

**AIROnline 2018 All 5280**

ALLAHABAD HIGH COURT

ANIRUDDHA SINGH , J.CRIMINAL REVISION - 754 of 1998 **D/- 1 - 12 - 2018**

Krishna Datta Shukla v. Sunita Devi

**Criminal P.C. (2 of 1974), S.125 - Maintenance to wife - Entitlement - Divorce - Grounds Of husband for denying maintenance is that his wife is literate lady and she may maintain herself by teaching etc, not tenable unless she gets married to some other person - Decree of maintenance proper.**

**(Paras 3, 7, 8)**

Sher Bahadur,g. D. Dubey,n. Lal Counsel For Opposite Party :- R. K. Singh,s. Kumar for Petitioner;

**Judgement**

1. **ANIRUDDHA SINGH J.** :-None is present for the revisionist even in the revised list/call. Learned AGA is present. Heard learned A.G.A. and perused the record. The revision is being decided on merit.

2. This revision under section 397/401 Cr.P.C. has been preferred by

revisionist-Krishna Datta Shukla against opposite party Smt. Sunita Devi challenging order dated 30.4.1998 passed by Principal Judge, Family Court, Kanpur Nagar in Case No. 186 of 1997 (Smt. Sunita vs. Krishna Datta Shukla) whereby application of opposite party Smt. Sunita Devi under Section 125 Cr.P.C. was allowed and revisionist was directed to pay Rs.500/- per month to her as maintenance w.e.f. 19.3.1997.

3. From perusal of record, it transpires that application of Smt. Sunita Devi was moved on the ground that marriage was solemnized between Sunita Devi and revisionist Krishna Datta Shukla on 24.6.1994 but after some time, she was tortured for demand of dowry and she started living separately. The revisionist filed written statement wherein he admitted marriage and stated that applicant is living separately from 2.7.1994 and is not ready to live with him and she has some relation with one Dinesh Shukla. The revisionist tried for settlement by compromise but could not succeed. The main ground pressed by revisionist is that his wife is literate lady and she may maintain herself by teaching etc. but he could not prove before the Court. Hence impugned order was passed.

4. Ground taken in memorandum of revision is that he has problem in his eyes. He does not earn money; there is decree dated 29.5.1997 in his favour in a case under Section 9 of Hindu Marriage Act and opposite party has not filed appeal against said order. Hence that order has become final and impugned order dated 30.4.1998 is illegal.

5. Proceeding under Section 125 Cr.P.C. is summary proceeding. Order does not determine rights of parties as it was held by the Apex Court in *Dwarika Prasad Satpathy vs. Bidyut Prava Dixit and Another*, AIR 1999 SC 3348, wherein following has been observed:-

"It is to be remembered that the order passed in an application under Section 125 Cr.P.C. does not finally determine the rights and obligations of the parties and the said section is enacted with a view to provide summary remedy for providing maintenance to a wife, children and parents. For the purpose of getting his rights determined, the appellant has also filed a Civil Suit, which is pending before the trial court. In such a situation, this Court in *S. Sethurathinam Pillai v. Barbara alias Dolly Sethurthinam*, {1971 (3) SCC 923} observed that maintenance under Section 488 Cr.P.C., 1898 (Similar to Section 125 Cr.P.C.) cannot be denied where there was some evidence on which conclusion for grant of maintenance could be reached. It was held that order passed under Section 488 is a summary order which does not finally determine the rights and obligations of the parties; the decision of the criminal court that there was a valid marriage between the parties will not operate as decisive in any civil proceeding between the parties."

6. In the case of *Ramesh Chander Kaushal v. Mrs. Veena Kaushal and others*, (AIR 1978 SC 1807) Krishna Iyer, J dealing with interpretation of Section 125 Cr.P.C. observed (at Para 9) thus:-

"This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause of the derelicts."

7. Section 125 Cr.P.C. is a measure of social justice on this point. It is also pertinent to mention here that intention of legislature also shows that this provision is measure of social justice because initially amount of maintenance was fixed to Rs.500/- per month. Subsequently, it was enhanced upto Rs.5000/- per month and later on these words have been deleted and present position is that there is no financial limit for maintenance under this section.

8. In my opinion even if there is a valid decree of divorce, still the wife is entitled to maintenance till she gets remarried and becomes the wife of another person, if she qualifies all other aspects of Section 125 Cr.P.C. because explanation (b) of Section 125 Cr.P.C. specifically says that wife includes a woman who has been divorced by or has obtained a divorce from her husband and has not remarried.

9. Therefore, all grounds are without substance. The Court below has carefully noticed all facts and has rightly decided the case in favour of opposite party. This Court finds no illegality, impropriety, material irregularity or jurisdictional error in the impugned order. No interference is called for. The present revision is bereft of merit and is hereby dismissed.

10. Certify this judgment to the lower Court immediately.