

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**Cr. Revision No.132 of 2016**

Umesh Prasad Mahto, son of Late Ram Das Mahto, resident of Mohalla Rana Chowk, P.O & P.S-Lohardaga, Distt.-Lohardaga ..... Petitioner

-Versus-

Smt. Puspa Devi, wife of Sri Umesh Prasad, resident of Rana Chowk, P.S-Lohardaga, Distt.-Lohardaga .....Opposite Party

**CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR**

For the Petitioner : Mr. Sanjay Prasad, Advocate  
For O.P. : -----

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(Through V.C.)

05/06.07.2020

The order of maintenance under section 125 of the Code of Criminal Procedure passed in Maintenance Case No.39 of 2014 has been challenged by the husband.

2. In the year 1977 the petitioner-husband was married to the opposite party and from the wedlock three daughters and one son were born. The wife of the petitioner has stated that her husband was irresponsible towards the conjugal relationship and he has neglected to maintain her. Matrimonial Title Suit No.7 of 2008 which was instituted by her husband seeking a decree of divorce was disposed of on a compromise between the parties.

3. The petitioner has set-up a case that his wife has grabbed his business and she has sold the land purchased by him.

4. Mr. Sanjay Prasad, the learned counsel for the petitioner submits that Matrimonial Title Suit No.7 of 2008 was decreed "as per terms of the compromise" under which the wife of the petitioner has relinquished all her claims against the petitioner and therefore she is not entitled to maintenance under section 125 of the Code of Criminal Procedure.

5. In "*Bai Tahira Vs. Ali Hussain Fidaalli Chothia*" reported in (1979) 2 SCC 316, the Hon'ble Supreme Court has held that every divorced wife, otherwise eligible, is entitled to maintenance and dissolution of the marriage makes no different to this right. The Supreme Court has observed that the Parliament has deliberately made a special provision in section 125 of the Code of Criminal Procedure to help women in distress cast by divorce. "*Bai Tahira*" was a case of Muslim

women claiming maintenance under section 125 of the Code of Criminal Procedure. In *“Nagendrappa Natikar Vs. Neelamma”* reported in (2014) 14 SCC 452, the issue before the Hon'ble Supreme Court was whether a wife who has agreed for permanent alimony and given up future claim for maintenance is entitled for maintenance under section 18 of the Hindu Adoption and Maintenance Act, 1956 after the divorce. The Hon'ble Supreme Court has held as under:

*“9. We are in complete agreement with the reasoning of the Family Court and confirmed by the High Court that the suit under Section 18 of the Act is perfectly maintainable, in spite of the compromise reached at between the parties under Order 23 Rule 3 CPC and accepted by the Court in its order dated 3-9-1994.*

*10. Section 125 CrPC is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children. Section 125 is not intended to provide for a full and final determination of the status and personal rights of the parties, which is in the nature of a civil proceeding, though are governed by the provisions of CrPC and the order made under Section 125 CrPC is tentative and is subject to final determination of the rights in a civil court.*

*11. Section 25 of the Contract Act provides that any agreement which is opposed to public policy is not enforceable in a court of law and such an agreement is void, since the object is unlawful. The proceeding under Section 125 CrPC is summary in nature and intended to provide a speedy remedy to the wife and any order passed under Section 125 CrPC by compromise or otherwise cannot foreclose the remedy available to a wife under Section 18(2) of the Act”.*

6. In *“Vanamala Vs. H.M. Ranganatha Bhatta”* reported in (1995) 5 SCC 299, the Hon'ble Supreme Court has held, thus;

*“3. .... 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 woman 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”.*

7. The petitioner and his wife both have examined themselves as witness in the proceeding of Maintenance Case No.39 of 2014. It is not in dispute that a decree of dissolution of marriage was passed on 08.10.2009 in Matrimonial Title Suit No.7 of 2008 and a certified copy of the decree in Matrimonial Title Suit No.7 of 2008 was led in evidence in the maintenance case. In the joint compromise petition both parties have relinquished their claims against each other and they agreed that they would be free to lead a life of their choice. Beyond this, nothing is stated in the compromise petition. The learned Family Court Judge has observed that permanent alimony or maintenance was not given by the petitioner to his wife and his wife is unable to maintain herself. The learned Judge has further observed that the petitioner receives rental income of Rs.17,000/- per month and he has got valuable properties at Lohardaga town.

8. On the basis of the materials laid before him, the learned Family Court Judge has awarded Rs.5,000/- per month to the wife of the petitioner for her monthly maintenance which is just, proper and reasonable.

9. The object behind section 125 of the Code of Criminal Procedure is to ensure that a wife, minor children or helpless parents do not suffer in penury. In *“Capt. Ramesh Chander Kaushal v. Veena Kaushal”* reported in (1978) 4 SCC 70, the Hon'ble Supreme Court has held as under:

*“9. 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 fulfill. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social 4 relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advance the cause — the cause of the derelicts.”*

10. In view of the aforesaid discussions and particularly keeping in mind limitations under the revisional jurisdiction [refer, *“Deb Narayan Halder Vs. Anushree Halder(SMT)”* reported in (2003) 11 SCC 303], I am not inclined to interfere

in this matter and, accordingly, Criminal Revision No.132 of 2016 is dismissed.

**(Shree Chandrashekhar, J.)**

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