Rina Kumari @ Rina Devi @ Reena Vs Dinesh Kumar Mahto @ Dinesh Kumar Mahato And Another

Court: Supreme Court Of India

Date of Decision: Jan. 10, 2025

Acts Referred: Constitution of India, 1950 â€" Article 15(3), 39 Code of Criminal Procedure, 1898 â€" Section 488, 488(4)
Code of Criminal Procedure, 1973 â€" Section 125, 125(1), 125(4), 126, 127, 128
Indian Penal Code, 1860 â€" Section 498A
Hindu Marriage Act, 1955 â€" Section 9, 13(1A)(ii), 24
Evidence Act, 1872 â€" Section 40, 41, 42, 43

Hon'ble Judges: Sanjiv Khanna, CJI; Sanjay Karol, J

Bench: Division Bench

Advocate: Mohini Priya, Anup Kumar, Pragya Choudhary, Shruti Singh, Vaibhav Prasad Deo, Neha Jaiswal, Shivam Kumar, Awanish Gupta, Vishnu Sharma, Madhusmita Bora, Shiv Ram Sharma, Dipankar Singh, Anupama Sharma

Final Decision: Allowed

Judgement

Sanjay Kumar, J

1. Leave granted.

2. Will a husband, who secures a decree for restitution of conjugal rights, stand absolved of paying maintenance to his wife by virtue of Section 125(4)

of the Code of Criminal Procedure, 1973, if his wife refuses to abide by the said decree and return to the matrimonial home?

3. This intriguing question was answered in the affirmative by a learned Judge of the Jharkhand High Court, vide order dated 04.08.2023 inÃ, Criminal

Revision No. 440 of 2022. Aggrieved, Rina Kumari @ Rina Devi @ Reena, the wife, is in appeal.

4. The appellant, Reena, and respondent No. 1, Dinesh Kumar Mahto @ Dinesh Kumar Mahato, were married on 01.05.2014. They parted ways in

August, 2015, and Reena started living at her parental home. Original (MTS) Suit No. 495 of 2018 was instituted by Dinesh on 20. 07.2018 before the

Family Court, Ranchi, under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights. Reena contested the suit by filing her written

statement on 25.04.2019. Dinesh claimed that Reena left the matrimonial home on 21.08.2015 and did not return thereafter. According to him,

attempts were made during August and October, 2017, to bring her back but she refused to come. He stated that his parents were very old and

needed to be taken care of but Reena was not there to do so. On the contrary, Reena asserted that she was subjected to torture and mental agony by

Dinesh, who demanded â‚¹5 lakh to purchase a four-wheeler. She alleged that he had extramarital relations. Further, she stated that she suffered a

miscarriage on 28. 01.2015 but Dinesh did not even come to see her from his workplace at Ranchi and it was her brother who took her to Dhanbad

for medical care. She claimed that it was Dinesh who persuaded her to go to her parental home in August, 2015, on the occasion of Raksha Bandhan

and he never truly tried to bring her back thereafter. She claimed that it was she who had gone to her matrimonial home in the year 2017 along with

her relations but they were forced to return as Dinesh and his family members treated them badly. She stated that she was ready to return to her

matrimonial home if Dinesh did not demand money to purchase a car and if she was not ill-treated by him and his family members. Her further

conditions were that she should be allowed to use the washroom/toilet in the house, as she was not allowed to do so earlier, and she should also be

allowed to use an LPG stove to prepare food, as she had to do so by using wood and coal hitherto. She concluded her written statement by asserting

that the suit for restitution filed by Dinesh was nothing but a tool to save himself from the effect of laws which were put in place for womenÃ¢â‚¬â„¢s

safety and prayed that the suit be dismissed with costs. Reena, despite filing the above written statement, failed to appear thereafter before the Family

Court.

5. By judgment dated 23.04.2022, the learned Additional Principal Judge-II, Additional Family Court, Ranchi, decreed DineshÃ¢â‚¬â„¢s suit for restitution

of conjugal rights. Therein, it was noted that Dinesh had attempted to bring his wife back only once but, relying on the evidence of his witnesses, the

Family Court concluded that he wanted to live with her as husband and wife. As no evidence was adduced by Reena, the Family Court held against

her as regards her allegation that Dinesh demanded â‚¹5 lakh to purchase a car and her allegation of ill treatment and torture by him and his family

members. As to her two conditions, the Family Court noted that Dinesh was a Junior Lineman in Jharkhand State Electricity Board and observed that

he would be expected to provide an LPG stove to his wife to prepare food. Opining that there must be something more serious than the ordinary wear

and tear of married life for a wife to withdraw from the society of her husband, the Family Court held in DineshÃ¢â‚¬â„¢s favour. He was, however,

directed to ensure the respect and dignity of his wife and to see that her conditions with regard to cooking and toilet facilities were complied with.

