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

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Judgment delivered on: 11.01.2019

+ CRL.REV.P. 455/2015 CrI. M.A. 10423/2015 (interim maintenance)

ARCHITA @ ANU SETH

..... Petitioner

versus

SUNIL SETH

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. S.K. Srivastava and Mr. Gurjeet Singh, Advs.

For the Respondent : Mr. Kirti Uppal, Sr. Adv. With Mr. Sidharth Chopra and Ms. Shaini Bhardwaj, Advs.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

11.01.2019

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner-Wife impugns judgment dated 07.05.2015 whereby the application of the petitioner under Section 125 Cr. P.C. claiming maintenance has been dismissed inter-alia, on the ground that the petitioner has failed to show that she had sufficient cause for living separately.

2. Parties were married on 31.01.2004 according to Hindu Rites and Ceremonies. Thereafter, disputes arose and parties started living separately since 03.04.2004.

3. Matrimonial proceedings between the parties were initiated by both sides. Subject proceedings were initiated by the Petitioner under Section 125 Cr. P.C. for interim maintenance in the year 2007.

4. It is an admitted position that decree of divorce has been granted on a petition filed by the respondent-husband on 12.03.2015 on the ground of cruelty as well as desertion. This decree of divorce has been upheld upto the Supreme Court.

5. Learned counsel for the petitioner submits that the trial court has erred in dismissing the application under Section 125 Cr. P.C. on the ground that there was no sufficient cause for the petitioner to live separately.

6. Learned counsel for the respondent submits that since the decree of divorce has been passed on the ground of desertion this finding of the trial court dismissing the application under Section 125 Cr. P.C. is unassailable.

7. Section 125 Cr. P.C. reads as under:

“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 not exceeding five hundred rupees in the whole, 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.*

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) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.*
- (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 allowances 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 allowance 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."

8. In terms of Section 125 (4) Cr. P.C., a wife is not entitled to receive any maintenance, *inter-alia*, if without any sufficient reason she refuses to live with her husband.

9. In *Rohtash Singh Vs. Ramendri & Ors.* (2000) 3 SCC 180,

Supreme Court while interpreting Section 125(4) Cr. P.C. has held that all the circumstances contemplated by sub-section (4) of Section 125 Cr. P.C. presuppose the existence of matrimonial relations. The provision would be applicable where the marriage between the parties subsists and not where it has come to an end. The Supreme Court negated the contention of counsel for the petitioner therein 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 and as such the obligation of the husband to maintain a woman with whom all relations had come to an end should also be treated to have come to an end.

10. The Supreme Court in *Rohtash Singh (Supra)* while negating the contention held that a woman has two distinct rights for maintenance. (i) As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125 (4) Cr. P.C. (ii) In another capacity, i.e., as a 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 and if she cannot maintain herself or remains unmarried, the man who was once her husband continues to be under a statutory duty and obligations to provide maintenance.

11. The Supreme Court further went on to hold that once decree of

divorce was passed on the ground of desertion by the wife, she would not be entitled to maintenance for any period prior to the passing of the decree under Section 13 of the Hindu Marriage Act.

12. In view of the law as laid down by the Supreme Court in *Rohtash Singh (Supra)*, in the present case as decree of divorce has been passed on the ground of desertion on 12.03.2015 and the said decree has been upheld upto the Supreme Court, the petitioner clearly is disentitled to maintenance for the period prior to the passing of the decree of divorce.

13. Further in terms of the law laid down in *Rohtash Singh (Supra)* by the Supreme Court as noticed above, she would be entitled to maintain an application for maintenance under Section 125 Cr. P.C. provided she satisfies the condition mentioned in section 125 (1)(a) Cr.P.C..

14. In view of the above, I find no infirmity in the view taken by the trial court in rejecting the application of the petitioner filed under Section 125 Cr. P.C. on this ground.

15. It is clarified that the petitioner would still be entitled to file and maintain an application under Section 125 Cr. P.C. in terms of the decision of Supreme Court in *Rohtash Singh (Supra)*, for the period post the decree of divorce (i.e. post 12.03.2015) provided she is able to satisfy the condition of Section 125 (1)(a) Cr. P.C. that she is

unable to maintain herself.

16. The petition is accordingly disposed of in the above terms.

17. Order *dasti* under signatures of the Court Master.

JANUARY 11, 2019/‘rs’

SANJEEV SACHDEVA, J

