the wife has without reasonable excuse withdrawn from the society of the husband, it is not open to the Criminal Court to come to a conclusion that the husband has neglected or refused to maintain her. According to me, the decision referred to above is not applicable to the fact of this case. In this case, as stated earlier, the decree for restitution of conjugal rights passed against the wife was obtained ex parte. It is gatherable from the evidence in this case that the wife could not contest the suit for restitution of conjugal rights because she is staying away from the husband and she had no sufficient means even to contest the proceedings. It is in evidence that the wife is now living with her mother at Hidayathnagar and she has no means to contest the proceedings. Under these circumstances it cannot be said that Ext. DI decree is a bar to the consideration of the petition under Section 125 of the Code of Criminal Procedure."

[Emphasis added]

27. Karnataka High Court in **K. Narayan Rao** (supra) has observed as under:

"12. It is true that sub-section (4) of Section 125 of the Code says that "no wife shall be entitled to receive an allowance from her husband ……. If, without any sufficient reasons, she refuses to live with" him.

13. The question is : What would be the implication of a decree obtained by one spouse against the other under the personal law governing them in a matrimonial court over a proceeding initiated by the wife against the husband under Section 125 of the Code.

14. The two proceedings, one under Section 125 and the other under the respective personal law of the spouses operate in different spheres, though in a very limited area they do overlap. Generally they are intended to serve different purposes. The remedy under Section 125 is purely a discretionary one. It is not so, to that extent, under the personal law. The aim and object of this provision (Section 125) and other provisions in Chapter IX of the Code is to help the weaker of the two to obtain assistance of the court in getting maintenance. Discarded or helpless wives, deserted children, and destitute parents can get much relief by invoking Section 125. The relative scope of these two types of proceedings, one under Chapter IX of the Code

and other under the personal law of the parties, came up for consideration before the Supreme Court in Mst. Zohara Khatoon v. Mohd. Ibrahim,. At Para 7 the Court observed as follows :

"It is not necessary to refer to the other provisions of Section 488 of the said Code as the same are not germane for the purpose of deciding this appeal. It may, however, be noted that a provision like clause (b) of the Explanation to Section 125(1) of the 1973 Code was conspicuously absent from Section 488 and has been added by the 1973 Code. We shall deal with the legal effect of this provision a little later. A perusal of Section 488 would clearly reveal that it carves out an independent sphere of its own and is a general law providing a summary machinery for determining the maintenance to be awarded by the Magistrate under the circumstances mentioned in the Section. The provisions may not be inconsistent with other parallel Acts in so far as maintenance is concerned, but the section undoubtedly excludes to some extent the application of any other Act. At the same time, it cannot be said that the personal law of the parties is completely excluded for all purposes. For instance, where the validity of a marriage or mode of divorce or cessation of marriage under the personal law of a party is concerned that would said personal law. Thus, the exclusion by Section 488 extends only to the quantum of the maintenance and the circumstances under which it would be granted"

15. Section 488 of the Code of Criminal Procedure, 1898 corresponds to Section 125 of the Code, and, in fact the latter has some features more beneficial to the wives and aged parents. The observations of the Supreme Court in Mst. Zohara Khatoon's case (1981 Cri LJ 754) make it clear that in matters like "the validity of a marriage or mode of divorce or cessation of marriage under the personal law are concerned", the findings of courts deciding such questions applying the personal law of the parties prevail. If such questions arise in a proceeding initiated in the criminal court under Chapter IX of the Code that court would be bound by those findings. But, if in a proceeding initiated under Chapter IX of the Code, the question is as to whether the wife, being 'wife' within the meaning assigned to that term in Section 125 of the Code, is at all entitled to maintenance, and, if so, at what rate, the Court (Criminal Court) trying that cause will have exclusive powers to deal with those issues. The findings of civil courts on issues other than those referred to above touching questions such as the wife withdrawing from the society of the husband, desertion on her part or her leading an adulterous life etc., are concerned, the

criminal court is not bound by such findings. This is not to say that it should simply neglect the decree, if any, obtained by the husband in the matrimonial court. The Court dealing with the maintenance claim under Section 125 will have to carefully examine and take into consideration such decrees also though as stated above, it is not bound by the findings. It may be difficult to give instances where such decrees or the observations made in such orders, torching questions relevant for consideration under Section 125, will be sufficient to negative the claim of the wife. All that can be said is, as observed by Chief Justice Beaumont in Fakruddin Shamsuddin v. Bai Jenab, (AIR 1944 Bom 11) : (1944-45 Cri LJ 271), that the Magistrate should not "surrender his own discretion" simply because the husband was armed with a Civil Court decree for restitution of conjugal rights. This question has also been considered by various High Courts. The following observations made by Janaki Amma, J., in Gopala Pillai v. Padmini Amma, (1978 Ker LT 485 : (1978 Cri LJ NOC 232) may be noted :