Reena was directed to resume conjugal life with Dinesh within two months. Admittedly, Reena did not abide by this decree.

6. Significantly, in the meanwhile, on 10.08.2018, Reena lodged a complaint under Section 498A IPC against Dinesh, in C.P. Case No. 3270 of 2018.

As a result of this, he was sent to prison and was consequently suspended from service for some time. The case is stated to be pending. Thereafter,

on 03.08.2019, Reena instituted Original Maintenance Case No. 454 of 2019 against Dinesh seeking maintenance under Section 125 of the Code of

Criminal Procedure, 1973 (for brevity, Ã¢â‚¬Ëœthe Cr.P.C.Ã¢â‚¬â„¢). This case was allowed by the learned Principal Judge, Family Court, Dhanbad, vide order

dated 15.02.2022, i.e., before the decretal of DineshÃ¢â‚¬â„¢s suit for restitution. Therein, the Family Court noted DineshÃ¢â‚¬â„¢s stand that he was ready

and willing to keep Reena with full dignity but held, on the evidence adduced, that she was entitled to maintenance. DineshÃ¢â‚¬â„¢s pay-slip (Ex-3)

revealed that he was working as a Junior Engineer in the Electricity Board and his net salary, after deductions from the gross salary of â‚¹62,000/-, was

â‚¹43,211/-. The Family Court held that Dinesh, despite having sufficient means, had neglected to maintain his wife, who was unable make ends meet

on her own. The petition was accordingly allowed and Dinesh was directed to pay â‚¹10,000/- per month to Reena towards maintenance. Such

maintenance was held payable from the date of the application, i.e., 03.08.2019, and the arrears were directed to be paid within two months.

7. Challenging this order, Dinesh filed Criminal Revision No. 440 of 2022 before the Jharkhand High Court. A learned Judge allowed the revision by

the impugned judgment dated 04.08.2023. Therein, the learned Judge noted that Reena, who deposed as PW-1, was not even cross-examined by

Dinesh. Similarly, the other two witnesses who appeared on her behalf were also not subjected to cross-examination. In her deposition, Reena

asserted that she was not working and this was confirmed by her brother, Dilip Kumar Mahato (PW-3), who stated that she was completely

dependent upon him. Dinesh, in his own cross-examination, denied that it was due to his assault that his wife suffered a miscarriage. He also denied

that he had demanded â‚¹5 lakh in dowry. He, however, admitted that Reena suffered an abortion and that he did not bear any expense in that regard. It

was submitted on behalf of Dinesh, that he was ready to pay â‚¹5,000/- per month to Reena, but not from the date of filing of the maintenance petition,

as he was suspended from service during that period owing to his being in judicial custody in relation to the Section 498A IPC case instituted by her.

The learned Judge, however, noted that there was a specific finding in the judgment dated 23.04.2022 in Original (MTS) Suit No. 495 of 2018 that

Reena had withdrawn from her husbandÃ¢â‚¬â„¢s society without reasonable excuse and that she had not returned to the matrimonial home despite the

said decree for restitution of conjugal rights, which she had not even chosen to challenge by way of appeal. The learned Judge, therefore, reasoned

that Section 125(4) Cr.P.C. would come to DineshÃ¢â‚¬â„¢s aid and, in consequence, Reena would not be entitled to maintenance. Hence, the learned

Judge allowed the revision.

8. Before proceeding to consider the matter on merits, it would be apposite to take note of the statutory scheme. Chapter IX of the Code of Criminal

Procedure, 1973, is titled Ã¢â‚¬Ëœ Order for Maintenance of Wives, Children and ParentsÃ¢â‚¬â„¢ and comprises Sections 125 to 128. Section 125(1) Cr.P.C.

provides to the effect that, if any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate children, falling

in the prescribed categories, or his parents, who are all unable to maintain themselves, a Magistrate of the first class may, upon proof of such neglect

or refusal, order such person to pay a monthly allowance, as thought fit, for their maintenance. Notably, Section 125 Cr.P.C. is not of recent origin. It

is analogous to and in continuance of Section 488 of the erstwhile Code of Criminal Procedure, 1898.

