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SMT. VANAMALA

v.

SHRI H.N. RANGANATHA BHATTA

JULY 27, 1995

B

[A.M. AHMADI, CJ. AND S.C. SEN, J.]

*Code of Criminal Procedure, 1973: Section 125.*

*Maintenance—Wife—Divorce by mutual consent—Held entitled to maintenance—Sub-section 4—Held inapplicable to the case of a woman who has obtained divorce by mutual consent.*

**D** The appellant obtained divorce by mutual consent under section 13(B) of the Hindu Marriage Act, 1955. Subsequently, she filed an application under section 125 of the Code of Criminal Procedure, 1973 seeking maintenance from the respondent-husband which was dismissed by the Magistrate on the ground that a woman who has obtained divorce by mutual consent was not entitled to maintenance. The Sessions Judge held that the appellant was entitled to maintenance notwithstanding the divorce by mutual consent. On revision the High Court set aside the order of the Sessions judge and upheld the view taken by the Magistrate. Against the decision of High Court an appeal was preferred before this Court.

**E** Allowing the appeal and setting aside the impugned order of the High Court, this Court

**F** HELD : The High Court was clearly wrong in reversing the order passed by the Sessions Judge. On a plain reading of section 125 of the Code of Criminal Procedure, 1973 it seems fairly clear that the expression 'wife' in the sub-section (4) does not have the extended meaning of including a women who has been divorced. This is for the obvious reason that unless there is a relationship of husband and wife there can be no question of a divorce woman living in adultery or without sufficient reason refusing to live with her husband. After divorce where is the occasion for the women to live with her husband? Similarly there would be no question of the husband and wife living separately by mutual consent because after divorce there is no need for consent to live separately. In the context, **H** therefore, sub-section (4) of section 125 does not apply to the case of a

woman who has been divorced or who has obtained a decree for divorce. A  
The order of the learned Sessions Judge is restored. [383-D; 382-F-H]

*Kongini Balan v. M. Visalakshy*, [1986] 92 Crl. Law Journal 697 (Ker.); *Krishan Kumar v. Kiran*, [1991] 1 DMC 248 (MP) and *M. Ramakrishna Reddy v. T. Jayamma and Anr.*, [1992] 98 Crl. Law Journal 1368, approved. B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.836 of 1995. C

From the Judgment and Order dated 19.8.1991 of the Karnataka High Court in C.R. 448 of 1988. C

S.N. Bhat for the Appellant.

K.R. Nagaraja for the Respondent.

The Judgment of the Court was delivered by D

AHMADI, CJ. Special leave granted.

The facts in brief reveal that the appellant married the respondent some time in 1970 and then gave birth to two issues from the said wedlock. Unfortunately, her married life was not smooth and in 1980 divorce by mutual consent was obtained under Section 13-B of the Hindu Marriage Act. While granting divorce by mutual consent, no order in regard to maintenance or alimony was made. The decree is silent on that count. Few years later the appellant filed an application under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter called 'the Code') seeking maintenance from the respondent. The learned Magistrate dismissed the application holding that a divorcee woman was not entitled to maintenance once it is found that the divorce was by mutual consent. Against that order the appellant filed a Revision Application to the Sessions Court. The learned Sessions Judge came to the conclusion that the appellant was entitled to maintenance notwithstanding the divorce by mutual consent and remanded the matter to the Trial Court for determining the quantum of maintenance. Against this order of the learned Sessions judge, the respondent preferred a Revision Application before the High Court and the High Court by the impugned judgment and order dated 19.8.1991 set aside the order of the learned Sessions Judge upholding the view taken by the H

A learned Magistrate and dismissed the application. It is against that order that the present appeal has been preferred.

Section 125 of the Code makes provision for the grant of maintenance to wives, children and parents. Sub-section (1) of Section 125 inter alia says that if any person having sufficient means neglects or refuses to maintain 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 not exceeding Rs. 500 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. Clause (b) of the explanation to the sub-section defines the expression 'wife' to include a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. In the instant case it is not contended by the respondent that the appellant has remarried after the decree of divorce was obtained under Section 13-B of the Hindu Marriage Act. It is also not in dispute that the appellant was the legally wedded wife of the respondent prior to the passing of the decree of divorce. By virtue of the definition referred to above she would, therefore, be entitled to maintenance if she could show that the respondent had neglected or refused to maintain her. Counsel for the respondent, however, invited our attention to sub-section (4) of Section 125, which reads as under :-

E (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.

F On a plain reading of this Section it seems fairly clear that the expression 'wife' in the said sub-section does not have the extended meaning of including a woman who has been divorced. This is for the obvious reason that unless there is a relationship of husband and wife there can be no question of a divorcee woman living in adultery or without sufficient reason refusing to live with her husband. After divorce where is the occasion for the women to live with her husband? Similarly there would be no question of the husband and wife living separately by mutual consent because after divorce there is no need for consent to live separately. In the context, therefore, sub-section (4) of Section 125 does not apply to the case of a woman who has been divorced or who has obtained a decree for divorce.

In our view, therefore, this contention is not well founded.

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Counsel for the appellant also pointed out that some of the High Courts had taken a similar view. Reference was made to the case of *Kongini Balan v. M. visalakshy*, [1986] 92 Criminal Law Journal 697 (Kerala), wherein it was held that a wife who obtains a divorce by mutual consent cannot be denied maintenance by virtue of Section 125(4) of the Code. Similar view was taken in *Krishan Kumar v. Kiran*, 1 [1991] DMC 248 (Madhya Pradesh) wherein it was held that the expression 'living separately by mutual consent' does not cover cases of those living separately due to divorce. The same view was expressed in *M. Ramakrishana Reddy v. T. Jayamma and Another*, [1992] 98 Criminal Law Journal 1368. In that case divorce was obtained by mutual consent on the ground of incompatibility and thereafter the woman was living separately, it was held that this could not be construed to be an agreement for living separately by mutual consent and hence the woman was entitled to maintenance. We think these decisions are in conformity with the plain language of sub-section (4) of Section 125 which we have construed hereinbefore. The contention raised by the counsel for the husband is, therefore, unsustainable. The High Court was, therefore, clearly wrong in reversing the order passed by the Sessions Judge. In the result, this appeal succeeds. The impugned order of the High Court dated 19th August, 1991 is set aside. The order of the learned Sessions Judge dated 5th September, 1988 is restored. The respondent will pay Rs. 5,000 by way of cost.

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T.N.A.

Appeal allowed.