"An order for restitution of conjugal rights by itself is not a ground for refusal of maintenance under Section 125 of the Code of Criminal Procedure unless it is made out that the person in whose favour it was made was willing to discharge his obligations as a husband and did not secure the order as a ruse to get rid of the wife in a subsequent proceeding for divorce. It may look obnoxious that a woman against whom an order for restitution of conjugal rights was passed and was divorced following the order should be granted maintenance after divorce by her former husband. But, it has to be borne in mind that the purpose of Section 125 of the Code of Criminal Procedure is to prevent vagrancy and it is the duty of Courts to advance that purpose. There are several grounds on which a husband may obtain a divorce from a wife. Divorce is permissible in a case where the wife is living in adultery; it is also allowed when the wife is suffering from a virulent disease. To direct a person to pay maintenance to his ex-wife in the former case would be revolting to one's sense of justice while to "to deny maintenance in the latter case when the statute provided for it would be unjust. It is not as if Section 125 of the Code of Criminal Procedure enjoins that the courts should award maintenance to all divorced wives. It is for the courts to make an assessment of the situation within the framework of the statute and to see that the object of the statute is served and at the same time there is no abuse of the process of court. The word 'may' in Section 125(1), Criminal P.C., make it clear that the grant of maintenance even in the case of a wife is a matter of

discretion, the discretion being used in a judicial manner, in advancement of the purpose underlying the section. The identical principles will apply in the case of maintenance to a divorced woman".

(Head-Note) Also the following observations of Ramachandra Raju, J. of Andhra Pradesh High Court in Sayed Ghulam Sajjad v. Parveenpatima 1981 Cri LJ NOC 2 may be noted :

"A mere decree for restitution of conjugal rights in favour of husband itself does not automatically bar the wife from claiming maintenance under Section 125, though the decree cannot be ignored. The Magistrate has discretion to decide on evidence adduced before him by the parties, whether the wife is entitled to maintenance despite the fact that husband has got a decree for restitution of conjugal rights. (Case law discussed)".

Some High Courts have also taken a contrary view and reference may be made to Smt. Geeta Kumari v. Shivacharan Das, 1975 Cri LJ 137 (Raj) and S. R. Govindarajan v. Rukmani Govinda-rajan, 1980 Mad LJ (Cri) 662.

16. In view of what I have stated above, and, particularly in view of the decision of the Supreme Court in Mst. Zohara Khatoon's case (1981 Cri LJ 754) (supra), the views expressed in Gopala Pillai's case (1978 Cri LJ NOC 232) (Ker), and in Sayed Ghulam Sajjad's case (1981 Cri LJ NOC 2) (Andh Pra) (extracted above) are to be preferred."

[Emphasis added]

28. In this context a decision of the Punjab & Haryana High Court in **Ram Piari vs. Piara Lal** reported in **AIR 1970 PH 341** may be recalled where another decision of the said High Court in **Surjit Kaur alias Bibo vs. Gurdev Singh** has been referred and hence the relevant part is required to be reproduced. In **Surjit Kaur** (supra), it has been observed as under:

