

(1977) 01 CAL CK 0024**Calcutta High Court****Case No:** Criminal Revision No. 871 of 1976

Nalini Kumar Pal

APPELLANT

Vs

Khukurani Pal

RESPONDENT

Date of Decision: Jan. 17, 1977**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1
- Criminal Procedure Code, 1973 (CrPC) - Section 125, 125(1), 125(4)
- General Clauses Act, 1897 - Section 6

Citation: (1977) 2 ILR (Cal) 59**Hon'ble Judges:** P.C. Borooah, J**Bench:** Single Bench**Advocate:** Dipak Kumar Mukherjee, for the Appellant; Shib Ram Sett, for the Respondent**Final Decision:** Dismissed**Judgement**

P.C. Borooah, J.

This application in revision is directed against an order dated April 27, 1976, passed by Shri R. Chakraborty, Judicial Magistrate, First Class, Serampore, on an application u/s 125 of the Code of Criminal Procedure, 1973, filed by the opposite party No. 1, Sm. Khukurani Pal, directing the Petitioner to pay her a sum of Rs. 80 per month as maintenance with effect from the date of the institution of the proceedings.

2. On June 21, 1974, Sm. Khukurani Pal filed the aforesaid application praying for maintenance at the rate of Rs. 300 per month on the ground that she was the legally married wife of the present Petitioner, who was neglecting to maintain her although he had sufficient means and that she had no means to maintain herself and was fully dependant on her mother and her younger brother who were not also economically sound to bear the burden of her maintenance.

3. The present Petitioner opposed the application denying the allegations and his case was that (Khukurani was his divorced wife and she was living in adultery and as she was an unchaste woman she was not entitled to any maintenance.

4. Mr. Dipak Kumar Mukherjee, learned Advocate appearing on behalf of the Petitioner before me, has submitted that the Petitioner had obtained an ex parte decree for divorce on January 31, 1969 and the opposite party's application under Order 39, Rule 1 of the CPC for setting aside the ex parte decree was dismissed. Therefore, on the date the Petitioner obtained the decree for divorce the old Code of Criminal Procedure was in force. Under the old Code a husband was not under any obligation to maintain a divorced wife. This liability has been imposed only under the new Code and by virtue of Section 6(c) of the, General Clauses Act the new Code cannot impose upon him any liability or obligation which he did not have under the repealed Code.

5. The second submission of Mr. Mukherjee is that since a competent Court had granted a decree for divorce on the ground that Khukurani Pal was living in adultery, the learned Magistrate was bound by such finding and he should have rejected the Petitioner's application keeping in view Section 125(4) of the New Code.

6. By virtue of Section 6(c) of the General Clauses Act, rights and privileges acquired or any liability or obligation incurred by any person under the law repealed are preserved unless there is a provision to the contrary in the repealing Statute.

7. Under the repealed Code of Criminal Procedure neither the husband had any obligation to maintain his divorced wife nor had a divorced wife any right to claim maintenance from her divorced husband. The new Code brought about a change in this position giving a divorced wife a right to maintenance till she remarried. Explanation (b) to Section 125(1) of the new Code makes the difference in the situation of a divorced woman's right for maintenance apparent. The first submission of Mr. Mukherjee cannot thus be accepted.

8. As regards the second submission made on behalf of the Petitioner, in order to come within Section 125(4) of the new Code, it has to be established that the wife who had filed the application for maintenance was living in adultery on the date when the application for maintenance was being considered. Before the learned Magistrate the Petitioner, produced no evidence to suggest that Khukurani Pal was living in adultery immediately before the filing of the application or when the application u/s 125 of the Code was pending decision. She might have been living in adultery at the time when the decree for divorce was obtained by the Petitioner in January 1969. She might have thereafter given up her adulterous connection and according to her evidence, she was living with her mother and younger brother. Therefore, in the absence of any material on record which would go to suggest that the opposite party was living in adultery when she filed her application for maintenance, the learned Magistrate was fully justified in coining to the finding that

the main requirement with regard to adultery within the meaning of Section 125 of the Code was wanting or absent in the case. The second submission of Mr. Mukherjee also, therefore, cannot be accepted; The application accordingly fails and is dismissed.