

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

Criminal Revision (F) No. 467 of 2017 (O&M)
Date of decision: 28.2.2020

Smt. Khushi @ Samiksha

...Petitioner

Versus

Shri Ankit

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Lekh Raj Sharma, Advocate,
for the petitioner.

Respondent in person.

JAISHREE THAKUR, J.

1. This is a revision that has been filed seeking to challenge the order dated 8.9.2017 passed by the District Judge, Family Court, Gurugram, where by the petition filed by the petitioner for grant of maintenance under Section 125 of the Code of Criminal Procedure has been dismissed.

2. In brief, the facts that are a marriage was solemnized between the petitioner and the respondent on 6.12.2012 according to Hindu rites and ceremonies at Gurgaon. However, soon after the marriage on account of matrimonial discord, they separated and the petitioner filed a petition under Section 125 of the Code of Criminal Procedure for grant of maintenance at the rate of ₹30,000/- per month on the ground that she is a house wife and has no source of income to maintain herself, while the respondent herein is working in a multinational company at Delhi and is earning ₹60,000/- per month.

3. The petition was contested by the respondent herein by filing

written statement, wherein it was alleged that the petitioner earlier also had filed a similar petition under Section 125 of the Code of Criminal Procedure in Delhi Court, which was disposed of by the Principal Judge, Family Court by order dated 27.5.2014 after making certain adverse observations against the petitioner regarding willful and deliberate concealment on her part. It was also pleaded that the respondent had filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights but the petitioner did not join his company and left the respondent without any just and reasonable cause, and therefore, the petitioner is not entitled to any maintenance.

4. In order to establish her claim, the petitioner herself stepped into the witness box as PW1 and by way of affidavit Ex. PW1/A reiterated the averments made in the petition. No documentary evidence was led by the petitioner. On the other hand, the mother of the respondent, namely Alka Mathur, stepped into the witness box as RW1 and by way of affidavit Ex. RW1/A reiterated the averments made in the written statement.

5. The Family court, after appreciating the evidence brought on record by the respective parties, observed that the petitioner has not come to the court with clean hand regarding her own earnings. In the cross-examination, she has very candidly admitted that she has a saving bank account in Canara Bank, Rajendera Park, Gurgaon and is also having a PAN card. However, she patently refused to divulge the details of her bank account, which clearly proved that she has an income and if she discloses the same, then she would not be entitled to claim maintenance from the respondent. It was further observed that even the criminal case filed by the

petitioner under Section 498-A IPC against the respondent has culminated into acquittal. While acquitting the respondent, the trial court observed that the petitioner herein is habitual of making improvements in her version at each and every step and consequently dismissed the petition. Aggrieved against the order denying her maintenance the present petition has been filed.

6. Learned counsel for the petitioner submits that the petitioner is a legally wedded wife of the respondent, but he has callously abandoned her knowing fully well that she has no independent source of income. It is also submitted that the respondent is working in a company and is earning ₹60,000/- per month. He also owns immovable properties at Muradabad UP and Rohini, New Delhi, whereas the petitioner has no source of income and and she is fully dependent upon her parents for sustenance. Learned counsel further submits that filing of an application under Section 9 of the Hindu Marriage Act by the respondent was only the first step in the direction of taking divorce as it was never the intention of the husband to bring back the petitioner to the matrimonial home, and this aspect is evident from the fact that after decree of restitution of conjugal rights instead of creating a conducive atmosphere for the wife to return the husband, he proceeded to file case for decree of divorce, which was granted on 31.5.2018. It is further submitted that even where a wife is divorced by the husband on the ground of desertion then also the divorced wife would continue to enjoy the status of wife for the limited purpose of maintenance and therefore, the husband has statutory duty to maintain the petitioner. In support of his contention he

relies upon **Dr. Swapan Kumar Banerjee Vs. State of West Bengal 2019**

(4) RCR (Cr1.) 628.

7. Per contra, the respondent who appears in person, submits that there was a decree of restitution of conjugal rights against the petitioner and once the petitioner-wife failed to perform the conjugal rights, she would not be entitled to any maintenance. It is further submitted that the decree of restitution of conjugal rights was a bipartite decree, where the wife was given full opportunity to appear and lead evidence to establish any reason attributable to the respondent-husband and his family members giving the sufficient cause to reside separately. Upon failure of the wife to bring any such circumstances in the proceeding of restitution, decree came to be passed in favour of the respondent—husband. The said decree has now attained finality as there is no challenge to the same. It is further submitted that when there is no reasonable cause or excuse for the wife to reside separately, then the wife is not entitled to the maintenance. He mainly relied on Section 125 (4) of the Code, which provides that a wife shall not be entitled to receive any maintenance under this Section if she refuse to live with her husband without any sufficient reason. He further submits that the instant case clearly falls under Section 125 (4) of the Code and therefore, the petitioner is not entitled to any maintenance as she has failed to perform her conjugal duties after the decree of conjugal rights. Otherwise also the petitioner is fully a woman of resources and she is in a position to maintain herself, as held by the court below.

