

Tejinder Kaur v. Balbir Singh (Tiwana, J.)

a contrary view. This ruling was not cited before R. N. Mittal J. Section 193 of the Code of Criminal Procedure lays down :—

“Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.”

In the above-cited ruling of the Andhra Pradesh High Court, the learned Judge, I may say with due respects, did not give effect to the opening words “Except as otherwise expressly provided by this Code” of Section 193. In Daya Singh’s case (supra), R. N. Mittal J. gave full effect to these words occurring in section 193 and held that the exception was provided by section 319 of the Code. Upon a full examination of the provisions of section 319 of the Code, R. N. Mittal, J. held :—

“A reading of sections 193 and 319 of the Code clearly establishes that after the Court of Session has taken cognizance of a case which has been committed to it, it has the power under section 319 to summon any person other than the accused who appears to it to have committed any offence for which he could be tried together with the accused.”

(4) I am in respectful agreement with the above-quoted observations of R. N. Mittal, J. This petition, therefore, fails and the same is hereby dismissed.

K. T. S.

CRIMINAL MISCELLANEOUS

Before K. S. Tiwana, J.

TEJINDER KAUR,—Petitioner.

versus

BALBIR SINGH.—Respondent.

Criminal Misc. No. 4864-M of 1976

October 6, 1977.

*Code of Criminal Procedure (2 of 1974)—Section 125(1) Explanation (b)—Divorced wife—Whether has a right to claim maintenance from her ex-husband—Existence of a Civil Court decree restraining her from proclaiming herself as his wife—Whether affects her right to claim maintenance.*

*Held*, that a divorced wife has a right of maintenance from her ex-husband under section 125 of the Code of Criminal Procedure 1973. The word 'wife' also includes even a wife divorced by her husband prior to the coming into force of the new Code to claim maintenance provided that other conditions are satisfied.

(Para 10).

*Held*, that inspite of a decree of a civil court restraining a woman to proclaim herself as the wife of a person her right to file a petition for maintenance under section 125 of the Code is not affected. Explanation (b) to section 125 (1) of the new Code creates a fictional relationship in view of the social conditions prevalent in the country to prevent quondam husbands to drive their ex-wives to a state of poverty and destitution till they re-marry

(Para 11)

*Petition under Section 482 Cr.P.C. and Article 227 of the Constitution of India praying that the impugned orders passed by Shri B. S. Nehra, 1st Additional Sessions Judge, Ludhiana, dated the 28th May, 1976, be set aside and the Trial Court be directed to proceed on merits of the case.*

Ujagar Singh, Advocate, for the Petitioner.

S. L. Ahluwalia, Advocate, for the Respondent.

### JUDGMENT

K. S. Tiwana, J.

(1) Tejinder Kaur petitioner has filed this application under section 482 of the Code of Criminal Procedure (hereinafter referred to as the new Code) and Article 227 of the Constitution of India for quashing the orders of the Judicial Magistrate 1st Class, Ludhiana dated April 25, 1975 dismissing her application for maintenance under section 125 of the new Code and also against the order of the learned Additional Sessions Judge Ludhiana, dated May 28, 1976, dismissing her revision against the order of the Judicial Magistrate.

(2) The facts of the case are that the petitioner filed an application under section 125 of the new Code in the Court of the Judicial Magistrate, 1st Class Ludhiana, against Balbir Singh, respondent, stating that she is the legally wedded wife of the respondent. The marriage was performed in February, 1967 at Ludhiana. After the