> **"A decree for restitution of coniugal rights was granted against her on the finding that she had no reasonable excuse for staying away from her husband. If such a decree was pending, then it appears to me that no Court should grant her relief by way of maintenance, because that would defeat the very object of the decree for the restitution of conjugal rights. If, on the other hand, as is urged by her, the appellant did go and live with the respondent, then also the decree having been complied with, there is no decree pending and, therefore, permanent alimony cannot be granted under Section 25 of the Hindu Marriage Act of 1955.' Now, the language of Section 25 shows that it is within the discretion of the Court to make an order for maintenance irrespective of the nature of the decree which has been passed and with great respect of Jindra Lal, J., I am unable to agree that merely because a decree for restitution of conjugal rights has been passed in favour of the husband against the wife on the ground that she had withdrawn from the society, she should not be granted maintenance. The Court under the law will have to look to all the facts and circumstances and then exercise judicial discretion in the matter both of grant and quantum of maintenance nor can the other view which has been sought to be pressed on certain observations made by Shamsher Bahadur, J. in Surjit Knur's case, ILR (1964) 2 Punj 100 be accepted that the Court is bound to grant maintenance under Section 25 irrespective of the entire facts and circumstances."**
>
> [Emphasis supplied]

29. One of the relevant aspects even though has not been emphasized by the learned counsel for the parties, but the said aspect warrants reference and consideration. That aspect is consequence or impact of Section 127(2) of the Cr.P.C. which reads as under:

> **"(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order as, as the case may be, vary the same accordingly."**

30. The petitioner has made a plain submission that since the competent civil court has passed the decree dated 25.03.2016 directing the respondent No.1 to restitute their conjugal rights that shall by itself would persuade the Magistrate to accept the ground made out under Section 125(4) of the Cr.P.C. for denying the maintenance or for cancelling the order of maintenance as the case may be. The question therefore arises that whether all decisions 'of a competent court' would provide the basis for rejection cancellation or variation of the order of maintenance. In other words, if the judgment or decree is passed by a competent civil court whether that would itself be persuasive to that extent that the Magistrate would without deciding any other issues relevant and related for consideration of granting maintenance deny the same? In this regard fundamental two aspects for granting maintenance has succinctly provided in **Sunita Kachwaha** (supra) that the Magistrate was to consider whether she (the wife) is unable to maintain herself and whether her husband has sufficient means to maintain her. Further, the Magistrate should weigh whether the husband has neglected to maintain her or not. The Magistrate shall not go into ascertain who was in wrong or to go into the minute details of the matrimonial dispute. The Magistrate is not required to go into the intricacies of the dispute.

31. A perusal of Section 125 would clearly reveal that it carves out an independent sphere of its own and is a general law

providing a summary machinery for determining the maintenance to be awarded by the Magistrate under the conditions as provided in that Section. The provisions may not be inconsistent with other parallel acts in so far as maintenance is concerned, but the section undoubtedly excludes to a greater extent the application of any other act. At the same time, it cannot be said that the personal law of the parties is completely excluded for all purposes. Having regard to Section 127(2) of the Cr.P.C., for instance, where the validity of a marriage or mode of divorce or cessation of the marriage under the personal law of a party is concerned that would be governed by the personal law and the determination thereof, for purpose of determining the status can be imported through the window provided by Section 127(2) of the Cr.P.C.

32. In **Mst. Zohara Khatoon** [**1981 CriLJ 754**], the apex court has made it clear that the validity of the marriage or mode of divorce or cessation of marriage is concerned under the personal law, the finding of the competent civil courts deciding such questions applying the personal law of the parties shall prevail. If such questions arise in a proceeding initiated in the criminal court under Chapter IX of the Code that court would be bound by those findings. But, if in a proceeding initiated under Chapter IX of the Code, the question as to whether the wife, being 'wife' within the meaning assigned to that term in Section 125 of the Code, is at all entitled to maintenance, and, if so, at what rate, the court (Criminal Court)

trying that cause will have exclusive powers to deal with those related issues. The findings of civil courts on issues other than those referred to above touching questions such as the wife withdrawing from the society of the husband, desertion on her part or her leading an adulterous life etc., are concerned, the criminal court is not bound by such finding. This is not to say that it should neglect the decree, if any, obtained by the husband from the matrimonial court. The Court dealing with the maintenance claim under Section 125 will have to carefully examine and take into consideration such finding. It may be difficult to give instances where such decrees or the observations made in such orders, touching the questions relevant for consideration under Section 125, will be sufficient to negative the claim of the wife. But it has to be unambiguously made clear that the Magistrate should not surrender his own discretion. It is his exclusive jurisdiction despite such decree of restitution of conjugal right to assess and ascertain from the facts laid before him whether he would exercises the discretionary jurisdiction by granting maintenance in favour of the wife or not. Thus, the decree for restitution of conjugal rights by itself cannot lead to refusal of the maintenance under Section 125 of the Cr.P.C. If the opposite analogy is accepted then how to explain the provision of law that a 'divorced' wife is entitled to maintenance under Section 125 of the Cr.P.C. A divorced wife never resides or has no reason to reside with a former husband but still she is entitled to maintenance under Section 125(1) of the Cr.P.C. For

purpose of Section 125 the word 'wife includes a woman who has been divorced by or has obtained a divorce from her husband and has not remarried.

