

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.8 of 2005

Ranjit Kumar Bhagat, s/o Yugeshwar Bhagat @ Arun Bhagat, r/o Village-Bharauli, P.S.- Saharsa, District- Saharsa, at present residing at 02/1 Budh Vihar Fase-1 Near Police Chouki, New Delhi-46

... .. Petitioner

Versus

1. The State of Bihar
2. Seema Devi, d/o Vijay Kumar Bhagat and w/o Ranjit Kumar Bhagat
3. Simranjit @ Khushi minor daughter Ranjit Kumar Bhagat
both residents of Village and P.S.-Murliganj, District-Madhepura

... ..Opposite Parties

Appearance :

For the Petitioner/s : Mr.Ramakant Sharma, SC
For the O.P. No. 2 : Mr.Seema Kumari in person

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

41 06-03-2020

Heard learned senior counsel for the petitioner. The O.P. No. 2 has appeared in person. She has submitted that earlier she had engaged a lawyer on her behalf but now she has cancelled the *Vakalatnama* and has chosen to appear in person.

Petitioner in the present case is seeking setting aside of the judgment and order dated 22.11.2004 passed by learned Sub-Divisional Judicial Magistrate in Misc. Case No. 27 of 2001 (TR No. 2609/04) by which the learned Magistrate at the relevant time directed this petitioner to pay a monthly maintenance of Rs.15,00/- to O.P. No. 2 and Rs.500/- to O.P. No. 3.

Opposite Party No. 2 is the wife of the petitioner and it is the case of the petitioner that he has obtained a decree of



divorce against O.P. No. 2 in H.M.A. No. 849 of 2001 from the court of learned Additional District Judge, Delhi vide judgment dated 14.05.2003 on the ground of desertion. O.P. No. 3 happens to be the minor daughter of the petitioner at the relevant time.

The learned Sub-Divisional Judicial Magistrate before whom application under Section 125 Cr.P.C. was filed by O.P. No. 2-wife seeking maintenance for herself and her minor daughter awarded a sum of Rs.15,00/- per month in favour of O.P. No. 2 and Rs.500/- per month in favour of the minor daughter (O.P. No. 3). It is this judgment and order of the learned Sub-Divisional Magistrate has been challenged before this Court.

Although the revision application against the impugned order was filed some time in the year 2005 but initially the learned Co-ordinate Bench of this Court took a view that the matter be heard after disposal of the revision application preferred by O.P. NO. 2-wife in the Hon'ble Delhi High Court against the ex-parte judgment and decree dated 14.05.2003 passed by learned Additional District Judge, Delhi in H.M.A. No. 849 of 2001.

The order granting maintenance in favour of the wife-O.P. No. 2 was stayed whereas the petitioner was directed to pay



the maintenance awarded to the minor daughter. Later on another learned Co-ordinate Bench of this Court took a view that there is no need to keep the matter pending awaiting the outcome of the revision preferred by the wife-O.P. No. 2 against the judgment and order dated 14.05.2003 granting ex-parte decree of divorce in favour of the petitioner on the ground of desertion.

The learned Co-ordinate Bench, therefore, took a view that the matter be heard and both the parties come prepared for argument. In this circumstance the O.P. No. 2 mentioned the matter in person yesterday, the matter has been taken up for consideration.

Mr. Ramakant Sharma, learned Senior Counsel representing the petitioner has taken this Court through the judgment dated 14.05.2003 passed by learned Additional District Judge, Delhi in H.M.A. No. 849 of 2001. Emphasis has been given on the finding of the learned court that a case for divorce on the ground of desertion was made out and accordingly the decree was granted in favour of the present petitioner. It is the submission that once the decree of divorce has been granted on the ground of desertion, in view of sub-Section (4) of Section 125 Cr.P.C. the opposite party no. 2



would not be entitled for maintenance and hence, the impugned order in so far as it directs payment of maintenance to O.P. No. 2 be set aside. In addition, it has been submitted that the petitioner is working as (*Nyaymitra*) and as such, she has got sufficient income to maintain herself. No other submission has been made on behalf of the petitioner.

The opposite party no. 2 who has appeared in person submitted before this Court that even though the ex-parte decree of divorce has been granted against her and the same is under challenge in the Hon'ble Delhi High Court pending consideration, the grant of divorce on the ground of desertion cannot be a ground to deny her maintenance. It is her submission that Section 125(4) is attracted only in case of a subsisting marriage and the said provision has come up for consideration before the Hon'ble Apex Court in the case of **Rohtash Singh Versus Ramendri (SMT) others** reported in **(2000) 3 Supreme Court Cases 180**. She has also relied upon a judgment of the learned Single Judge of the Hon'ble Delhi High Court in the case of **Archita @ Anu Seth vs Sunil Seth** in **CRL.REV.P. 455 of 2015** which has been decided on 11.01.2019. It is submitted that since the year 2015, she is getting Rs. 7000/- per month as '*Nyaya Mitra*' which is not



sufficient for her needs in the present conditions.