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marriage, she and the respondent lived as husband and wife at Shankar, Delhi, Ludhiana and other places. The respondent used to press upon her to get money from her parents whenever he was in necessity. Whenever she failed to get the money from her parents, she was maltreated. During general election to the Punjab Legislative Assembly, held in 1972, the respondent contested the election as a Congress candidate. For his election campaign, he was in need of money and pressed her to get it from her parents. Their marital relations got strained on her failure to provide money to the respondent. Because of ill treatment at the hands of the respondent, her health deteriorated. On the medical advice for a change of climate, she proceeded to United States of America. Taking advantage of her absence from India, the respondent filed a suit against her in the Civil Court at Nakodar, stating that she was not his legally wedded wife and as such there was no relationship of husband and wife between them. The petitioner got information about these proceedings and rushed back from the USA and appeared in the Court in the case on December 13, 1972 to contest the proceedings. Feeling frustrated in his attempt to get a decree and of the fear of being prosecuted for false verification of the plaint, the respondent absented himself from the Court on January 8, 1973. His counsel pleaded no instructions in the case and his suit was dismissed. Thereafter the petitioner made unsuccessful attempts to meet the respondent. She came to know from newspaper reports that he had remarried with another girl.

(3) As the petitioner, according to her averments in the petition, was not possessed of sufficient means to maintain herself and the respondent neglected and refused to maintain her, she filed an application in the Court of the Judicial Magistrate 1st Class, Ludhiana, under Section 125 of the new Code for the award of maintenance.

(4) The respondent in his reply took a preliminary objection that the petitioner had no *locus standi* to file the petition because of the decree of competent Civil Court which was binding on them to the effect that the petitioner had been restrained from proclaiming herself to be the wife of the respondent and as such, she was not entitled to claim maintenance.

(5) The learned Magistrate tried the case on the preliminary objection and in view of the *ex parte* decree of the Civil Court, which the respondent had obtained subsequent to the dismissal of the civil

suit on January 8, 1973, dismissed the application of the petitioner for maintenance, holding that she could not file it in the capacity of the wife of the respondent. The learned Magistrate further held that the petitioner could not file maintenance proceedings as a divorced wife. In the revision filed by the petitioner, the learned Additional Sessions Judge, Ludhiana, held that the petitioner, in view of the decree of the Civil Court, restraining her to proclaim herself as wife of the respondent, could not file any application in her capacity as wife or even as a divorced wife. The present petition has been filed by the petitioner against those orders, stating that those are contrary to law contained in section 125 of the new Code.

(6) The learned counsel for the respondent at the outset raised an objection that the inherent and supervisory powers of this Court cannot be invoked in this case after the revision of the petitioner has been dismissed by the Additional Sessions Judge. According to him, atleast the facts do not justify such an interference. It is true that this Court, exercising inherent and supervisory jurisdiction, does not convert itself into a Court of appeal to correct the errors of fact. It is to see that the subordinate Courts function within the limits of their jurisdiction to interpret the law correctly and do not act in a manner which amounts to negation of the provisions of law, resulting into miscarriage of justice. The Supreme Court in (1) *State of Karnataka v. L. Muniswamy and others* observed that the proceedings and the orders of the subordinate Courts can be quashed in the interest of justice. It further observed that the ends of justice are higher than the ends of law, though justice has got to be administered according to the law made by the Legislature.

(7) The only point requiring decision in this case is whether the petitioner, in spite of the decree of the civil Court, restraining her to proclaim herself as wife of the respondent (which she is making efforts to set aside) falls within the ambit of the 'wife' as defined in explanation (b) of section 125 (1) of the new Code and the case is such in which invoking the inherent and supervisory powers of this Court the orders dismissing her application can be quashed. The relevant provisions of section 125 of the new Code are as under:—

“If any person having sufficient means neglects or refuses to maintain—

(a) his wife, unable to maintain herself, or

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- (b) — — —  
 (c) — — —  
 (d) — — —

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:—

- (a) — — —  
 (b) "wife" includes a woman who has been divorced, or, has obtained a divorce from, her husband and has not remarried".

