

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.79 OF 2016

ORDER:

The Revision Petitioner/Sri Chepuri Hanumantha Rao, is sole respondent in M.C.No.262 of 2008 on the file of Judge, Family Court, Ranga Reddy District at L.B.Nagar, that was maintained by his wife (Smt.Chepuri Uma Bala), the revision 1st respondent, under Section 125 Cr.P.C. with a claim to grant maintenance at Rs.25,000/- per month from date of petition.

2. The learned Judge, Family Court, on appreciation of the material covered by petition and counter and also from the evidence of P.W.1 and Rws.1 and 2 with reference to Exhibits R1 to R41, by the impugned order dated 28.11.2015, awarded maintenance of Rs.10,000 per month from date of petition with proportionate costs, with a direction to pay all arrears due after deducting interim maintenance paid by him at Rs.2,000/- per month from date of petition.

3. The contentions in the grounds of revision vis-à-vis the oral submissions of the learned counsel for the revision petitioner (for short, 'husband') are that the impugned order is contrary to law, illegal, improper, unjust and is liable to be set aside, that the maintenance case was filed on 11.07.2008, whereas his marriage performed on dated 02.12.2004, with

the revision respondent (for short, 'wife') was dissolved by a decree of divorce in his favour on the ground of cruelty on 16.03.2012 - in O.P.No.317 of 2008, on the file of Judge, Family Court, Ranga Reddy at L.B.Nagar, that the maintenance case allowed later on 28.11.2015, from date of petition, ignoring the dissolution of the marital tie from which she is no longer wife, irrespective of a divorced wife is otherwise entitled to maintenance within the meaning of wife under Section 125 Cr.P.C., mainly for the fact that the husband's obligations and liabilities to maintain wife of subsisting marriage are different to his divorced wife, that wife is under obligation to live with husband but not for a divorced wife where either of them got liberty to have another spouse and question of neglect of a divorced wife thereby does not arise, that the standard of living to a subsisting wife with that of husband cannot be equated to a divorced wife, apart from divorced wife got other remedies by independent proceedings to have maintenance claim (alimony).

4. His further contest is that he lost job and his health is not permitting to work and he is dependent on his brother and mother for his survival that was not properly considered in awarding maintenance, apart from the maintenance petition not even contains averment of she is unable to maintain herself. It is also the contest that she is employed as office assistant and can do job, the impugned order is only

keeping in mind the past events and by ignoring *pendenti lite* events including the factum of divorce on the ground of cruelty on her part that also disentitles her to make claim for maintenance for no neglect or refusal there from and awarding of maintenance is thereby improper and unsustainable. It is also the contest that merely because interim maintenance was awarded, that does not entitled her to regular maintenance and the lower court should have been dismissed the maintenance claim therefrom.

5. The learned counsel placed reliance on a Division Bench expression of the Bombay High Court in ***Bhagwan Raoji Dale Vs. Sushma Alias Nanda Bhagwan***¹, and drawn attention of this Court to certain observations in that judgment with 53 Paras, particularly to Para 26 that as per Section 125 (4) Cr.P.C., (i) no wife shall be entitled to receive the allowance from the husband....., (ii) without any sufficient reason she refused to live with her husband..... Section 125(1) Explanation (b) says wife includes even a divorced wife until remarried. If the relationship of husband and wife has come to an end as a result of decree for divorce, there can be no question of divorced women without sufficient cause refusing to live with her husband. After divorce, there is no occasion for a woman to live with her husband..... as held in by the Apex Court in ***Vanmala Vs. H.M.Ranganath Bhatta***.

¹ 1995 (5) BomCR 851

6. Again from Para 29 that Section 25 of the Hindu Marriage Act empowers the Court exercising jurisdiction under the Act, at the time of passing of the decree or at any time subsequent thereto, to direct the spouse that he shall pay maintenance to the applicant under Section 25 of the said Act. nothing prevents her from invoking jurisdiction of competent Civil Court under Section 25 of the Act. From observation in Para 36 that some divorcee women are entitled to claim maintenance under Section 125(1) is beyond doubt. In my opinion each and every divorced wife is not entitled to claim maintenance under the said provision.