9. In its 41st Report submitted on 24th September, 1969, the Law Commission of India, while adverting to Section 488 of the Code of Criminal

Procedure, 1898, observed that the primary justification for placing provisions relating to maintenance of wives and children, which is a civil matter, in

the Criminal Procedure Code was that a remedy, speedier and more economical than that available in the Civil Courts, is provided to them. The Law

Commission noted that the provision was aimed at preventing starvation and vagrancy, leading to commission of crime.

10. On the same lines, in Chaturbhuj vs. Sita Bai (2008) 2 SCC 316, this Court observed that the object of maintenance proceedings is not to punish

a person for his neglect but to prevent the vagrancy and destitution of a deserted wife, by providing her food, clothing and shelter by a speedy remedy.

It was held that Section 125 Cr.P.C. is a measure of social justice, especially enacted to protect women and children, falling within the constitutional

sweep of Article 15(3) reinforced by Article 39 of the Constitution. Thus, the objective of the provision, then and now, is to alleviate the financial plight

of destitute wives, children and now, parents, who are left to fend for themselves.

11. In Bhuwan Mohan Singh vs. Meena and others (2015) 6 SCC 353, this Court observed that Section 125 Cr.P.C. was conceived to ameliorate

the agony, anguish and financial suffering of a woman, who left her matrimonial home for the reasons provided in the provision, so that some suitable

arrangement can be made by the Court and she can sustain herself and also her children, if they are with her. It was held that the concept of

sustenance did not necessarily mean Ã¢â‚¬Ëœto lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic

maintenance somewhere elseÃ¢â‚¬â„¢ and the wife would be entitled in law to lead a life in a similar manner as she would have lived in the house of her

husband. This Court further cautioned that, in a proceeding of this nature, the husband cannot be permitted to take subterfuge to deprive the wife of

the benefits of living with dignity and there could be no escape route, unless there is an order from the Court that the wife is not entitled to get

maintenance from the husband on legally permissible grounds.

12. Earlier, in Badshah vs. Urmila Badshah Godse and another (2014) 1 SCC 188, this Court held that the provision of maintenance aims at

empowering the destitute and achieving social justice or equality and dignity of the individual and while dealing with cases thereunder, the drift in the

approach from adversarial litigation to social context adjudication is the need of the hour. More recently, in Rajnesh vs. Neha and another (2021) 2

SCC 324, this Court emphasized that maintenance laws were enacted as a measure of social justice to provide recourse to dependent wives and

children for their financial support, so as to prevent them from falling into destitution and vagrancy.

13. In Shamima Farooqui vs. Shahid Khan (2015) 5 SCC 705, this Court noted that the inherent and fundamental principle behind Section 125

Cr.P.C. is the amelioration of the financial state of affairs as well as the mental agony and anguish that a woman suffers when she is compelled to

leave her matrimonial home. It was further observed that, as per law, she is entitled to lead life in a similar manner as she would have lived in the

house of her husband and as long as she is held entitled to grant of maintenance within the parameters of Section 125 Cr.P.C., it has to be adequate so

that she can live with dignity. Lastly, it was noted that, a plea is sometimes advanced by the husband that he does not have the means to pay as he

does not have a job or his business is not doing well, but these are only bald excuses and, in fact, they have no acceptability in law as a husband, who

is healthy, able-bodied and in a position to support himself is under a legal obligation to support his wife and her right to receive maintenance under

Section 125 Cr.P.C., unless disqualified, is an absolute right.

14. Such disqualification, by way of an exception, was envisaged under Section 488(4) of the old Code, which is replicated, almost verbatim, in Section

125(4) Cr.P.C. It reads thus:

Ã¢â‚¬Å“Section 125

(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,] [Substituted by

Act 50 of 2001, Section 2 for ""allowance"" (w.e.f. 24-9-2001)] 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.Ã¢â‚¬â€‹

15. The issue, presently, turns upon the applicability of Section 125(4) Cr.P.C. to the case on hand. The question as to whether non-compliance with a

decree for restitution of conjugal rights by a wife would be sufficient in itself to deny her maintenance, owing to Section 125(4) Cr.P.C, has been

addressed by several High Courts but no consistent view is forthcoming, as their opinions were varied and conflicting.