Having heard learned senior counsel for the petitioner and the opposite party no. 2 in person, this Court finds force in the submission of the opposite party no. 2. Section 125 Cr.P.C. is quoted hereinbelow for a reading reference:

“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

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself,

(d) his father or mother, unable to maintain himself or 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 or such child, father or mother, at such monthly rate ¹[***], as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

²[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section,

1. The words “not exceeding five hundred rupees in the whole” omitted by Act 50 of 2001, sec. 2(i) (a) 9w.e.f.24-9-2001).

2. Ins. by Act 50 of 2001, sec. 2(i) (b) (w.e.f. 24-9.2001)



order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation.- For the purposes of this Chapter,-

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875); is deemed not to have attained his majority;

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

¹[(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]

(3)If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's ²[allowances for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until



payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife' s refusal to live with him.

(4) No Wife shall be entitled to receive an ²[allowances 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.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.”

In the case of **Rohtas Singh** (Supra) the said provision has fallen for consideration and the Hon'ble Apex Court in Paragraph '7', '8', '9' and '10' of the judgment observed are quoted hereunder for reading reference:

1. Subs. By Act 50 of 2001, sec. 2(ii), for sub-section (2) (w.e.f. 24-9-2001).

2. Subs. By Act 50 of 2001, sec. 2(iii), for "allowance" (w.e.f. 24-9-2001).



“7. 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.

8. 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 a "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 a woman who has been divorced by, or has obtained a divorce from her husband, and has not remarried.”

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 wife for the limited purpose of claiming Maintenance Allowance from her ex-husband. This Court in *Capt. Ramesh Chander Kaushal v. Veena Kaushal*¹ observed as under:(SCC p. 74, para 9)

“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 Article 39. We have no doubt that sections of statues 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.”

10. Claim for maintenance under the first part of Section 125 Cr. P.C. is based on the subsistence of

1 (1978) 4 SCC 70 : 1978 SCC (Cri) 508: AIR 1978 SC 1807



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 the 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*²). 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.”

The learned Single Judge of the Hon’ble High Court in the case of **Archita @ Anu Seth** (supra) has in similar circumstance noticed the judgment of the Hon’ble Apex Court in the case of Rohtas Singh(Supra) and held that the wife against whom divorce has been granted on the ground of desertion would be entitled to maintain an application for maintenance under Section 125 Cr.P.C. provided she satisfies the conditions mentioned in Section 125(1)(a).

In the present case, in the impugned judgment the learned Sub-Divisional Judicial Magistrate has dealt on the issue



of the income of the wife-O.P. No. 2 and recorded a finding that the O.P. No. 2 and her minor daughter had no source of income to maintain themselves.

Before this Court, at this stage learned senior counsel has argued that the O.P. No. 2 is in service as *Nyaymitra* but no material has been brought on record in this regard and the O.P. No. 2 who has appeared in person has submitted that prior to 2015 she had no other source of income and at this stage she is getting Rs.7000/- per month as *Nyaymitra*.

On this issue, this Court is of the considered opinion that the opposite party no. 2 and her minor daughter were awarded the maintenance amount of Rs.15,00/- and Rs.500/- respectively in the year 2004 and since then the O.P. No. 2 has not received a single farthing. She has been compelled to contest this litigation for about 15 years in this Court alone. Even if she is earning Rs.7,000/- per month at present, considering the price index of the country during this period it would not be just and proper to interfere with the amount of maintenance awarded to her way back in the year 2004. The hardship which she has faced during all this period cannot be compensated and suffice it to note that the O.P. No. 2 has been claiming the outstanding maintenance amount of all these years and then the current maintenance. She has not prayed for any other benefit of interest etc. over that amount and



as such, this Court is of the opinion that her earning of Rs.7,000/- per month at this stage would not be a ground to be taken into consideration to interfere with the impugned judgment and order. It is not the submission of learned Senior Counsel for the petitioner that the petitioner had no sufficient source of income to pay the maintenance amount. By withholding the maintenance amount for all these years he has in fact gained monetarily.

In result, this Court finds no merit in this application. The application is dismissed.

The petitioner shall pay the entire outstanding amount of O.P. No. 2 within a period of four months in four equal monthly installments. He will continue to pay the maintenance for the current months accordingly.

This application stands dismissed.

(Rajeev Ranjan Prasad, J)

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