33. In **Rohtash Singh vs. Ramendri (Smt) and Others** reported in **(2000) 3 SCC 180,** the apex court had occasion to observe as under:

> **9. 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 Ramesh Chander Kaushal v. Mrs. Veena Kaushal, AIR 1978 SC 1807 : (1979 Cri LJ 3), 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."**

34. A wife who refuses to comply the decree of restitution of the conjugal life cannot be deprived of maintenance for that status only having interpreted Section 125(4). It would be incongruent to assume that a wife against whom a decree for restitution of conjugal rights has been passed is disentitled to move the Magistrate under Section 125(1) of the Cr.P.C. praying for maintenance, while a wife

who has been divorced can still move the court. Without taking cognizance of brooding presence of constitutional empathy for women, the judgment of the civil court in respect of the restitution of the conjugal right can be treated only as the relevant evidentiary material, but the conduct of the wife whether there is any sufficient reason for refused by the wife to live with her husband be assessed by the Magistrate and only thereafter whether the wife would be entitled to maintenance or not be decided by the Magistrate. To be candid, the restriction as imposed by Section 125(4) of the Cr.P.C. has been substantially diluted, if not virtually negated.

35. In **Amar Kanta Sen vs Sovana Sen** reported in **AIR 1960 CAL 438,** Calcutta High Court held that even an unchaste wife had an absolute right to a starving allowance for her maintenance and this right would be enforceable even where the women had been divorced on the ground of her adultery. This provision is intended to prevent the wife starve and where she has an income of her own, her right to this bare subsistence disappears. A similar view has been taken in **Dr. Hormusji M. Kalapesi vs Dinbai H. Kalapesi** reported in **AIR 1955 Bom 413 (DB),** a case under the Parsi Marriage and Divorce Act- Section 30 of which Act may appear to be in pari materia with Section 25 of the Hindu Marriage Act except for the fact that the chastity of the wife besides her unmarried state has been given as the requisite condition entitling her to permanent alimony after passing of any decree under the Act. The Bombay High Court did not

throw out the petition for alimony on the ground that the petition had been made by a guilty wife. Having discussed the English case laws they came to the inference that it was never intended that a guilty wife should be thrown out on the streets to starve. Mere existence of an unsatisfied decree for restitution of conjugal life against the wife may not, therefore, seem to disentitle her to maintenance. The contrary view therefore cannot be accepted by this court. A decree for restitution of the conjugal rights against the petitioner as stated earlier may be a circumstance to enable the court judge the conduct of the parties and there is no authority for the proposition that such a decree against the petitioner would be a complete bar to her claim for maintenance. The court under the law will have to look all the facts and circumstances and then exercise judicial discretion in the matter of grant and quantum of maintenance. In **Surjit Kaur's** case [**IRL 1964 (2) Punjab 100**] it was observed that the court is bound to grant maintenance irrespective of the entire fact and circumstances which according to this court has been reverberated in **Sunita Kachwaha's** case.

36. Therefore, this court would by way of reiteration hold that mere existence or non-compliance of a decree of restitution of the conjugal life by itself would not debar or disentitle the wife within the meaning of Section 125 of the Cr.P.C. from getting an order of maintenance. Hence the plea as raised by Mr. Dutta, learned counsel appearing for the petitioner is negatived.

(II) WHETHER IT IS THE CIRCUMSTANCE AVERRED AND PROVED BY THE PETITIONER WOULD DETERMINE THE EXTENT OF THE APPLICATION OF SECTION 125(4) OF THE CR.P.C.?

Yes, in view of the discussion made above.