16. In K. Narayana Rao vs. Bhagyalakshmi 1983 SCC OnLine Kar 190 = (1984) 1 Kant LJ 451 = 1984 Cri LJ 276 (Kant), the Karnataka High

Court observed that the Court dealing with a maintenance claim under Section 125 Cr.P.C. has to carefully examine and take into consideration the

decree for restitution of conjugal rights which has not been complied with by the wife but it would not be bound by all the findings therein, including

findings on questions, such as, whether the wife withdrew from the society of the husband; desertion on her part; or her leading an adulterous life.

Reference was made to Fakruddin Shamsuddin Saiyed vs. Bai Jenab AIR 1944 Bom 11, wherein the Bombay High Court had held that the

Magistrate should not Ã¢â‚¬Ëœsurrender his own discretionÃ¢â‚¬â„¢ simply because the husband was armed with a decree for restitution of conjugal rights.

17. In Sampuran Singh vs. Gurdev Kaur and another Criminal Revision No. 1562 of 1983, decided on 17.01.1985 = 1985 Cri LJ 1072 (P&H), the

Punjab & Haryana High Court observed that a wife can still claim maintenance in the presence of a decree for restitution of conjugal rights if the

conduct of the husband is such that it obstructs her from obeying the decree.

18. In Amina Mohammedali Khoja vs. Mohammedali Ramjanali Khoja and another 1985 SCC OnLine Bom 99 = 1985 Cri LJ 1909, the Bombay

High Court noted that an order of maintenance can always be passed in favour of a wife even if her husband obtained a decree for restitution of

conjugal rights, unless it is established that she willfully deserted her husband and was not willing to stay with him without reasonable cause or

sufficient reason. On facts, it was found that the record did not show that the wife had deserted the husband and was unwilling to stay with him

without reasonable cause or sufficient reasons. It was further noted that, after obtaining the decree, the husband had not taken any effective steps to

get the decree satisfied as he had made no genuine, honest and sincere efforts to see that his wife comes back to him. It was, therefore, held that he

was only interested in a paper decree for restitution of conjugal rights, which he had gotten ex parte.

19. In Kavungal Kooppakkattu Zeenath vs. Mundakkattu Sulfiker Al i2008 SCC OnLine Ker 78 = (2008) 3 KLJ 331, the Kerala High Court

noted that the expression used in Section 125(4) Cr.P.C. is Ã¢â‚¬ËœrefusalÃ¢â‚¬â„¢ and not Ã¢â‚¬Ëœfailure Ã¢â‚¬â„¢ to live with the husband and that there is evidently

some difference between the two. It was held that Ã¢â‚¬Ëœfailureâ€¢ would mean not doing something that one is expected to do but Ã¢â‚¬Ëœrefusalâ€¢

would mean saying or showing that one would not do or accept something which is offered. In effect, if a husband says he is willing to do something

for the wife but she states or shows that she does not want or accept that something which is offered to her, then only there is refusal.

20. In Subal Das vs. Mousumi Saha (Das) and another 2017 SCC OnLine Tri 175 = Criminal Revision Petition No. 89 of 2016, decided on

25.07.2017, the Tripura High Court held that a wife who refuses to comply with a decree for restitution of conjugal rights cannot be deprived of

maintenance under Section 125(4) Cr.P.C. It was observed that it would be incongruent to assume that a wife against whom a decree for restitution

has been passed is disentitled to maintenance while a wife who has been divorced can still claim the same. It was further observed that the Civil

Courtâ€¢s judgment for restitution can only be treated as relevant evidentiary material but the conduct of the wife, i.e., whether she had sufficient

reason to refuse to live with the husband, has to be assessed by the Magistrate and only thereafter, it could be decided whether she would be entitled

to maintenance or not. It was concluded that the restriction imposed by Section 125(4) Cr.P.C. had been substantially diluted, if not virtually negated.