7. From Para 37, with reference Section 125(1) Explanation (b) of wife includes a divorced wife, the question is then whether a woman, who has been divorced by a decree of divorce passed by a Court of Law at the instance of her husband, is entitled to claim maintenance under Section 125 of the Code. Her case surely would not fall under second limb of Explanation (b) as it is not she who has obtained a divorce from her husband but is he who stated to have obtained divorce against her from a Court of law.

8. From Para 38, that if such a woman against whom a decree of divorce was obtained by the husband is included in the extended definition of wife under Section 125(1) of the code, it would mean that woman who was wrong doer or was guilty of desertion or cruelty against her husband would be

entitled to claim maintenance after a decree of divorce is passed against her, though undisputedly, she would not be entitled for maintenance from such divorce was granted by virtues of subsection (4) of Section 125 of the Code. From Para 53, which reads since in this case (writ) petitioner-husband has obtained divorce against respondent wife, the latter is not entitled to claim maintenance, from and after the date of divorce. Hence, this writ petition must succeed.

9. Whereas, it is the submission of the learned counsel for the revision respondent – wife that the order of the court below no way requires interference for this Court while sitting in revision within the limited scope defined in Section 397(1) Cr.P.C. for no illegality or incorrectness or impropriety in the order of maintenance granted by the court below including in its observations and conclusions and the expression of Bombay High Court, no way a binding precedent and the interpretation must be purposive and in favour of the woman as also laid down by the Apex Court in **Badshah vs Sou. Urmila Badshah Godse & Anr**² and drawn attention of the Court to Paras 17 to 27 therein which read as under:

“17. Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125, Cr.P.C. While dealing with the application of destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalized sections of the society. The

² (2014) 1 SCC 188

purpose is to achieve social justice which is the Constitutional vision, enshrined in the Preamble of the Constitution of India. Preamble to the Constitution of India clearly signals that we have chosen the democratic path under rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the Courts to advance the cause of the social justice. While giving interpretation to a particular provision, the Court is supposed to bridge the gap between the law and society.

18. Of late, in this very direction, it is emphasized that the Courts have to adopt different approaches in social justice adjudication, which is also known as social context adjudication as mere adversarial approach may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof.Madhava Menon describes it eloquently: It is, therefore, respectfully submitted that social context judging is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social- economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the judge has to be not only sensitive to the inequalities of parties involved but

also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication. (Delivered a key note address on Legal Education in Social Context)

19. Provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from adversarial litigation to social context adjudication is the need of the hour.

20. The law regulates relationships between people. It prescribes patterns of behavior. It reflects the values of society. The role of the Court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to societys changing needs. In both Constitutional and statutory interpretation, the Court is supposed to exercise direction in determining the proper relationship between the subjective and objective purpose of the law.

21. Cardozo acknowledges in his classic (*The Nature of Judicial Process*).no system of *jus scriptum* has been able to escape the need of it, and he elaborates: It is true that Codes and Statutes do not render the Judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however, obscure and latent, had none the less a real and ascertainable pre- existence in the legislators mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a judges troubles in ascribing meaning to a stature. Says Gray in his lecture (*From the Book The Nature and Sources of the Law by John Chipman Gray*) The fact is that the difficulties of so-called *interpretation* arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to determine that the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present.

22. The Court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonize results with justice through a method of free decision *libre recherche scientifique* i.e. free Scientific research. We are of the opinion that there is a non-rebuttable presumption that the Legislature while making a provision like Section 125 Cr.P.C., to fulfill its Constitutional duty in good faith, had

always intended to give relief to the woman becoming wife under such circumstances.

23. This approach is particularly needed while deciding the issues relating to gender justice. We already have examples of exemplary efforts in this regard. Journey from Shah Bano (AIR 1985 SC 945) to Shabana Bano (AIR 2010 SC 305) guaranteeing maintenance rights to Muslim women is a classical example.

24. In Rameshchandra Daga v. Rameshwari Daga (AIR 2005 SC 422), the right of another woman in a similar situation was upheld. Here the Court had accepted that Hindu marriages have continued to be bigamous despite the enactment of the Hindu Marriage Act in 1955. The Court had commented that though such marriages are illegal as per the provisions of the Act, they are not immoral and hence a financially dependent woman cannot be denied maintenance on this ground.

25. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydons Case ((1854) 3 Co.Rep.7a,7b) which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction ut res magis valeat quam pereat, in such cases i.e. where alternative constructions are possible the Court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is

between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125, Cr.P.C., such a woman is to be treated as the legally wedded wife.

