

(1982) 12 AHC CK 0044

Allahabad High Court

Case No: Criminal Revision No. 1235 of 1980

Prakash Chandra Verma

APPELLANT

Vs

Smt. Prakashwati alias Krishna
Devi

RESPONDENT

Date of Decision: Dec. 6, 1982

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 125(1), 125(4)

Citation: (1983) 7 ACR 220

Hon'ble Judges: B.N. Katju, J; A.S. Srivastava, J

Bench: Division Bench

Advocate: G.N. Chandra, for the Appellant; P.N. Misra and Shyam Lal Verma, for the Respondent

Judgement

B.N. Katju, J.

The question that has been referred to us for decision is:

Whether a wife who has applied u/s 125 Code of Criminal Procedure for maintenance allowance is disentitled to maintenance even though she has not remarried merely on account of the fact that her husband has obtained a decree for divorce or a decree for judicial separation on the grounds of desertion?

2. In order to answer the question referred to us the under mentioned provisions of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) are relevant:

125(1). If any person having sufficient means neglects or refuses to maintain-(a) his wife, unable to maintain 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:

Explanation-For the purposes of this Chapter (b) "wife" includes a woman who has been divorced by, or has obtained a divorce from her husband and has not remarried.

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.

3. It is clear from Clause (b) of the Explanation that now under the Code wife includes a woman who has been divorced or has obtained a divorce from her husband and has not remarried. This is an important departure from the Code of Criminal Procedure, 1898 in which a similar provision was absent. It has enlarged the definition of the word "wife" used in Chapter IX of the Code. In view of this clause wherever the word "wife" is used in Chapter IX of the Code it must be read to include a woman who has been divorced by or has obtained a decree from her husband and has not remarried. u/s 125(1)(a) of the Code a person having sufficient means is under an obligation to maintain not only his wife but also his divorced wife who has not remarried. The ground on which the decree for divorce was obtained is immaterial. Thus even though the decree for divorce was obtained by the husband on the ground of desertion of the wife he is required to maintain the divorced wife u/s 125(1)(a) of the Code. u/s 125(4) of the Code a divorced wife is not entitled to receive maintenance allowance from her husband if she is living in adultery. The other parts of Section 125(4) of the Code, namely, "or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent" obviously do not apply to a divorced wife as a divorced wife has sufficient reason not to live with her husband as she is no longer his wife. If the wife has been divorced it is also obvious that the husband and wife are not living separately by mutual consent as the status of husband and wife has ceased to exist. It is true that if a wife deserts her husband it amounts to her refusal to live with her husband without any sufficient reason. She is thus not entitled to receive any maintenance allowance from her husband. But once a wife is divorced the status of wife comes to an end. She cannot obviously live with her husband any longer. There is, therefore, sufficient reason for her not to live with her husband. After the divorce has taken place the divorced wife is thus entitled to receive maintenance allowance from her husband and he cannot refuse to maintain her u/s 125(1)(a) of the Code on the ground that he has obtained a decree for divorce on the ground of desertion. It was observed by brother Deoki Nandan, J. in *Dhaniram v. Parvati* 1980 ACR 8: In face of the finding of the District Court, Delhi, in the said judgment granting the applicant-husband a decree of judicial separation against the wife, it cannot be said that the wife is not guilty of having deserted the applicant-husband. If that is so, it cannot be said that the husband had neglected to maintain the wife. It cannot also be disputed that the judgment of the District Court, Delhi, is a judgment from, and

is, otherwise too, binding on the Court of a Magistrate acting under Chapter IX of the Code of Criminal Procedure. The learned Magistrate was bound to give effect to the finding of the District Court that the wife was guilty of desertion. His having refused to do so vitiates his order refusing to cancel the maintenance order passed by him.

4. It may be pointed out that there is a basic difference between a decree for divorce and a decree for judicial separation as in case of divorce the status of husband and wife comes to an end whereas in a case of judicial separation the status of wife and husband continues. Even in case of a decree for judicial separation passed on the ground of desertion of the wife the fact of desertion of the wife before the decree is passed cannot be taken into consideration after the decree is passed as the liability of the husband to maintain his wife continues u/s 125(1)(a) of the Code and it cannot be held that he is not liable to maintain her in view of Section 125(4) of the Code as there is sufficient cause for the wife not to live with the husband after the decree for judicial separation has been obtained by the husband against her. It is significant to note that the words used in Section 125(4) of the Code are "without any sufficient reason, she refuses to live with her husband" and not "without sufficient reason has refused to live with her husband." It is obvious that after the decree for judicial separation has been passed there is sufficient reason for the wife to refuse to live with the husband although before the said decree is passed there may not have been sufficient reason for her to refuse to live with her husband if she deserted him. The decree for judicial separation itself is a sufficient cause for the wife not to live with her husband. If the husband is not maintaining his wife after judicial separation he is obviously either neglecting her or refusing to do so. The finding of desertion by the wife in granting a decree for judicial separation is, therefore, of no consequence in proceedings u/s 125 of the Code initiated after the decree for judicial separation is granted as the decree itself is sufficient reason for the wife not to live with her husband after it is passed. We are, therefore, not in agreement with the view of brother Deoki Nandan, J. that the learned Magistrate was bound to give effect to the finding of the District Court that the wife was guilty of desertion and that if that is so it cannot be said that the husband neglected to maintain his wife.

5. In our opinion, therefore, a wife who has applied for maintenance u/s 125 of the Code is not disentitled to maintenance if she has not remarried on account of the fact that the husband had obtained a decree for divorce or a decree for judicial separation on the ground of desertion.

6. Let our opinion be placed before the learned single Judge for the necessary orders.