21. In Babita vs. Munna Lal 2022 SCC OnLine Del 4933 = Criminal Revision Petition No. 1001 of 2018, decided on 22.08.2022, the Delhi High

Court opined that an ex parte decree for restitution of conjugal rights would not automatically put an end to the wifeâ€¢s right to maintenance under

Section 125 Cr.P.C. It was held that, even if such a case is contested by the wife and is decided in the husbandâ€¢s favour, non-compliance

therewith could be taken to be a ground to deny maintenance, provided the Court is satisfied on the strength of evidence that the wife had no

justifiable grounds to stay away from the husband. The mere presence of a decree for restitution of conjugal rights was, therefore, held insufficient to

disentitle a wife from claiming maintenance, if the conduct of the husband is such that she is unable to obey such a decree or if the husband creates

such circumstances that she cannot stay with him. It was noted that even a divorced wife is entitled to maintenance under Section 125 Cr.P.C. and it

would be improper and unfair to deny maintenance to a wife merely because she refused to cohabit with the husband, despite having sufficient

grounds therefor.

22. In Shri Mudassir vs. Shirin and others Criminal Revision Application No. 268 of 2022, decided on 09.02.2023, the Bombay High Court noted that

mere readiness and willingness on the part of the husband to cohabit with the wife would not be sufficient to absolve him of the liability to pay

maintenance, by projecting that the wife left his company without sufficient reason. It was held that if the grounds justified the wife and children

staying away from the husband, Section 125(4) Cr.P.C. would have no application.

23. In its recent judgment in Smt. S.R. Ashwini vs. G. Harish NC: 2024: KHC: 14466 = RPFC No.104 of 2018, decided on 23.02.2024, the Karnataka

High Court held that there is nothing in law to bar the grant of maintenance under Section 125 Cr.P.C. even if a decree for restitution of conjugal

rights is secured by the husband. It was noted that, at the most, such a decree would enable the husband to take that defence in the maintenance

proceedings initiated by the wife but, for the Court, it would not be the sole factor to refuse maintenance to her. In the result, it was held that a petition

under Section 125 Cr.P.C. could be considered on its own merits independently, without being influenced by the decree for restitution of conjugal

rights. It was further held that, even if there is a decree for restitution of conjugal rights, and the wife still does not choose toÃ, joinÃ, theÃ,

matrimonialÃ, homeÃ, thatÃ, wouldÃ, notÃ, amountÃ, toÃ, voluntary refusal/desertion which would bar her claim to maintenance under Section 125

Cr.P.C.

24. On the other hand, the Gujarat High Court, in Girishbhai Babubhai Raja vs. Smt. Hansaben Girishchandra and another 1985 SCC OnLine Guj 161

= (1986) GLH 778, observed that when the Civil Court orders the wife to go and stay with her husband and fulfil her marital obligations, it presupposes

that she has no justification to be away from the husband and refuse to perform her corresponding marital obligations.

25. A similar view was taken by the Himachal Pradesh High Court in Hem Raj vs. Urmila Devi and others 1996 SCC OnLine HP 116 = (1997) 1

HLR 702, wherein it was held that, once a Civil Court found in a contested proceeding that the wife had no just or reasonable cause to withdraw her

society from the husband, she cannot claim maintenance under Section 125 Cr.P.C. It was observed, on facts, that the wife had not pleaded any

subsequent event or circumstance which justified her staying away from her husband in spite of the decree for restitution of conjugal rights passed

against her.

26. On the same lines, in Ravi Kumar vs. Santosh Kumari 1997 SCC OnLine P&H 529 = (1997) 3 RCR (Cri) 3 (DB), a Division Bench of the

Punjab & Haryana High Court held that a wife against whom a decree for restitution of conjugal rights has been passed by the Civil Court would not

be entitled to claim maintenance under Section 125 Cr.P.C. if, in the proceedings of restitution, a specific issue was framed as to whether the wife

refused to live with her husband without sufficient reason and the parties were given an opportunity to lead evidence, whereupon specific findings

were recorded by the Civil Court against the wife on the issue. It was, however, added that in the event the husband got an ex parte decree for

restitution, such a decree would not be binding on the Criminal Court exercising jurisdiction under Section 125 Cr.P.C. It was also clarified that if the

decree for restitution of conjugal rights was obtained by the husband subsequent to the order for maintenance passed by the Magistrate under Section

125 Cr.P.C., then the decree would not ipso facto disentitle the wife to her right to maintenance and the husband would have to approach the

Magistrate to get the order granting maintenance cancelled.

