

Prakash v. Jaswant Kaur (S. C. Mital, J.)

Before S. C. Mital and S. S. Sidhu, JJ.

PRAKASH,—Petitioner.

versus

JASWANT KAUR,—Respondent.

Criminal Misc. No. 5934-M of 1979

March 11, 1980.

Code of Criminal Procedure (II of 1974)—Section 125—Wife divorced by husband—wife not re-marrying subsequently—Such wife—Whether entitled to maintenance under section 125.

Held, that on a simple reading of Explanation (b) to section 125 of the Code of Criminal Procedure 1973, it would be clear that every divorcee otherwise eligible is entitled to the benefit of maintenance allowance and the dissolution of the marriage makes no difference to this right under the Code. As such, a wife divorced by a husband but not re-married is entitled to maintenance under the Code.

(Para 4).

Petition under Section 482 of the Code of Criminal Procedure praying that this petition be accepted and the orders Annexure P. 1 and P. 2 (Orders of Shri S. K. Jain, Additional Sessions Judge, Hoshiarpur, dated 29th October, 1979 upholding the order of Shri Manohar Singh Judicial Magistrate Hoshiarpur, dated 11th August, 1979 ordering the petitioner to pay Rs. 50 per month as maintenance to the respondent be quashed.

Th. Maluk Singh, Advocate, with Mr. Gurdial Singh, Advocate.,
for the Petitioner.

Mr. B. R. Premi, Advocate, for the Respondent.

JUDGMENT

S. C. Mittal, J.—

(1) The question of law involved in this petition is whether a wife, who has been divorced by her husband, and has not re-married, is entitled to maintenance under section 125 of the Code of Criminal Procedure, 1973 ?

(2) The salient facts of this case are that Parkash secured a decree for restitution of conjugal rights against his wife Jaswant Kaur on 13th October, 1972. On the basis thereof he, having satisfied the requirement of law, obtained decree for dissolution of marriage against Jaswant Kaur on 3rd October, 1975. The parties did not resume cohabitation. Then on 29th July, 1977, Jaswant Kaur applied under section 125 of the Code of Criminal Procedure claiming maintenance from Parkash. She succeeded in getting Rs. 50 per month as maintenance by the order of the Judicial Magistrate I Class, Hoshiarpur. The revision petition filed by Parkash was dismissed by the Additional Sessions Judge, Hoshiarpur. Parkash has now preferred the present petition under section 482 of the Code of Criminal Procedure.

(3) Support to this petition was sought from a Single Bench decision of this Court in *Atma Ram Sharma versus Manjit Rani*, (1) wherein the decree of restitution of conjugal rights obtained by the husband was held to operate as a bar to the application for maintenance filed under section 488 of the Code of Criminal Procedure (old). As would be presently seen after the amendment of section 488 by section 125 of the New Code ratio of this authority is no longer applicable to the case of a divorce. For the same reason the other ruling *Baldev Raj and others v. Pushpa Rani*, (2) is also of no avail to Parkash petitioner.

(4) Explanation (b) to section 125(1) of the New Code reads:—

“wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.”

It deserves mention that this provision did not exist in section 488 of the Code (old). Above all the question under consideration stands concluded by an authoritative pronouncement of their Lordships of the Supreme Court in *Bai Tahira versus Ali Hussain Fissalli Chothia and another*, (3). Their Lordships have held “that on a simple reading of Section 125(1) Explanation (b) it would be clear that every divorcee, otherwise eligible is entitled to the benefit of maintenance allowance and the dissolution of the marriage makes no difference to this right under the current

(1) 1974 C.L.R. 217.

(2) 1970 Cur. L.J. 157.

(3) 1979 P.L.R. 218.

Ashok Kumar v. Union Territory of Chandigarh and another
(J. V. Gupta, J.)

Code." The same view was expressed by K. S. Tiwana, J. in *Tejinder Kaur v. Balbir Singh*, (4), with which we concur.

(5) Section 125 requires, as a *sine qua non* for its application, neglect by husband. Relying on this observation of their Lordships of the Supreme Court in *Bai Tahira's* case, learned counsel for Parkash urged that Jaswant Kaur has failed to prove this essential ingredient of section 125. The finding of the Additional Sessions Judge to the contrary against Parkash, which is unassailable in this petition under section 482 of the Code, makes the contention devoid of merit.

(6) For the foregoing reasons, this petition fails and the same is hereby dismissed.

H. S. B.

Before J. V. Gupta, J.

ASHOK KUMAR,—Petitioner.

versus

UNION TERRITORY OF CHANDIGARH and another,—Respondents.

Civil Revision No. 1912 of 1979.

April 11, 1980.

Code of Civil Procedure (V of 1908)—Sections 113 and 115—Application filed under section 113 dismissed by the trial Court—Discretion of Sub-Judge in such matters—Whether calls for interference in revision under section 115.

Held, that under section 113 of the Code of Civil Procedure 1908 it is for the trial Court to state a case and refer the same for the opinion of the High Court and if the trial Court is not satisfied that the case pending before it involves a question as to the validity of any Act, ordinance etc. the High Court in the exercise of its jurisdiction under section 115 will not direct the court to refer the same to the High Court. Thus, the discretion exercised by the trial Court in dismissing the application cannot be interfered with under section 115 of the Code. (Para 2).

Petition Under Section 115 C.P.C. for revision of the Order of Shri B. C. Rajput, Sub-Judge 1st Class, Chandigarh, dated 18th October, 1979, dismissing the application and declining to make reference.

M. R. Agnihotri, Advocate, for the Petitioner.

Anand Sarup, Senior Advocate.

M. L. Bansal, Advocate with him,—for the Respondents.