

(2013) 07 P&H CK 0762

High Court Of Punjab And Haryana At Chandigarh

Case No: CRR (F) No. 72 of 2013

Baljeet

APPELLANT

Vs

Poonam

RESPONDENT

Date of Decision: July 30, 2013**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13
- Criminal Procedure Code, 1973 (CrPC) - Section 125, 125(4), 126
- Hindu Marriage Act, 1955 - Section 13

Hon'ble Judges: R.P. Nagrath, J**Bench:** Single Bench**Advocate:** Vivek Khatri, for the Appellant;**Final Decision:** Dismissed

Judgement

R.P. Nagrath, J.

Challenge in the instant revision is to the order passed by Family Court, Bhiwani u/s 125 Cr.P.C. awarding Rs. 3,500/- per month w.e.f. the date of filing the petition. It is not the quantum of maintenance but only entitlement of respondent that has been questioned. The petitioner in fact is posted in the Army and amount of maintenance has been determined on the basis of his carry-home salary of Rs. 16,123/- without reference to total emoluments that he may be drawing. It has also not come on record how much amount is by way of voluntary deductions or otherwise. For that matter, however, it is for the respondent to seek her remedy for enhancement of amount of maintenance. The first challenge to the impugned order is that Family Court at Bhiwani did not have territorial jurisdiction as the marriage was admittedly solemnized at Hansi in District Hisar and couple lived as husband and wife at Najafgarh, New Delhi. In support of this contention the petitioner's counsel has relied upon an order dated 10.12.2011 (Annexure P-1) passed by the Chief Judicial Magistrate, Bhiwani, returning the complaint to respondent to file the same in appropriate Court as the Court at Bhiwani has no jurisdiction. That order was passed in a criminal complaint for the acts of cruelty and mis-appropriation of dowry

articles for which the cause of action is stated to have arisen either at Hansi the place of marriage or Najafgarh at New Delhi. I would hold that the said order would not be relevant at all for the purpose of proceeding u/s 125 of the Code.

2. Sub-section (1) of Section 126 Cr.P.C. says that proceedings u/s 125 may be taken against any person in any district:-

(a) xx xx xx xx xx

(b) where he or his wife, resides, or

(c) xx xx xx xx xx

3. The petitioner is resident of Nai Basti, Bhiwani as mentioned in the petition u/s 125 Cr.P.C. The petitioner's counsel has not been able to refer to any observation of the Family Court where the present residence of the respondent was questioned by the petitioner. If some preliminary objection was raised by the respondent, he was supposed to prove it by cross-examining the respondent to say that she was not residing at the mentioned address or that it was a fake address. This contention of learned petitioner's counsel is untenable.

4. It is, however, contended by learned petitioner's counsel that the respondent was not entitled to the award of maintenance in view of the judgment of matrimonial Court, Hisar, granting decree of divorce in favour of petitioner. The ground of divorce was cruelty and desertion and accepted by the matrimonial Court. This contention deserves to be rejected outrightly because the respondent clearly asserted in her petition u/s 125 Cr.P.C. that she has come to know that the petitioner has obtained ex parte decree of divorce by playing fraud and had already filed an application under Order IX Rule 13 of CPC for setting aside the ex parte decree. It is apparent from the judgment and decree of divorce (Annexure P-2), that the said petition was instituted on 05.02.2010 and ex parte divorce decree was passed on 14.12.2010. The respondent was proceeded against ex parte in the divorce petition on the report of alleged refusal to receive summons.

5. The admitted facts are that the marriage between the parties was solemnized on 30.04.2006 but no child was born from the wedlock. The petitioner has re-married on 15.07.2011 as stated in reply to the application u/s 125 Cr.P.C. and a male child was born on 06.08.2012 from that marriage.

6. The petitioner's counsel with vehemence placed reliance upon judgment of Bombay High Court in [Bhagwan Raoji Dale Vs. Sushma alias Nanda Bhagwan Dale](#), decided on 18.04.1998 wherein it was held that a woman who has been divorced by her husband for the wrongs committed by woman is not entitled to maintenance. It was not appropriate to rely upon this judgment in view of the later judgment of Hon'ble Supreme Court in [Rohtash Singh Vs. Smt. Ramendri and Others](#), holding that the divorced wife has an independent remedy of claiming maintenance till she is not re-married. The Hon'ble

Supreme Court held as under:-

XX XX XX XX XX

7. The second ground on which she would not be entitled to Maintenance Allowance is the ground of her refusal to live with her husband without any sufficient reason. This also presupposes the subsistence of marital relations between the parties. If the marriage subsists, the wife is under a legal and moral obligation "to live with her husband and to fulfil the marital obligations. She cannot, without any sufficient reason, refuse to live with her husband. "Sufficient reasons" have been interpreted differently by the High Courts having regard to the facts of individual cases. We are not required to go into that question in the present case as admittedly the marriage between the parties came to an end on account of a decree for divorce having been passed by the Family Court. Existence of sufficient cause on the basis of which the respondent could legitimately refuse to live with the petitioner is not relevant for the present case. In this situation, the only question which survives for consideration is whether a wife against whom a decree for divorce has been passed on account of her deserting the husband can claim Maintenance Allowance u/s 125, Cr.P.C. and how far can the plea, of desertion be treated to be an effective plea in support of the husband's refusal to pay her the Maintenance Allowance.

8. Admittedly, in the instant case, the respondent is a divorced wife. The marriage ties between the parties do not subsist. The decree for divorce was passed on 15th of July, 1995 and since then, she is under no obligation to live with the petitioner. But though the marital relations came to an end by the divorce granted by the Family Court) u/s 13 of the Hindu Marriage Act, the respondent continues to be "wife" within the meaning of Section 125, Cr.P.C. on account of Explanation (b) to Subsection (1) which provides as under:

Explanation.--For the purposes of this Chapter:-

(a)...

(b) "wife" includes woman who has been divorced by, or has obtained a divorce from her husband and has not remarried.

9. & 10. XX XX XX XX XX

11. Learned Counsel for the petitioner then submitted 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. He pleaded that in this situation, the obligation of the petitioner to maintain a woman with whom all relations came to an end should also be treated to have come to an end. This plea, as we have already indicated above, cannot be accepted as a woman has two distinct rights for maintenance. As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125(4). In another capacity, namely, 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. If she cannot maintain herself or remains unmarried, the man who was, once, her husband continues to be under a statutory duty and obligation to provide maintenance to her.

7. In [Sushil Kumar Vs. Neelam](#), petition for maintenance u/s 125 Cr.P.C. was filed by a wife despite divorce decree by mutual consent having already been passed. In the said joint petition there was an averment that the wife would not claim any maintenance from the husband at any time or in future under any provision of law. This Court categorically held that the former-wife has not re-married and is not capable to maintain herself, cannot be denied a bare minimum of the life to survive in the survival of the fittest society. In the grounds of instant revision, there is no indication that the respondent is having any means to maintain herself. In view of the above discussion, the petition is found to be devoid of merit and consequently dismissed in limine.