27. Now, turning to the decisions of this Court on the point, in Kirtikant D. Vadodaria vs. State of Gujarat and another (1996) 4 SCC 479, it was

held that Section 125 Cr.P.C. has to be given a liberal construction to fulfil and achieve the intention of the legislature and, therefore, the passing of a

decree for restitution of conjugal rights against the wife would not, by itself, defeat her right to maintenance under Section 125(1) Cr.P.C. It was

further observed that the mere Ã¢â‚¬Ëœfailure Ã¢â‚¬â„¢ of the wife to live with her husband would not be sufficient to disentitle her from receiving maintenance

from him, especially as the crucial word carefully chosen in the relevant provision is Ã¢â‚¬Ëœrefusal Ã¢â‚¬â„¢.

28. In Amrita Singh vs. Ratan Singh and another (2018) 17 SCC 737, this Court held, on facts, that the plea of the husband that his wife had

deserted him without reasonable cause and that he was ready to take her back was falsified by the fact that the wife was treated with cruelty and

subjected to persistent demands for dowry, resulting in her being ousted from the matrimonial house, whereupon she was compelled to file a criminal

complaint under Section 498A IPC ending in the conviction of the husband and his father. The wife was held to have reasonable grounds not to join

the husband, thereby entitling her to maintenance.

29. Thus, the preponderance of judicial thought weighs in favour of upholding the wife Ã¢â‚¬â„¢s right to maintenance under Section 125 Cr.P.C. and the

mere passing of a decree for restitution of conjugal rights at the husband Ã¢â‚¬â„¢s behest and non-compliance therewith by the wife would not, by itself,

be sufficient to attract the disqualification under Section 125(4) Cr.P.C. It would depend on the facts of the individual case and it would have to be

decided, on the strength of the material and evidence available, whether the wife still had valid and sufficient reason to refuse to live with her husband,

despite such a decree. There can be no hard and fast rule in this regard and it must invariably depend on the distinctive facts and circumstances

obtaining in each particular case. In any event, a decree for restitution of conjugal rights secured by a husband coupled with non-compliance therewith

by the wife would not be determinative straightaway either of her right to maintenance or the applicability of the disqualification under Section 125(4)

Cr.P.C.

30. Another contention that was urged before us is that the findings in the judgment for restitution of conjugal rights by the Family Court, being a Civil

Court, would be binding on the Court seized of the petition under Section 125 Cr.P.C, as they are to be treated as criminal proceedings. This specious

argument needs mention only to be rejected outright. No doubt, in Shanti Kumar Panda vs. Shakuntala Devi(2004) 1 SCC 438, this Court held that

a decision by a Criminal Court would not bind the Civil Court while a decision by the Civil Court would bind the Criminal Court. However,

maintenance proceedings are essentially civil in nature and the reason for inclusion of the provisions dealing therewith in the Code of Criminal

Procedure was clarified by the Law Commission of India in September, 1969. Significantly, as long back as in the year 1963, in Mst. Jagir Kaur and

another vs. Jaswant Singh AIR 1963 SC 1521, a 3-Judge Bench of this Court held that proceedings under Section 488 of the Code of Criminal

Procedure, 1898, the precursor to Section 125 Cr.P.C., are in the nature of civil proceedings; the remedy, being a summary one; and the person

seeking that remedy, ordinarily being a helpless person. Therefore, even if non-compliance with an order for payment of maintenance entails penal

consequences, as may other decrees of a Civil Court, such proceedings would not qualify as or become criminal proceedings. Nomenclature of

maintenance proceedings initiated under the Code of Criminal Procedure, as those provisions find place therein, cannot be held to be conclusive as to

the nature of such proceedings.

31. Further, in Iqbal Singh Marwah and another vs. Meenakshi Marwah and another (2005) 4 SCC 370, while dealing with the contention that

an effort should be made to avoid conflict of findings between Civil and Criminal Courts, a Constitution Bench pointed out that there is neither any

statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases

have to be decided on the basis of the evidence adduced therein.

32. The Indian Evidence Act, 1872, distinguishes between judgments in rem and judgments in personam and Sections 40 to 43 therein stipulates the

relevance of existing judgments, orders or decrees in subsequent proceedings in different situations. The relevant provisions are extracted hereunder

for ready reference:

40. Previous judgments relevant to bar a second suit or trial: -

The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial is a relevant fact when the

question is whether such Court ought to take cognizance of a such suit, or to hold such trial.

