

**(1987) 10 MP CK 0003**

**Madhya Pradesh High Court (Indore Bench)**

**Case No:** None

Mangilal

APPELLANT

Vs

Gitabai

RESPONDENT

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**Date of Decision:** Oct. 1, 1987

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 126, 127, 128, 482

**Citation:** (1988) CriLJ 1591

**Hon'ble Judges:** K.L. Shrivastava, J

**Bench:** Single Bench

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### **Judgement**

@JUDGMENTTAG-ORDER

K.L. Shrivastava, J.

This is an application u/s 482 of the Cr.P.C. 1973 (for short "the Code") against He revisional order dated 31-3-87 passed by the Second AddL Sessions Judge Ratlam in Criminal Revision No. 3 of 1985 whereby the order passed by the Inquiring Magistrate granting the non-applicant's application u/s 125 of the Code and making a monthly allowance in the sum of Rs. 75/- against the petitioner has been maintained.

2. The contention of the petitioner's learned Counsel is that the petitioner has obtained a decree for divorce on the ground of desertion and, therefore, the order for maintenance in favour of the non-applicant could not be passed In support of this submission he has placed reliance on the Bombay decision in Smt. Shantibai's case (1985) 2 Cri 901 .

3. In the aforesaid decision with reference to Sub-section (4) of Section 125 of the Code and Sub-section (2) of Section 127 of the Code, it was urged that the decree for divorce on the ground of desertion showed that the wife had abandoned the matrimonial home without sufficient cause and without the consent of the husband

and against his wishes. If that fact is proved before the court which passed the order of maintenance then the learned Magistrate or the learned Sessions Judge was empowered to set aside the original order of maintenance.

4. The point for consideration is whether the application deserves to be admitted.

5. It is apposite to advert to the relevant provisions in Sub-section (4) of Section 125 and in Sub-section (2) of Section 127 of the Code they run thus:

Section 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.

Section 127(2): Where it appears to the Magistrate that in consequence of any decision of a competent civil court any order made u/s 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

It is urged that on a combined reading of these provisions, the order u/s 125(1) passed in favour of the non-applicant deserves to be cancelled.

6. As pointed out in [Babulal Vs. Sunita](#), the provisions have to be interpreted so as to effectuate the legislative intent. It is pertinent to point out that according to the explanation below Sub-section (1) of Section 125 of the Code for the purposes of Chapter IX (Sections 125 to 128) of the Code "wife" includes a women who has been divorced by or has obtained a divorce from her husband and has not remarried. After divorce, there is no question of the woman living with her former husband and even then Section 125 recognizes her right to claim maintenance from her former husband. "Therefore, keeping in view the object behind the enactment of the relevant provision, and the rule of harmonious construction it cannot be permitted to be urged with any measure of success that in view of a decree of divorce, the order passed in favour of the wife is liable to be cancelled. The provision in Sub-section (4) of Section 125 of the Code properly interpreted furnishes defence during the proceeding under Section 125(1) and the decision of a competent civil court contemplated u/s 127(2) does not take in a decree of divorce. In this connection the decisions in *Rayajunnisa* (1981 (1) MPWN 23) and [Captain Ramesh Chander Kaushal Vs. Mrs. Veena Kaushal and Others](#), are pertinent.

7. The provision in Sub-section (5) of Section 125 of the Code which provides for cancellation of an order already made under Sub-section (1) reads thus:

(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. It may be noted that the provision in Sub-section (2) of Section 127 of the Code regarding cancellation invests the Magistrate with ample discretion which as any

judicial discretion, is to be exercised on a careful consideration of the facts and circumstances of each case.

9. In the result, I find that the impugned order is proper and no interference in exercise