(III) WHETHER TO ACHIEVE THE PURPOSE OF SECTION 125(1) OF THE CR.P.C. BEING PREVENTION OF VAGRANCY AND DESTITUTION, THE MAGISTRATE IS ENTITLED TO HAVE A PURPOSIVE INTERPRETATION OF SECTION 125(4) OF THE CR.P.C HAVING REGARD TO THE CONSTITUTIONAL EMPATHY TOWARDS THE WOMEN AND CHILDREN?

Yes, the Magistrate is entitled to embark on a purposive interpretation to achieve the object of 125 of the Cr.P.C in the light of the discourse above.

37. The duty of a Judge in our country is to uphold the constitutional principles. When there emerges two alternatives by way of interpretation, the interpretation which supports the constitutional philosophy would be invariable accepted by the Magistrates. What has been observed by the apex court in **Captain Ramesh Chander Kaushal** (supra) should be the guiding principle in respect of the provision relating to social justice. At the cost of repetition, this court would observe that the provision of Section 125 is a measure of social justice and specially enacted to protect women and children and it falls within the constitutional sweep of Article 15(3) reinforced by Article 39. The statutes calling for construction by

courts are not 'petrified print', but vibrant words with social functions to fulfill. 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. In **Danial Latifi and Another vs. Union of India** reported in **2001(7) SCC 740**, the apex court has made a dynamic interpretation having regard to the prevailing social conditions. A passage from **Danial Latifi** (supra) is reproduced hereunder:

> **"20. In interpreting the provisions where matrimonial relationship is involved, we have to consider the social conditions prevalent in our society. In our society, whether they belong to the majority or the minority group, what is apparent is that there exists a great disparity in the matter of economic resourcefulness between a man and a woman. Our society is male dominated both economically and socially and women are assigned, invariably, a dependent role, irrespective of the class of society to which she belongs. A woman on her marriage very often, though highly educated, gives up her all other avocations and entirely devotes herself to the welfare of the family, in particular she shares with her husband, her emotions, sentiments, mind and body, and her investment in the marriage is her entire life - a sacramental sacrifice of her individual self and is far too enormous to be measured in terms of money. When a relationship of this nature breaks up, in what manner we could compensate her so far as emotional fracture or loss of investment is concerned, there can be no answer. It is a small solace to say that such a woman should be compensated in terms of money towards her livelihood and such a relief which partakes basic human rights to secure gender and social justice is universally recognised by persons belonging to all religions and it is difficult to perceive that Muslim law intends to provide a different kind of responsibility by passing on the same to those unconnected with the matrimonial life such an the heirs who were likely to inherit the property from her or the wakf boards. Such an approach appears to us to be a kind of distortion of the social facts. Solutions to such societal problems of universal magnitude pertaining to horizons of basic human rights, culture, dignity and decency of life and**

> **dictates of necessity in the pursuit of social justice should be invariably left to be decided on considerations other than religion or religious faith or beliefs or national, sectarian, racial or communal constraints. Bearing this aspect in mind, we have to interpret the provisions of the Act in question."**
>
> [Emphasis added]

This is our constitutional philosophy profoundly embedded in the basic human rights, culture, dignity and decency in life.

38. Despite the provisions of Muslim Women (Protection of Rights on Divorce) Act, 1986 right to approach the court under Section 125 of the Cr.P.C. cannot be fossilized. Even a Muslim woman after her divorce would be entitled to claim maintenance from her husband under Section 125 of the Cr.P.C. even after expiry of the period of 'Iddat' as long as she is not remarried. Even though absence of detailed discussion on this aspect in the order dated 22.09.2016 will not make it susceptible to interference by this court.

39. On foraying into the evidence, the Magistrate has observed categorically that the respondent No.1 failed to bear the violence perpetrated by the petitioner and that was the reason of her leaving the matrimonial home with her daughter. This court does not find any illegality or manifest perversity in such finding. On scrutiny of the judgment dated 25.03.2016, it appears that the said judgment is *ex parte*. The respondent No.1 did not even file the written statement. Thus the finding in the said judgment cannot have any

primacy over the probative value of the evidence that she led in the maintenance proceeding.

Hence this petition stands dismissed. The petitioner is directed to pay the maintenance allowance to the respondents in terms of the said order dated 22.09.2016.

The quality of assistance as extended by the learned counsel appearing for the parties deserves commendation and this note records appreciation for them.

JUDGE

Moumita