41. Relevancy of certain judgments in probate, etc., jurisdiction: -

A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial admiralty or insolvency jurisdiction which confers upon or takes away

from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any

specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proofÃ¢â‚¬

that any legal character, which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, [order or decree] declares it to

have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, [order or decree] declared that it had ceased or

should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, [order or decree] declares

that it had been or should be his property.

42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41: -

Judgments, orders or decrees other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the enquiry; but such

judgments, orders or decrees are not conclusive proof of that which they state.

Illustration:

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land in which C alleged the existence of the same right of

way, is relevant, but it is not conclusive proof that the right of way exists.

43. Judgments, etc., other than those mentioned in sections 40 to 42, when relevant. -

Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in

issue, or is relevant under some other provisions of this Act.

Illustrations

(a) A and B separately sue C for a libel which reflects upon each of them. C in each case says, that the matter alleged to be libellous is true, and the circumstances are

such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(c) A prosecutes B for stealing a cow from him, B, is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d) A had obtained a decree for the possession of land against B, C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

[(e) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(f) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for

the fact in issue.

33. Sections 34 to 37 of the Bharata Sakshya Adhiniyam, 2023, correspond to Sections 40 to 43 of the Indian Evidence Act, 1872, with some

modifications. Section 41, as is clear from the extraction hereinabove, specifically deals with instances where an earlier judgment, order or decree

constitutes conclusive proof whereas Section 42 provides that an earlier judgment is relevant if it relates to matters of public nature relevant to the

inquiry, but such judgments, orders or decrees are not conclusive proof of that which they state. These provisions were considered in detail by a 3-

Judge Bench of this Court in K.G. Premshankar vs. Inspector of Police and another (2002) 8 SCC 87, in the context of when a judgment in a civil

proceeding, on the same cause of action, would be relevant in a criminal case, and it was observed thus:

Ã¢â‚¬Å“30. What emerges from the aforesaid discussion is Ã¢â‚¬" (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the

Evidence Act; (2)..; (3)..; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of

Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would

be conclusive proof of what is stated therein.

31. Further, the judgment, order or decree passed in previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence

Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Ã¢â‚¬Â¦ Hence, in each and every

case, the first question which would require consideration is Ã¢â‚¬" whether judgment, order or decree is relevant, if relevant Ã¢â‚¬" its effect. It may be relevant for a limited

purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case.Ã¢â‚¬â€‹

Decisions of this Court manifest that judgments passed on merits in civil proceedings have been accepted as sufficient cause to discharge or acquit a

person facing prosecution on the same grounds. This dictum is applied especially in cases where civil adjudication proceedings, like in tax cases, lead

to initiation of prosecution by the authorities. Such cases are, however, different as there is a direct connect between the civil proceedings and the

prosecution which is launched. The facts and allegations leading to the prosecution directly arise as a result of the civil proceedings. Moreover, the

standard of proof in civil proceedings is a preponderance of probabilities whereas, in criminal prosecution, conviction requires proof beyond reasonable

doubt. We do not think the said principle can be applied per se to proceedings for maintenance under Section 125 Cr.P.C. by relying upon a judgment

passed by a Civil Court on an application for restitution of conjugal rights. Further, the two proceedings are altogether independent and are not directly

or even indirectly connected, in the sense that proceedings under Section 125 Cr.P.C. do not arise from proceedings for restitution of conjugal rights.

34. Long ago, in Captain Ramesh Chander Kaushal vs. Mrs. Veena Kaushal and others (1978) 4 SCC 70, this Court noted that it is valid to assert

that a final determination of a civil right by a Civil Court would prevail against a like decision by a Criminal Court but held that this principle would be

inapplicable when it comes to maintenance granted under Section 24 of the Hindu Marriage Act, 1955, as opposed to maintenance granted under

Section 125 Cr.P.C. It was noted that the latter provision was a measure of social justice specially enacted to protect women and children falling

within the constitutional sweep of Article 15(3) reinforced by Article 39.

35. Viewed thus, the findings in the proceedings for restitution of conjugal rights, which were partly uncontested as Reena did not appear before the

Family Court to adduce evidence or advance her case after filing her written statement, did not clinch the issue and the High Court ought not to have

given such undue weightage to the said judgment and the findings therein. In the process, certain crucial factors were overlooked. Particularly, the

fact that the witnesses who appeared on behalf of Reena in the Section 125 Cr.P.C. proceedings were not even cross-examined. It was clear

therefrom that Dinesh did not even contest or rebut what they had stated. The fact that Reena was fully dependent on her brother was thus admitted.

