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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.978 of 2014**

Smt. Sita Bai, W/o Shri Jethuram Sinha, aged about 60 years, R/o Ward No.8, Mathpara, Thana/Tahsil Kawardha, Distt. Kabeerdham (Chhattisgarh)

---- **Revisioner/**
(Applicant)

Versus

Jethuram Sinha, S/o Late Mehattar Ram Sinha, aged about 64 years, R/o KBT/75, Kabeer Nagar, Near First Gate, Housing Board Colony, Thana Sarswati Nagar, Distt. Raipur (Chhattisgarh)

---- **Respondent/**
(Non-applicant)

For Applicant: Mr. Samir Singh, Advocate.

For Non-applicant: Mr. Manoj Paranjpe, Advocate.

AND**Criminal Revision No.155 of 2015**

Jethuram Sinha, S/o Late Mahetar Ram Sinha, aged about 64 years, R/o KBT/75, Kabir Nagar, Near First Gate of Kabir Nagar, Housing Board Colony, Raipur, Police Station Saraswati Nagar, Raipur, Civil & Revenue District Raipur (C.G.), permanent R/o Ward No.8, Mathpara, Kawardha, Police Station & Post Kawardha, Civil & Revenue District Kabirdham (Chhattisgarh)

---- **Applicant/**
(Non-applicant)

Versus

Smt. Seetabai, W/o Shri Jethuram Sinha, R/o Ward No.8, Mathpara, Kawardha, Police Station & Post Kawardha, Civil & Revenue District Kabirdham (Chhattisgarh)

---- **Respondent/**
(Applicant)

For Applicant: Mr. Manoj Paranjpe, Advocate.

For Non-applicant: Mr. Samir Singh, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

13/08/2015

1. Since common question of law and fact is involved in both the revisions, they are being heard analogously and are being decided by this common order.
2. Smt. Sita Bai – wife, filed an application under Section 125 of the CrPC pleading inter alia that her marriage was solemnized with Jethuram Sinha in the year 1971 as per Hindu rites. She has further pleaded that she had earlier filed an application for maintenance which culminated into compromise in the year 1993 and her husband Jethuram is staying with one woman Neera Bai since 1980 and he has three sons with said Neera Bai. She has also pleaded that Jethuram has deserted her and failed to make payment as per the compromise entered into in the year 1993. Now, she is unable to maintain herself and her husband is getting Rs.28,000/- per month as pension, having retired as Assistant Grade-II from the Electricity Department. Therefore, Rs.15,000/- per month be granted to her as maintenance, as she is unable to maintain herself.
3. In the reply filed before the Family Court, the non-applicant herein – husband, submitted that he had already divorced applicant Sita Bai by way of customary divorce that is '*chhorchutti*' and there is no relationship of husband and wife between the parties and that the applicant wife is already getting Rs.9 lakhs per annum from the landed property which she has and she is hale and healthy woman and case for partition is already pending consideration in the High Court, as such, she is not entitled for maintenance.

4. The Family Court by its impugned order has recorded a finding that applicant Sita Bai is wife of non-applicant Jethuram Sinha. The Family Court has further recorded a finding that the applicant is unable to maintain herself whereas, the non-applicant is the person having sufficient means to make payment and she is entitled for maintenance and that the non-applicant has refused to maintain her without any sufficient cause and as such, she is entitled for maintenance of Rs.1,500/- per month from the date of order.
5. Against the order granting maintenance, husband has preferred Criminal Revision No.155/2015 for setting aside the order of maintenance whereas, wife has also preferred Criminal Revision No.978/2014 seeking enhancement of the amount of maintenance. Both the revisions have been clubbed together and are being heard analogously.
6. Mr. Samir Singh, learned counsel appearing on behalf of Smt. Sita Bai – wife, submits that undisputedly, husband of Sita Bai is getting pension of Rs.36,391/- per month and the maintenance awarded is only a meager amount of Rs.1,500/- per month and, therefore, the amount of maintenance be enhanced suitably by modifying the order of the Family Court.
7. Mr. Manoj Paranjpe, learned counsel appearing on behalf of Jethuram Sinha – husband, would submit that wife of Jethuram is not at all entitled for maintenance, as she has already been divorced, marriage was solemnized between them in the year 1971, she is residing separately since 1975 and she is able to maintain herself since then. He would further submit that filing of

application for maintenance on 10-2-2014, after an inordinate delay of 34 years, is hopelessly barred by limitation and is an unexplained delay as such, her application for grant of maintenance deserves to be dismissed. He would also submit that although there is no period of limitation prescribed for filing application under Section 125 of the CrPC, but yet, filing of maintenance application after delay of 34 years would impliedly mean that she is able to maintain herself and there is no need to grant maintenance to her and, therefore, the impugned order be set aside, the revision filed by wife be dismissed and the revision filed by husband be allowed setting aside the order of the Family Court.

8. I have heard learned counsel for the parties and perused the record of the Family Court with utmost circumspection.
9. The question for consideration would be-
 1. Whether in view of delay in filing application for maintenance, the application was liable to be rejected?
 - and / or
 2. If no, whether the maintenance granted to wife deserves to be enhanced?