26. *The principles of Hindu Personal Law have developed in an evolutionary way out of concern for all those subject to it so as to make fair provision against destitution. The manifest purpose is to achieve the social objectives for making bare minimum provision to sustain the members of relatively smaller social groups. Its foundation spring is humanistic. In its operation field all though, it lays down the permissible categories under its benefaction, which are so entitled either because of the tenets supported by clear public policy or because of the need to subserve the social and individual morality measured for maintenance.*

27. *In taking the aforesaid view, we are also encouraged by the following observations of this Court in Capt.Ramesh Chander Kaushal vs. Veena Kaushal ((1978) 4 SCC 70):*

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. Heard both sides at length on facts and law referred supra and perused the material on record. Before answering the scope of the revision *lis* within the limited scope of law in sitting against the impugned order of the lower court, it is necessary to reproduce Section 125 Cr.P.C, which reads as follows:

“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, or

(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, 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.

PROVIDED FURTHER that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, 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.

(2) Any such allowance for the maintenance or interim maintenance and expenses for 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 allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrants 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 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, 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.”

11. From the above, coming to the facts, admittedly, the maintenance case filed in the year 2008 is during subsistence of the marital tie between the couple outcome of marriage dated 02.12.2004 and the divorce granted in O.P.317 of 2008 on the ground of cruelty and not on the ground of desertion at all, is otherwise undisputedly subject matter of Family Court Appeal No.298 of 2013. To say, though there is no suspension of the decree of divorce granted by the Family Court, there is no finality attained to the said divorce decree in view of the pendency of the appeal, which is continuation of the main proceeding till attains finality. It is also not in dispute that before filing of the maintenance case on 11.07.2008, wife already filed a private complaint against the husband for the offence under Section 498-A and 323 IPC. What he claimed though there is no date of his filing the divorce petition O.P.318 of 2008, was subsequent to his filing

divorce petition, the criminal case and maintenance case filed against him.

12. In the evidence covered by Exs.R1 to R41, prior to his filing of the divorce case, there was no exchange of notices. Coming to the evidence on record in the maintenance case including with reference to the documents supra, according to her very petition for maintenance, after marriage at Hyderabad dated 02.12.2004, her husband left for U.K. on 05.12.2004 and returned to India on 25.12.2004 to take her to his company in U.K. and their marriage was consummated only on 29.12.2004 and according to her, harassment started right from the marriage consummation day, apart further from he suppressed the factum of he already married another woman and divorced the first wife and married the petitioner. Her further averment in the maintenance case is that they both left for U.K. on 31.12.2004 and she suffered for two weeks due to ill-health there and even thereafter, he started suspecting her fidelity and abusing for not conceiving children. They went to a Gynecologist in U.K. in 2005, January and the Doctors there on diagnosis found it was he that suffering from prostrate. In their stay till they returned back to India for his father's death on 10.12.2005, where even she was treated with hostility and ill-will by him and his family members. In October, 2006, she suffered from abortion. In November, 2006, they returned to India again to

attend the funeral ceremony of her mother, however, he did not attend the same, but for stayed at his family and it is there he was poisoned more to divorce her also the reason for not meeting the additional monetary demands of them. They left for U.K. on 01.02.2007 and after that he used to beat her by demanding to sign on papers for his undergoing a third marriage else with threats that he is going to convert into Muslim religion to marry number of wives. It was on 12.01.2008, he mercilessly beaten her for not given consent to his demand for divorce and she was in hospital by the time she regained conscious, and later she received a phone call that he was under police arrest and she has to tell the police of she attempted to commit suicide for not begetting children and on depression by conserving pills and cut her hands and she gave statement to the U.K. police accordingly and therefrom the criminal proceedings against him were dropped. She averred further that what she mentioned the events in her diaries were even destroyed by him. On 27.03.2008, they both came to India and he and his family members sent her to her parents house at Khammam and since then, he was avoiding her and even she and her father went to his house, he and his brother Srinivasa Rao, kicked her on the stomach and pulled by holding her tuft by compelling to sign on documents for divorce and created a big scene and it is he that deserted her and treated with harassment and cruelty and made to suffer all the agony

which ultimately made her to file the criminal complaint against him and his family members.