Further, documents were placed on record in proof of ReenaÃ¢â‚¬â„¢s abortion in January, 2015. In that regard, DineshÃ¢â‚¬â„¢s admission that he did not

bear the expenditure for her treatment and her unrebutted assertion that he did not take her to the hospital or even come from Ranchi to see her were

clear indicia of the pain and mental cruelty meted out to her. The fact that she was not allowed to use the toilet in the house or avail proper facilities to

cook food in the matrimonial home, facts which were accepted in the restitution proceedings, are further indications of her ill-treatment.

36. Pertinently, in Parveen Mehta vs. Inderjit Mehta (2002) 5 SCC 705, this Court held that mental cruelty is a state of mind and feeling of one of

the spouses due to the behavioral pattern by the other and, unlike physical cruelty, mental cruelty is difficult to establish by direct evidence. It was

observed that a feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on

cumulatively assessing the attending facts and circumstances in which the two spouses have been living. In a case of mental cruelty, per this Court, it

would not be the correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by

itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on

record and then draw a fair inference whether the spouse has been subjected to mental cruelty due to the conduct of the other.

37. Applying this standard, DineshÃ¢â‚¬â„¢s conduct in completely ignoring his wife, Reena, after she suffered the miscarriage of their child would have

been the proverbial last straw adding to her suffering due to the ill-treatment in her matrimonial home. She, therefore, had just cause to not return to

her matrimonial home, despite the restitution decree. Further, the events thereafter or rather, the lack thereof, is relevant. The restitution decree came

to be passed on 23.04.2022. Admittedly, there was no attempt made at reconciliation after 2017. However, having secured the said restitution decree,

Dinesh did nothing! He neither sought execution of the decree under Order XXI Rule 32 CPC nor did he seek a decree of divorce under Section

13(1A)(ii) of the Hindu Marriage Act, 1955.

38. The reason for this is not far to gather. In Rohtash Singh vs. Ramendri (Smt.) and others (2000) 3 SCC 180, this Court clarified that a wife, who

suffered a decree of divorce on the ground of deserting her husband, would not be entitled to maintenance under Section 125 Cr.P.C. as long as the

marriage subsisted, but she would be entitled to such maintenance once she attained the status of a divorced wife, in the light of the definition of a

Ã¢â‚¬Ëœwife Ã¢â‚¬â„¢ in Explanation (b) to Section 125(1) Cr.P.C. Dinesh, therefore, sought to protect himself from a claim by Reena for maintenance by

projecting the disobeyed restitution decree as a defence and as long as she did not attain the status of a divorced wife, that protection would endure to

his benefit. This stalemate of sorts created by Dinesh clearly reflects his lack of bonafides and demonstrates his attempt to disown all responsibility

towards his wife, Reena. These factors, taken cumulatively, clearly manifest that Reena had more than sufficient reason to stay away from the

society of her husband, Dinesh, and her refusal to live with him, notwithstanding the passing of a decree for restitution of conjugal rights, therefore,

cannot be held against her. In consequence, the disqualification under Section 125(4) Cr.P.C. was not attracted and the High Court erred grievously in

applying the same and holding that Reena was not entitled to the maintenance granted to her by the Family Court.

39. The appeal is accordingly allowed, setting aside the judgment dated 04.08.2023 passed by the High Court of Jharkhand at Ranchi in Criminal

Revision No. 440 of 2022. In consequence, the order dated 15. 02.2022 passed by the learned Principal Judge, Family Court, Dhanbad, in Original

Maintenance Case No. 454 of 2019 shall stand restored. In furtherance thereof, Dinesh, respondent No. 1 herein, shall pay maintenance @ â‚¹10,000/-

per month to Reena, the appellant, on or before the 10th day of each calendar month. Such maintenance would be payable from the date of filing of

the maintenance application, i.e., 3. 08.2019. Arrears of the maintenance shall be paid by Dinesh in three equal installments, i.e., the first instalment by

30.04.2025, the second instalment by 31.08.2025 and the third and final instalment by 31.12.2025.

In the circumstances, parties shall bear their own costs.