(8) Section 125 of the new Code has replaced section 488 of the Code of Criminal Procedure, 1898 (hereinafter called the old Code). Section 125 which is a provision of general application provides for a right of maintenance in favour of the persons specified in subsection (1) of section 125 which includes certain categories of persons who did not have such a right under the old Code. Section 488 of the old Code did not have any explanation of the word 'wife' as has been added in section 125 of the new Code in Chapter IX. 'Wife' normally means a person who is tied in a marital bondage to a man. She ceases to be a wife as soon as the relationship is put to an end by any law, custom or usage applicable to the parties. Normally marital obligations like maintenance come to an end with the dissolution of marriage or divorce. In many cases, the right of maintenance of the wives was defeated by the husbands by resorting to divorce in anticipation of the claim for maintenance. This social problem which was assuming alarming proportions in our society came to the pointed attention of the Legislature at the time the new Code was being enacted. The Joint Committee of the Parliament made a report about this aspect of the Social evil in these words:

"The benefit of the provisions should be extended to a woman who has been divorced from her husband, so long as

she has not remarried after the divorce. The Committee's attention was drawn to some instances in which, after a wife filed a petition under this section on the ground of neglect or refusal on the part of her husband to maintain her, the unscrupulous husband frustrated her object by divorcing her forthwith thereby compelling the Magistrate to dismiss the petition. Such divorce can be made easily under the personal laws applicable to some of the communities in India. This causes special hardship to the poorer sections of the community who become helpless. The amendments made by the Committee are aimed at securing social justice to woman in our society belonging to the poorer classes".

This report makes it clear that the provision for giving an extended meaning to the word 'wife' was not accidental. This beneficial provision was made, keeping in view the social conditions of our society.

(9) Though the jural relationship of husband and wife comes to an end by divorce, yet section 125 of the new Code creates the fictional relationship between a man and a woman only for the purpose of maintenance to attain the object of the provision, i.e., to prevent vagrancy and starvation of the divorced wives so long as they do not remarry. In *K. Raza Khan, v. Mumtaz Khatoon and another*, (2), it was held:—

"A plain reading of section 125 of the new Code shows that a woman who has been divorced by her husband or who has obtained a divorce, from her husband can also claim maintenance, if she is unable to maintain herself. The section does not say that the woman should have been divorced after the new Code has come into force and there is no warrant to read any such limitation in the section. Therefore, it applies both to women who have been divorced before or after the new Code came into force. The Code of Criminal Procedure has not only dealt with the procedure but has also conferred a right in this regard. Under the corresponding section 488 of the old Code of Criminal Procedure, 1898, a wife had a right to maintenance but a divorced wife did not have.

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For the first time, that right is conferred upon her under the new Code and it is in accord with social justice.—”

In *Rukhsana Parvin, v. Shaikh Mohammed Hussain Mahmood Akbar* (3) it was observed as under :—

“———There is no doubt that a divorced wife, who has not remarried is entitled to apply for maintenance under section 125 of the new Code, but it is only one part of Chapter IX of the new Code which contains the whole scheme contemplated by the new Code regulating the right of maintenance. Therefore, the provisions of section 125 to 128, which are contained in Chapter IX, and which together constitute the entire scheme regarding the right of maintenance contemplated by the Parliament while enacting the new Code, will, therefore, have to be considered as a whole and if there is any apparent conflict between any of the provisions in that Chapter, those provisions will have to be harmoniously construed. In fact in our view, there is no conflict whatsoever between the provisions of section 125 and 127 (3) (b) of the new Code. Section 125 provides for a right of maintenance in favour of the person specified in section 125 (1), which includes certain categories of persons who did not have such a right under the old Code.

(10) I am in agreement with these judgments to hold that a divorced wife has a right of maintenance from her husband under Section 125 of the new Code. The word ‘wife’ also includes even a wife divorced by her husband prior to the coming into force of the new Code to claim maintenance provided that other conditions are satisfied.