13. In addition to the facts pleaded by her of she was deserted and neglected with ill-treatment even during their living together, so far as his means and her inability to maintain concerned, she claimed that he is a software engineer working for Prudential Company in U.K. and getting more than 50,000/- per annum equal to about Rs.41,00,000/- in Indian currency and also he got assets worth Rs.6.00 Crores in Indian currency there and he suppressed his means and these could be known by her from the e-mail conversations between him and his brother and he worked for sometime in Netway Technologies Limited and also for sometime in Mars Confectionary by earning about 4,60,000 pounds per annum there from. He withdrew money of her from I.S.A. Account with Barclays Bank at U.K. He is highly rich. He is in the habit of sending money to his brother in India in purchasing properties in and around Hyderabad city and his brother also being paid Rs.10,000/- per month towards his charges for supervising his properties and in purchasing properties and their e-mail conversations are also clear in this regard. She is now residing with her sister and she needs minimum Rs.25,000/- per month for her house rent, food and clothing etc., and she is not having any income or fixed assets of her, her father is also an aged

person and not in a position to support her and she is in dire need of maintenance including interim maintenance pending the petition from the date of petition besides legal expenses. She placed reliance on documents viz., marriage photos, photo copy of marriage registration certificate and photo copies of the e-mail correspondences between him and his brother referred in her petition.

14. Thus, the contention of the revision petitioner – husband that the petition for maintenance claim of his wife is bereft of particulars much less of the legal requirements of Section 125 and particularly of Section 125(4) Cr.P.C. are untenable. In fact, the Madhya Pradesh High Court categorically held in **Smt. Radhamani vs Sonu**³, that irregularities in the petition should not come in the way of the wife's entitlement to the claim of maintenance if the facts show her entitlement from appreciation of material on record, as Court in these matters should not be too right dogmatic and technical in evaluating the overall evidence on record.

15. No doubt, it was a case where maintenance petition filed by the wife without showing the children as co-petitioners in claiming maintenance or even in awarding maintenance by the court including for the minor children. In that contest from the contest of pleading are in-sufficient, said finding was rendered. The same was quoted with approval by Patna High

³ 1986 CrLJ 1129

Court in Criminal Revision Case No.385 of 2006, dated 20.04.2009 in **Amarnath Dubey Vs. State of Bihar**, holding that court cannot be very hyper technical in maintenance matters but for to adopt the objective approach and where from the hearing if the court finds it is necessary to order court has to, to sub-serve the ends of justice and in the interest of justice. In fact, there is a clear plea regarding the acts of cruelty and desertion and neglect and refusal to pay maintenance and she is a destitute with no means and he is affluent.

16. Leave about the denial of her petition averments in his counter, what he contended otherwise is that he spent moneys for her treatment including by borrowing while at U.K. in Oxford Fertility Unit and John Radcliffe Hospital among others and also in India for various health problems. He admitted that on 27.03.2008, they came to India and denied the alleged beating of her by him and his brother and any ill-treatment by his family members and the criminal case filed by her is a false one and the same is after filing of that divorce case. In his counter dated 09.04.2009, in Para 9, he stated further that for the last one year he is in India and not in U.K. and he is doing job or earning huge moneys there or highly rich are untrue so also of the allegation of he withdrew her moneys from her bank accounts in U.K. or purchasing properties through his brother and managing

through him, by paying to him. His further contention from Para 11 of the counter is that she is a cunning and in the habit of stealing amounts from him apart from extracting money from him by harassing or black mailing or putting him in mental torture through abuses and she has stolen and swindled ten thousand British pounds from him while they were in U.K., which is the money he procured on loans from his friends and kept for her treatment and she has withheld all the gold given to her by him and his parents and she is having sufficient amounts in liquid which she has swindled from with foresight and she illegally extracted moneys from him of Rs.40,000/- in January 2005, Rs.80,000/- in May 2005, Rs.1,00,000/- in June 2005, Rs.40,000/- in October, Rs.20,000/- in March 2006 and Rs.15,000/- in November 2006 by pressure tactics and send to her sisters and she depleted his physical health, mental peace and finance and deserted him in a sick, jobless and debt laden with dependency on his parents. She had worked as a teacher, principal and administrator in various schools in Khammam like Marvel Model School and Scholars Public School and also as City Cable TV news reader in Khammam and also worked as lawyer and using all her knowledge, she narrated false stories against him, also put baseless allegations against him, also hatched a plan to squeeze his moneys and she is not entitled to the claim of maintenance. Ever since March 2008, after they came to India, he is staying in India without Job

and also due to severe recession prevailing in market and for his health problems. As he is a chronic Prostatitis with Coccyx tail bone injury undergone long treatment and his sitting and standing functions are affected with pain to lower abdomen and perineum and he is not in a position to work and he is taking help of his mother for his daily needs for no source of income to him.

