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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3406/2016

REKHA GARG & ANR Petitioners

Through: Mr.Manohar Lal, Adv.

Versus

THE UNION OF INDIA & ANR Respondents

Through: Mr.Jasmeet Singh, CGSC with
Mr.Srivats Kaushal, Adv. for UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **25.04.2016**

CM No.14578/2016 (exemption)

Allowed, subject to all just exceptions.

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1. The petitioner No.2 and the respondent No.2 were married on 03.07.1989. The marriage was dissolved by decree of divorce by mutual consent vide order dated 12.09.1996 in H.M.A.No.24/1995 and 638/1996. It is claimed that subsequently in the year 1997 the petitioner No.2 married the petitioner No.1. Long thereafter in the year 2006, it appears that the respondent No.2 filed an application for grant of maintenance under Section 125 Cr.P.C. and by order dated 09.01.2012, the learned M.M. (Mahila Court)(E), Karkardooma granted maintenance @ Rs.1000/- per month. Though the petitioner No.2 moved an application under Section 125(4)(5) to recall the order dated 09.01.2012, the same was dismissed by order dated 09.02.2016.

2. The petitioners have now come up with the present petition with a

prayer to declare Clause (b) of Explanation to Section 125(1)(a) of Cr.P.C. to the extent it provides that the wife includes a woman who has been divorced by or has obtained a divorce from her husband and has not re-married, as unconstitutional being violative of Article 21 of the Constitution of India.

3. It is contended in the writ petition *inter alia* that the respondent No.2 is not entitled to claim maintenance since all her claims regarding permanent alimony and maintenance, past, present and future have already been settled as recorded in the judgment in H.M.A. No.24/1995 and 638/1996 dated 12.09.1996. However, it appears that the fact that the respondent No.2 is not re-married is not in dispute.

4. Be that as it may. On the basis of the grounds urged in the petition, we do not find any justifiable reason to hold that Clause (b) of Explanation to Section 125(1)(a) of Cr.P.C. is unconstitutional.

5. We, however, make it clear that the petitioners are at liberty to institute fresh proceedings seeking a declaration that the respondent No.2 is not entitled to claim maintenance in the facts and circumstances of the case. It is also open to the petitioner No.2 to challenge the order dated 09.02.2016 by availing the appropriate remedy as available under law.

6. The writ petition is accordingly disposed of.

CHIEF JUSTICE

APRIL 25, 2016/pmc

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JAYANT NATH, J

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