Answer to question No.1: -

10. It is not in dispute that marriage between the parties was solemnized in the year 1971. It is also not in dispute that application for grant of maintenance was filed on 10-2-2014. It is also not in dispute that Miscellaneous Case No.78/88 (Sita Bai v. Jethuram Sinha) was initiated by wife Sita Bai which was terminated on 25-1-1993 on the basis of statement given by wife –

Sita Bai. The fact remains that there was proceeding for maintenance initiated and withdrawn by wife – Sita Bai which is apparent from the copy of order dated 25-1-1993 (Ex.P-1) recorded by the Court of Judicial Magistrate First Class, Kawardha and thereafter husband has deposited Rs.300/- per month and Rs.10,000/- for his minor son.

11. The law of limitation is not applicable to the proceeding under Section 125 of the CrPC. It is a continuing right. Section 125 of the CrPC has not restricted the period of limitation to claim maintenance. When the statute has not prohibited wife to claim maintenance within any period of limitation, husband is not entitled to plead that his wife has waived her right to claim maintenance due to long lapse of 34 years under the changed circumstances and husband is not entitled to raise the plea that wife has waived her right to claim maintenance after long lapse of 34 years.

12. In the matter of **Ghurava Bai v. Vishnuram**¹, this Court held as under:-

“13..... As the provisions of the Limitation Act either in general or special are not applicable to an application under Section 125 Cr.P.C. the Court is not required to look into the question of limitation, but the Court may say that the delay in making the application was un-justified or the delay has been properly explained, the wife would or would not be entitled to maintenance. This principle, though is not enshrined under the provisions of law, has been applied by the Courts to look into the bona fides of a woman who is seeking maintenance.”

13. Turning back to the factual score of the case, it is the case of wife – Sita Bai that she had filed application for maintenance which was withdrawn by her on the basis of compromise entered into between them, but when husband – Jethuram did not pay the

¹ 2001(2) C.G.L.J. 283

amount of maintenance as agreed and husband omitted to maintain her after institution of suit for partition in the year 2012 by her son, she decided to file application for maintenance finding her unable to maintain herself and in view of the fact that husband-jethuram has entered into second marriage with Neera Bai and has three sons with Neera Bai, as such, there is change in circumstances on account of non-payment of maintenance as agreed and discontinuance of necessary financial help by the husband since 2012, and therefore, application for maintenance filed by wife on 10-2-2014 cannot be rejected on the ground of delay in filing the application, particularly when there is no specific plea raised in the reply filed before the Family Court. In the circumstances, the Family Court has rightly entertained the application for maintenance filed by the applicant-wife.

Answer to question No.2: -

14. Case of the husband is that there is customary divorce by *chhorchutti* which will prevent the wife to claim maintenance. In the considered opinion of this Court, it is well settled legal position in view of Explanation (b) appended to Section 125 (1) of the CrPC that "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. It is not the case of the husband that applicant Sita Bai has remarried after the divorce as alleged by him.
15. In case of **Rohtash Singh v. Smt. Ramendri and others**², Their Lordships of the Supreme Court have held that by virtue of Explanation appended to sub-section (1) of Section 125 of the

² AIR 2000 SC 952

CrPC, a woman divorced by her husband on account of a decree passed by the Family Court under the Hindu Marriage Act, 1955 continues to enjoy the status of a wife for the limited purpose of claiming maintenance from her ex-husband, and held as under:-

“9A. Claim for maintenance under the first part of Section 125 Cr.P.C. is based on the subsistence of marriage while claim for maintenance of a divorced wife if based on the foundation provided by Explanation (b) to sub-section (1) of Section 125 Cr.P.C. If the divorced wife is unable to maintain herself and if she has not remarried, she will be entitled to Maintenance Allowance. The Calcutta High Court had an occasion to consider an identical situation where the husband had obtained divorce on the ground of desertion by wife but she was held entitled to Maintenance Allowance as a divorced wife under Section 125 Cr.P.C. and the fact that she had deserted her husband and on that basis a decree for divorce was passed against her was not treated as a bar to her claim for maintenance as a divorced wife. [See: *Sukumar Dhibar v. Smt. Anjali Dasi*, 1983 Cr.L.J. 36 (Cal)]. 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.

10. 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 obligations 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 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 can not 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.”

16. Thus by virtue of Explanation (b) to Section 125 (1) of the CrPC, divorced wife is entitled for maintenance, if she is unable to maintain herself and has not remarried.
17. The Family Court has clearly recorded a finding that the applicant is wife of the non-applicant who is unable to maintain herself whereas, the non-applicant is the person of sufficient means who is getting pension of Rs.36,391/- per month after retirement and enjoying with his second wife and the issues out of the second wife.
18. Looking to the cost of living, standard of living, age of the applicant – wife and her medical needs, the amount of Rs.1,500/- per month granted to her by the Family Court cannot be said to be reasonable amount to maintain herself.
19. In view of the aforesaid reasons and considering the fact that the non-applicant – husband is getting pension of Rs.36,391/- per month, the amount of maintenance is enhanced to Rs.5,000/- per month from the date of this order.
20. Accordingly, the revision filed by husband – Jethuram Sinha being Cr.Rev.No.155/2015 is dismissed and the revision filed by wife – Sita Bai being Cr.Rev.No.978/2014 is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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