17. From the pleadings, coming to the evidence, he did not file a scrap of paper of his closing the entities of him in U.K. or when he resigned or lost any job in respect of his entities. His very counter averments shows the allegation of several amounts said to have been swindled from him by her shows his high earnings and his affluence.

18. She deposed in the cross-examination of prior to her marriage with respondent, she did job in Maripell Model School at Khammam and elders arranged the marriage and the marriage arrangement took place at Hyderabad at her sister's house and he is a software engineer in London. On his suggestion, it is submitted by her of his cadre and working as software engineer in London as true, which he confirmed of he is a software engineer at London there from. She denied the suggestion of her husband informed of his first marriage and divorce before their marriage engagement. She deposed as true of her husband sent Rs.45,000/- through western money union service, however says the same

is to purchase medicines to be sent to him for his Prostatitis health problem. She also deposed about Rs.40,000/-, Rs.45,000/- and Rs.80,000/- thrice including the above sent through western money union service by him to her or to her parents. She deposed that since 2005, he got Prostatitis problem. She deposed that he started company in U.K. with name Netway Technologies and the company affairs is operating from his residence only and she worked under him as office assistant and drawn salary of 500 pounds equal to Rs.40,000/-. However, it is he that used to draw in her name the salary and the said company continued by him even after they came back to India. She deposed that though she passed L.L.B. and enrolled in Bar Council of A.P., she never practiced as advocate but for she worked in Madas High School in 2010 June to August as office assistant and denied the suggestion of later even she worked till 2012 in that school and also denied the suggestion of she later stopped her employment in order to claim maintenance. She deposed that her husband went to Bangalore in search of employment and denied the suggestion of since her filing of criminal case, he stopped searching jobs, for attending courts or he has no source of income or he is dependent on his mother and he is not in a position to pay any maintenance to her and he has no assets or earnings. She denied the suggestion of her husband closed the company Netway Technologies by the time they came back to India. She also denied the suggestion

of because of her suicide attempt he out of fear left his valuable job in U.K. and came to India. It is in fact absurd to believe. He did not file, as referred supra, even a scrap of paper about his resigning the job or staying in India only and not even submitted his Passport to know any endorsements of transit permissions and traveling abroad to say he is not going or not staying in U.K. or not running any business and not even filed record regarding closure of the own business of him a software company by name Netway Technologies in U.K.

19. What further deposed by her on re-call cross-examination is that her parents are having lands in Talluru Village of Sattenapally Mandal of Guntur District. It is not even the case that it is an ancestral property. It is brought on record that she got 7 more brothers and sisters and her father is alive. Once it is his property, the question of her succeeding in his lifetime even does not arise. Thus there is nothing to appreciate any contention of she got share in any properties of her father in the absence of showing those are coparcenary properties and she got right therein by birth.

20. His Chief Examination is nothing but repetition of those facts covered by his pleadings and cross-examination suggestions to P.W.1 and by denying her version and with claim of he got no means and she got means or can otherwise earn with experience to work. What further deposed by him

is that he is a naturalized citizen of U.K. and the income tax department of U.K. sent tax return notices to him to file IT returns Exhs.R2 to R6 for the years 2008-09 to 2012 and he filed returns through online covered by Exhs.R7 to R12 showing nil income and there from claiming he is not in a position to pay the maintenance to her and also the other version that after death of his father in December 2005, his mother is getting dependent pension of Rs.8,000/- per month and he is living with his brother and mother in the rented house as dependent from 27.03.2008 with no employment and also for his health problem for Prostatitis and neck and back pain covered by Exhs.R27 to R33 medical diagnosis and treatment material.

