

In the High Court of Punjab and Haryana at Chandigarh

**1. Crl. Misc. No. M-545 of 2015
Date of Decision: 26.05.2016**

Ajit SinghPetitioner

Versus

Kanwarjit KaurRespondent

2. Crl. Misc. No. M-7540 of 2015

Kanwarjit KaurPetitioner

Versus

Ajit SinghRespondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the digest?

Present: Mr. Jagjot Singh, Advocate for
Mr. Kunal Dawar, Advocate
for the petitioner.
(in CRM-M-545 of 2015) and
for the respondent.
(in CRM-M-7540 of 2015)

Mr. S.S.Rangi, Advocate
for the petitioner.
(in CRM-M-7540 of 2015) and
for the respondent.
(in CRM-M-545 of 2015)

ANITA CHAUDHRY, J (ORAL)

1. Two petitions have been filed under Section 482 Cr.P.C.
seeking quashing of the order dated 29.8.2014 passed by the Additional

Sessions Judge, Patiala who dismissed the revision petitions filed against the order of the Magistrate who had awarded Rs. 5,000/- as maintenance to the wife in a petition filed under Section 125 Cr.P.C. on 7.12.2013.

2. Kanwarjit Kaur was married to Ajit Singh on 27.11.1996. No child was born to them. A petition under Section 125 Cr.P.C. was filed in July 2005 seeking maintenance. The petitioner had claimed that she did not have any income and was being maintained by her father. The husband was stated to be working as a Clerk in the SDM's office. The husband took the plea that the petitioner did not have a liking for him and she lived with him only for 1½ month after marriage and used to pick up quarrels. The father of the wife was a Sub-Inspector in the Police Department and used to visit his house every week on Sunday and used to spend the entire day in his house. Pargat Singh took his daughter after 1½ months of the marriage. The wife returned to stay for few months and then again returned to her parents house in May 1997. The husband led evidence to show that divorce had been granted. The certified copies of the orders were placed on record.

3. The main plea of the husband was that the wife had left the company of the respondent without sufficient cause and a decree of divorce had been passed on the ground of desertion, therefore, she was not entitled to any maintenance. The trial Court recorded a finding that the divorce decree had not become final as the matter was pending in first Appeal and it was not a case where the wife was living in adultery and even a divorced wife was entitled to maintenance. Considering the material that was produced before it, a sum of ₹ 5,000/- per month as maintenance was granted from the date of the order i.e. 07.12.2013. Both Ajit Singh and

Kanwarjit Kaur preferred revisions which were dismissed by the Additional

Sessions Judge on 29.8.2014.

4. The submissions on behalf of Ajit Singh were that it was the wife who had refused to stay with the husband and several attempts were made by him to bring her back but failed and since she had left the company of the husband without any reason she was not entitled to any maintenance and the decree of divorce had been passed on the ground of desertion. It was urged that the material was produced to show that the wife was earning ₹ 5,000/- per month and she was working in a school but the Court had failed to consider this aspect and by virtue of the provisions contained in Section 125 (4) Cr.P.C. the wife was not entitled to any maintenance. It was urged that the judgment of the civil Court would be binding upon the Court dealing with the proceedings under Section 125 Cr.P.C. Reliance was placed on *Rabindra Nath Roy versus Anjana Roy 1995(2) R.C.R. (Criminal) 125*, *Sanjay Sudhakar Bhosale versus Khristina 2008(2) R.C.R. (Criminal) 608*, *Raghubir Singh versus Krishna 1982 PLR 768*, *Aloka Chhabra versus Mani Chhabra 2013(2) PLR 243* and *Rohtash Singh versus Ramendri 2000(2) R.C.R. (Criminal) 286*.

5. The counsel was candid to admit that the Apex Court had held that even a wife who was divorced on account of her desertion was entitled to maintenance but from the date of decree of divorce as held in *Rohtash Singh's* case (supra).

6. The submissions on the other hand were that though, a decree of divorce had been passed but it had not become final and the husband is avoiding his service in the appeal. It was urged that the wife was entitled to maintenance from the date of the application and when the income was over ₹ 33,000/- the amount allowed was too meagre. It was urged that the law

was settled that even a divorced wife was entitled to maintenance till she remarries. Reliance was placed on ***Sushil Kumar versus Neelam, 2004(2) R.C.R. (Criminal) 760, Vijay Singh versus Kamla @ Kalia Devi 2014(5) R.C.R. (Criminal) 437, Manoj Yadav versus Pushpa @ Kiran Yadav and others 2011(1) R.C.R. (Criminal) 513, Smt. Kesri Devi versus Jagdev Singh 2005(2) R.C.R. (Criminal) 359 and Chaturbhuj versus Sita Bai 2008(1) R.C.R. (Criminal) 163.***

7. Admittedly, a decree of divorce had been granted to the husband on the grounds of desertion. The Hon'ble Apex Court in ***Rohtash Singh's*** case (supra) on examination of Sub Section 4 of 125 Cr.P.C. held that even a divorced wife was entitled to maintenance even when she had deserted the husband. It was held that there was no bar to her claim for maintenance but the entitlement could only be from the date of decree.

8. Para 8 to 12 of the said judgment reads as under:-

“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 "wife" within the meaning of Section 125 Criminal Procedure Code on account of Explanation (b) to Sub-section (1) which provides as under :-

"Explanation. - For the purposes of this Chapter -

(a)

(b) "Wife" includes 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 a wife for the limited purpose of claiming Maintenance Allowance from her ex-husband. This Court in Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Others, AIR (1978) SC 1807, 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 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 advances the cause-the cause of the derelicts."

10. *Claim for maintenance under the first part of Section 125 Criminal Procedure Code is based on the subsistence of 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 Criminal Procedure Code 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 Criminal Procedure Code 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) Crl. L.J. 36). 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.”

9. In view of the settled position the claim of the divorced wife even when she had deserted the husband would be maintainable but not for the period prior to the passing of the decree under Section 13 of the Hindu Marriage Act. The wife would be entitled to maintenance only from the date of decree of divorce.

10. The parties had been married in November 1996 and there was no issue. The wife stayed with the husband only for few months and she left the matrimonial home finally in 1997. A petition for maintenance was filed in 2005. The husband filed a petition seeking divorce in March 2006. The decree of divorce was passed on 9.10.2012 on the grounds of desertion. There is a categoric finding that the wife had deserted the petitioner for 9 years. She had got herself aborted without informing the husband and failed

to return to the matrimonial home nor spelt out the reasons.

11. The husband is working in the SDM office. There is no dispute about his income. The trial Court had noted that the wife was a school teacher and was earning for sometime but thereafter the husband could not produce any document to show that the wife was still working.

12. The contentions on behalf of the husband was that it was a case of lack of bonafides of the wife as she had not disclosed her income and left the job and it could be that she would have secured a fresh employment as she was qualified and she had failed to give the details of the employment, therefore, there should be no intervention in the amount awarded by the first Court.

13. The wife has suppressed facts and has not informed the Court about her employment status. Though the issue should not be taken as a issue of non disclosure as relevant but it was expected that the parties should have made fully disclosure of their respective employments. The husband had produced some documents to show that the wife was earning ₹ 5,000/- per month during that period, therefore, the Court had granted maintenance of ₹ 5,000/- per month to the wife which in my view was sufficient. The order passed by the Magistrate, thus, is modified to the extent that the amount of maintenance shall be payable from the date on which the decree of divorce was passed.

14. With the above said modification, both the petitions are disposed of.

**(ANITA CHAUDHRY)
JUDGE**

May 26, 2016
Gurpreet