(11) The next question is whether in the case in hand, the decree of the Civil Court restraining the petitioner to proclaim herself as wife of the respondent has any effect on her right to file a petition for maintenance under section 125 of the New Code. Literally, there is no difference between a divorce under custom, or personal law and a divorce granted by a decree. The effect of the divorce is that the wife does not remain a wife and a husband

does not remain a husband and they cease to perform mutual obligations as spouses. In spite of this position of the parties under the civil law, personal law and custom, governing them, the general provisions of law under section 125 of the new Code defines the word 'wife' as reproduced above. This fictional relationship has been created by the statute in view of the social conditions prevalent in the country to prevent quondam husbands to drive their ex-wives to a state of poverty and destitution till they (wives) remarry. Explanation (b) to section 125(1) of the new Code is of wide connotation and the phraseology shows that it does not only include a wife who has been divorced by her husband, but also includes a wife who has herself obtained a divorce. The intent of the explanation is, therefore, manifest and includes a wife divorced before or after the coming into force of the new Code. The language in which this definition has been couched is very pertinent and has to be given effect. The *ex-parte* decree obtained by the respondent, which will remain binding on the parties till it is set aside, does not have any effect on the case of the petitioner in filing a claim for maintenance under section 125 of the new Code provided she satisfies other conditions. Section 125(1), Explanation (b) of the new Code does not create a separate entity of the divorced wife as she is included in the word 'wife'. The divorced wives are not required to split this definition and style themselves as separate entity as divorced wives in their maintenance applications. In the case in hand, a reading of the petitioner's claim application shows that the petitioner claimed ignorance of any such decree which was obtained by the respondent. The learned trial Magistrate was not correct to dismiss the petition by directing her to claim maintenance as a divorced wife an entity outside Explanation (b) to section 125(1) of the new Code. There is no conflict between section 127(3) and section 125(1) of the new Code. The learned Additional Sessions Judge, in revision came to a completely incorrect conclusion which, in my view, was not only inconsistent, but is in contradiction to the new definition of the 'wife' as provided in section 125 of the new Code.

(12) The dismissal of the application by both the subordinate Courts in violation of the provisions of section 125(1) Explanation (b) of the new Code by giving a completely untenable interpretation of the word 'wife' amounts to a negation of the new provisions giving an extended meaning of this word, in view of the report of the Joint Committee of the Parliament. The orders under consideration have resulted into miscarriage of justice. The facts of



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the case are such which require interference by this Court under section 482 of the new Code. The orders under challenge are hereby quashed and the case is sent back to the same trial Court for deciding it on merits. The learned Magistrate, however, will determine the points of controversy raised by the parties in the petition and the reply. The parties through their counsel are required to put in appearance before the learned Judicial Magistrate at Ludhiana on 15th November, 1977.

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K.T.S.

CIVIL MISCELLANEOUS

*Before S. S. Sandhawalia, J.*

KUNDAN SINGH PATANG and others,—*Petitioners.*

*versus*

RAGHBIR SINGH GILL and others,—*Respondents*

*Civil Misc. No. 13-E of 1977 in*

*Election Petition No. 1 of 1976*

October 25, 1977.

*Representation of People Act (XLIII of 1951)—Sections 94, 100 (1) (d) (iii) and 128—Conduct of Election Rules 1961—Rules 40, 40A, 70, 73 and 74—Exercise of franchise in favour of or against a candidate—Tampering of ballot papers alleged—Reception of evidence regarding the casting of votes—Whether absolutely barred—Section 100 (1) (d) (iii)—Whether visualises unveiling of secrecy of votes whenever necessary—Public policy—Whether requires the blacking out of all evidence in every eventuality.*

*Held*, that the plain language of section 94 of the Representation of Peoples Act 1951 indicates that the element of compulsion on the point of answering questions by witnesses with regard to the persons in favour of whom they have voted is sought to be done away with. From the language of the section it follows that it provides only a qualified protection to a witness enabling him to refuse to answer a question on the point and is indeed far from laying down any absolute bar to the reception of all evidence regarding the casting of votes in an election. Even section 128 of the Act gives an indication that the Legislature never intended any absolute blanket rule of secrecy of vote in all contingencies whatsoever.

(Paras 9 and 10)