21. Admittedly, he is an M.Tech of the year 1985 and after completion in the year 1985 itself, he joined in National Insurance Corporation and in the year 2000, he left for U.K. and in 2007, he got British Citizenship and he is a citizen of London even now having relinquished Indian citizenship and he is having otherwise overseas citizenship of India. He filed divorce petition against his first wife in Secunderabad Civil Court and divorced his first wife and later married the M.C. petitioner. He deposed that the criminal case filed by his wife in C.C.162 of 2009 is pending against him besides the maintenance case. He deposed that there are no documents filed by him to show his wife worked in Maripell Model School

or in any local TV channel. He admitted that the petitioner was worked as office assistant in Netway Technologies, U.K., while there were living in London and he and the petitioner are also the promoters of Netway Technologies, which is a private company. He deposed that the company was closed in January 2009 and he filed IT returns till then saying it is a voluntary winding up and the petitioner was not informed of the same and there is no permission of the petitioner for its winding up saying it is not required. He did not file any income tax returns of Netway Technologies till so called winding up and no proof regarding its alleged winding up voluntarily that too when his wife is one of the Directors without her knowledge. His evidence speaks that there is income tax partial exemption to it from the British Government, as while denying the same, his answer again is he is not aware of the partial exemption. Exhs.R22 speaks name of the purchaser which he claims he purchased gold under Ex.R22 by saying at the force of his wife when he attended the obsequies of his father. It is also quite unbelievable in such a situation from alleged version. He deposed that he did not file any record to show that his mother is staying in a rented house. He deposed that after he filed divorce O.P.376 of 2008, he twice went to U.S. and stopped in U.K. by break journey and he stayed in U.S. for two months as a tourist to meet his brother. He deposed that during 2000-2001, he worked in Web League Limited, U.K.

and during 2002-2005, in Netway Technologies and during 2006-2008, he did not work due to health problems, though he is notionally an employee of Netway Technologies during that period, saying he used to earn 5,000 pounds per month. He deposed that he got one NRI account 14432 with Canara Bank, Mettuguda and he is professionally expertise in IT support and he worked in the domain of software installation and maintenance up to 2005. He admitted about the encumbrance certificate reflects sale of open plot in the year 2008 by getting revocation of gift deed by his mother which was executed in his favour and under Ex.R39 E.C. and he deposed that he sold to one Sri A.Srinivas Reddy, Plot No.15 of Nagole Village in the year 2009. For which he says he and his brother sold the same and claiming his brother sold the same. Though what made him to join if it is that of his brother as a co-vendor, nothing come out from him. From this evidence when the petitioner himself says his wife also worked under him in Netway Technologies, besides she was one of the promoters then whatever any amounts she sent if at all or he sent to her father or sisters for thrice including for any treatment to one of her sisters or for his medicines purchase, it cannot be said not out of her any earnings. It is not even his case that out of those earnings, she saved anything. Once, she claimed she never practiced as an advocate, mere standing of her name in the roles of the Bar

Council for not even shown member of any Bar Association, no way shows she can practice and earn.

22. The law is very clear in this regard that mere possessing of qualification is different from earning and in the absence of showing wife is earning, showing qualification is not enough to refuse maintenance. Leave about any source of income even she got, that is not the be all to refuse maintenance, but for at best that also to be taken into consideration.

23. There are sale transactions by him even from the showing including from his cross-examination even he did not file any of his accounts including that after the bank account at Canara Bank, Mettuguda, to reflect his means and income. Coming to the contention of there is no neglect or refusal; this evidence on record clearly shows the neglect and refusal, because there is after decree of divorce on ground of cruelty particularly if at all from her filing of the criminal case under Section 498-A IPC, even considering the same, that is different from desertion, for not his version of he provided anything for her survival at any time. The contention that on the ground of cruelty once divorce granted by the court even appeal is pending since decree of trial court not suspended, it cannot be construed as neglect or refusal to maintain his wife is untenable, for not a case of divorce on the ground of desertion by wife. Acts of cruelty even caused knowingly or unknowingly from the conduct of the wife to the husband to

get the divorce are different from his neglect or refusal to provide maintenance. Even from the expression of the Bombay High Court in **Bhagwan Raoji Dale** (Supra), the facts undisputedly different to the facts on hand for there a restitution of conjugal rights decree obtained by husband and still wife did not join and from the same also as a ground, he filed divorce petition and obtained divorce and thereby, it was observed on facts of it was she that deserted and there was no neglect or refusal by him and for there is a finality in the divorce proceedings, she at best can claim permanent alimony in not granting maintenance therein. In fact, as held in the expressions of the Apex Court, the burden of proof lies on the husband that he did not neglect or refuse to maintain his wife.