8. I have heard learned counsel for the parties and have perused through the documents annexed with the petition as well as produced at the time of arguments.

9. The sole question that falls for consideration in the instant petition is, whether the petitioner is entitled to maintenance from the respondent despite the fact that a decree of conjugal rights was passed against the petitioner and since she failed to perform her conjugal rights, even a decree of divorce has also been passed against her on account of desertion and cruelty committed by her and whether Section 125 (4) of the Code of Criminal Procedure would come into effect, which stipulate that a wife will not be entitled to maintenance if she refuses to live with her husband without any sufficient reason?

10. The petitioner herein has approached this court seeking maintenance under Section 125 Cr.P.C, claiming that she was married to the respondent and is unable to maintain herself. It is submitted that even though there is a decree of divorce but she would still be entitled to receive maintenance. This claim is challenged by the respondent husband on the ground that he has got a decree of divorce from the petitioner on the grounds of cruelty and desertion; that he has been subjected to cruelty as he was falsely implicated by the petitioner in proceedings initiated under Section 498-A, 406 IPC, in which proceedings he stands acquitted; the petitioner has subjected him to a various kinds of litigation and has remained unsuccessful in the same; refused to join his company in proceedings that were initiated under the Domestic Violence Act 2005; apart from the main argument that she is a person of substantial means as she is running a playway school in the name of 'Baby Smile Care'.

11. The Supreme Court in a recent judgment reported as **Dr.**

Swapan Kumar Banerjee (Supra) has ruled that a wife, who has been

divorced on the ground of desertion, is entitled to claim maintenance from her ex-husband.

“8. No doubt, as urged by Mr. Debal Banerjee, explanation II to Section 125 of the Cr.P.C. by deeming fiction includes a divorced woman to be a wife and, therefore, a woman who has been divorced by her husband can still claim maintenance under Section 125 of the Cr.P.C. The question is how we should read the provisions of sub-section (4) in this regard, especially when we deal with those women, against whom a decree for divorce has been obtained on the ground that they have deserted their husband. Once the relationship of marriage comes to an end, the woman obviously is not under any obligation to live with her former husband. The deeming fiction of the divorced wife being treated as a wife can only be read for the limited purpose for grant of maintenance and the deeming fiction cannot be stretched to the illogical extent that the divorced wife is under a compulsion to live with the ex-husband. The husband cannot urge that he can divorce his wife on the ground that she has deserted him and then deny maintenance which should otherwise be payable to her on the ground that even after divorce she is not willing to live with him. Therefore, we find no merit in the contention of Mr. Debal Banerjee.”

12. [Section 125](#) of the Code of Criminal Procedure deals with order of maintenance of wife, children and parents. Whereas Sub-[Section 4](#) provides that 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. Section 125 (4) of the Code of Criminal Procedure reads as under:-

“125 (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.”

13. In the present proceedings the petitioner had filed various litigations against the respondent and has been unsuccessful in all. The respondent had been implicated in the FIR under Sections 498A and 406 IPC, in which he and his family members were exonerated by the judgment dated 17.2.2016 and the judgment rendered acquitting the respondent has attained finality. The present application for maintenance was filed in April 2016, after the acquittal and at that point in time too there was no sufficient cause for the petitioner to reside separately from her husband. However, since the divorce has taken place thereafter, and in view of the judgment rendered in **Dr. Swapan Kumar Banerjee (Supra)**, the petitioner would in normal circumstances have been entitled to receive maintenance. But is she really entitled to?

14. The legislature enacted Section 125 Cr.P.C. as 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. The claimant has to claim that she/they, be it parents or wife has no means of to support themselves and are entirely dependent of the husband/father/son/daughter. The petitioner herein has failed to establish that she had no source of income, mainly because she failed to disclose the details of her bank account. It has always been the case of the respondent that the petitioner had sufficient means to support herself and was running a playway school. The petitioner, while denying the said contention, admitted

when asked to furnish details did not do so nor sought time to place the relevant document on the record. The family court took into account the statement made by her in her cross examination “ *I do not remember my bank account No. I cannot supply my statement of my bank account.* ” Even otherwise in these proceedings the petitioner has not placed, or sought permission to place on record the details of her bank accounts to reflect that she had no source of income. Once the respondent had taken a specific plea that the petitioner was running a playway school and coupled with her own admission that she is maintaining a bank account and had a PAN card, the petitioner should have adduced evidence to substantiate that she had no source of income. In such a situation, the Family Court rightly came to the conclusion that the petitioner had not approached the court with clean hands and is not entitled to any maintenance.

15. There is no infirmity with the impugned order. Consequently, this petition stands dismissed.

28.2.2020

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**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

Yes