24. In this regard, what the law further says is once wife even divorced entitled to continue with the status of wife for the entitlement of maintenance under Section 125 Cr.P.C., till her re-marriage and thus unless it is shown that she is re-married she is entitled to the claim. It is held by the Apex Court in **Sunita Kachwaha and Others Vs. Anil Kachwaha**⁴ and **Bhuwan Mohan Singh Vs. Meena and others**⁵ of it is the duty of the husband towards wife to provide proper maintenance and said duty continues, to lead a life similar to him with all dignity according to their social

⁴ (2014) 16 SCC 715

⁵ (2015) 6 SCC 353

status and strata, regard being had to solemn pledge at the time of marriage and also in consonance with statutory law that governs the field to see that his wife does not become a destitute as it is the sacrosanct duty of the husband to provide maintenance once he can earn either by physical labour from able bodied or otherwise for there is no escape route unless there is an order from court of wife is not entitled to get maintenance on any legally permissible grounds. It was also justified granting maintenance from date of petition and the proceedings even taken nine years in attaining finality from date of petition.

25. In this regard, legal position is further clear that Section 125 Cr.P.C. is a measure of social legislation and is to be construed liberally for the welfare and benefit of the wife and children. Having regard to the above, once the expressions supra clearly say the proceedings under Section 125 Cr.P.C. are a stop-gap measure, the availability of remedy for permanent alimony in the event of finality of the appeal proceeding against the divorce on ground of cruelty obtained by husband, in the appeal filed by wife still pending, leave about the expression of Division Bench of this Court in **Jayakrishna Panigrahi**⁶ of even court without written application while granting decree of divorce or confirming, can grant permanent alimony, if at all granted the remedy open to the husband is to file application under Section 127 Cr.P.C.

⁶ 2006 (1) ALD 18

from the changed circumstances from permanent alimony awarded if at all, for not to be made further liable to pay maintenance under Section 125 Cr.P.C. and till then, he cannot avoid maintenance under Section 125 Cr.P.C. Further continuation of the petition for maintenance claim, even divorce obtained by him which is undisputedly not finalized as appeal pending, the court can at best take the same into consideration as a subsequent event pending *lis* and even taken it into consideration for not a case of any permanent alimony awarded, for there is no bar legally under Section 125 Cr.P.C. proceedings to claim maintenance even after divorce by wife but for specifically if at all under Section 18 of the Hindu Adoptions and Maintenance Act, for divorced wife is not wife there under; on that ground he cannot avoid maintenance that too when the law is very clear in purposive interpretation required from the expression of the Apex Court applied in **Badsha case** (*referred supra*) by scanning the law.

26. Thus, there is no illegality or irregularity any impropriety in the award of maintenance by the lower court in its order holding the M.C. petitioner is entitled to maintenance. However, coming to the quantum when he was affluent and he worked as software engineer and established own company by showing his wife also one of the promoters therein by managing the affairs by utilizing her services as employee under him and when he did not file even

a scrap of paper showing its winding up even voluntarily and when as Director she was not informed even to wind up, there is nothing to show the entity is wound up and not in existence, and leave about he traveled abroad twice admittedly, he was even visiting Bangalore no doubt with a claim by him of searching jobs, it is hardly believable of his health no way permits to do any job with his expertise and skill in software field for not a hard job he has to undertake; Apart from it, it is also hardly believable of he is under the mercy of his mother and brother being otherwise affluent from the material on record and also sold away some of his properties and got means and even maintains bank accounts and same not even filed before Court which is the best evidence in his exclusive control which he cannot withhold. Thereby what the lower court from the evidence on record scanned to the relevancy concluded in awarding Rs.10,000/- per month from the date of petition. However in the facts what this Court feels to interfere with is only to reduce from Rs.10,000/- to Rs.8,000/- per month by otherwise confirming the order of the Court below.

27. Accordingly and in the result, the impugned order of the lower court granting maintenance at Rs.10,000/- per month from date of petition is but for to reduce to Rs.8,000/- per month, in other respects for - no way requires interference, the Revision is allowed in part to the above extent. No costs.

26. Miscellaneous petitions pending, if any, in this case shall stand closed.

DR.B.SIVA SANKARA RAO,J

DT:21.02.2017

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