
Before Satish Kumar Mittal, J

SUSHIL KUMAR,—*Petitioner*

versus

NEELAM,—*Respondent*

CRL. M. NO. 27433-M OF 2002

18th March, 2004

Code of Criminal Procedure, 1973— S.125(1)(b)—Decree of divorce by mutual consent—Agreement between parties that wife will not claim maintenance in future—Wife not contracting re-marriage after mutual divorce—Wife failing to maintain herself and claiming maintenance—Whether a wife is entitled for maintenance after dissolution of her marriage—Held, yes—If a divorced wife is unable to maintain herself and she has not re-married, she is entitled to maintenance—Merely because at the time of granting of decree of divorce by mutual consent she had agreed not to claim the maintenance in future cannot debar or estop her from claiming the maintenance—If the object or consideration of an agreement would defeat the provisions of any law, and if it is against the public policy, the agreement will be treated as unlawful and void.

Held, that on account of explanation (b) to sub-section (1) of Section 125 of the Code, a woman who has been divorced by her husband on account of a decree passed by the Family Court under the Hindu Marriage Act, continues to enjoy the status of a wife for the limited purpose of claiming maintenance allowance from her ex-husband. The claim of maintenance under section 125 of the Code by a divorced wife is based on the foundation provided under explanation (b) to sub-section (1) of Section 125 of the Code. If the divorced wife is unable to maintain herself, and if she has not re-married, she will be entitled to claim maintenance allowance. If she is not able to maintain herself and remains unmarried, the man who was once her husband continues to be under a statutory duty and obligation to provide maintenance to her.

(Para 8)

Further held, that the right to claim maintenance by the wife, children and the old parents, who are not capable to maintain themselves, has been provided under section 125 of the Code as a public policy by the State. The definition of 'wife' has also been given extended meaning by the statute in order to provide security in life to a wife whose marriage has been dissolved by a decree of divorce and who being a destitute is unable to maintain herself. This is a matter of public policy and not of an individual. In such circumstances, the statutory right which has been conferred on a person under a public policy cannot be waived by the said person by mutual agreement. It is also well settled that any contract which is opposed to public policy is void under section 23 of the Indian Contract Act, 1872 and the same cannot be enforced in a court of law. If the object or consideration of an agreement would defeat the provisions of any law, and if it is against the public policy, the agreement will be treated as unlawful and void.

(Para 9)

Aman Kashyap, Advocate, Counsel, *for the petitioner.*

None for the respondents.

JUDGMENT

SATISH KUMAR MITTAL, J.

(1) The petitioner, who is former husband of the respondent, has filed this petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the Code) challenging the order dated 8th February, 2000 passed by the Judicial Magistrate Ist Class, Chandigarh (Annexure P-1) granting an amount of Rs. 200 per month as interim maintenance, on an application filed by his divorcee wife; and the order dated 30th August, 2001 (Annexure P-2) passed by the learned Additional Sessions Judge, Chandigarh, confirming the aforesaid order.

(2) The sole question involved in this petition is, whether a former wife is entitled for maintenance under Section 125 of the Code when the marriage between the parties was dissolved by decree of consent divorce, and at that time it was agreed between the parties that the respondent-wife will not claim maintenance in future.

(3) In this case, the marriage between the parties was solemnised on 11th October, 1993. Two issues were born out of the said wedlock. Subsequently, relations between the parties became strained and ultimately on their joint application under Section 13-B

of the Hindu Marriage Act, a decree of divorce by mutual consent was passed by the learned District Judge on 23rd November, 1995. In their joint petition for divorce, there was an averment that the respondent-wife would not claim any maintenance from the petitioner-husband at any time or in future under any provisions of law. In her statement before the Court, the respondent-wife also stated that she would not claim any maintenance from the petitioner in future. Admittedly, after the mutual divorce, the respondent-wife has not re-married. She is living alone". However, the husband has contracted the second marriage.

(4) After the divorce, the respondent-wife was not able to maintain herself. In spite of her request, the petitioner had refused to maintain her. Hence, on 2nd June, 1999, the respondent-wife filed an application under Section 125 of the Code for maintenance alleging therein that she was the former wife of the petitioner. She did not contract any re-marriage. She was unable to maintain herself, and the petitioner had refused to maintain her.

(5) The petitioner contested the aforesaid application on two grounds. Firstly that since the marriage between the parties was dissolved by mutual consent, therefore, in view of sub-section (4) of Section 125 of the Code, the respondent-former wife is not entitled for maintenance as both the spouses were living separately by mutual consent. Moreover, the petitioner is looking after the two children born out of the wedlock between the parties. Secondly that in view of the earlier compromise effected between the parties and the statement made by the wife in the court that she will not claim maintenance in future from the petitioner, she is estopped from claiming the maintenance.

(6) The learned trial Court repelled both the contentions of the petitioner and held that the respondent-former wife was entitled for maintenance and accordingly an amount of Rs. 200 per month was granted as an interim maintenance,—*vide* order dated 8th February, 2000. On revision filed by the petitioner, the said order of the learned Judicial Magistrate, Ist Class was affirmed by the learned Additional Sessions Judge,—*vide* order dated 30th August, 2001. Still feeling aggrieved against the award of meagre amount of Rs. 200 to the respondent-former wife, the petitioner has filed the instant petition under Section 482 of the Code.

(7) After hearing the learned counsel for the parties and perusing the record of the case, I do not find any merit in this petition. As far as the facts are concerned, there is no dispute. The marriage

between the parties was dissolved by a decree of divorce by mutual consent under Section 13-B of the Act. It was also agreed between the parties that the respondent-former wife will not claim any maintenance from the petitioner in future but it is also a fact that the respondent-former wife did not contract re-marriage. Both the Courts have also come to the conclusion that she was unable to maintain herself. In such situation, whether the respondent-former wife can claim maintenance from her husband. Explanation (b) to sub-section (1) of Section 125 of the Code clearly provides that the expression 'Wife' includes a woman who has been divorced or has obtained a divorce from her husband and has not re-married.

(8) It is well settled, as held by Hon'ble Supreme Court in **Vanamala versus H. M. Randanatha Bhatta (1)**, that a wife who obtains divorce by mutual consent cannot be denied maintenance by virtue of Section 125(4) of the Code. If the marriage between the parties is terminated by a decree of consent divorce, that would not amount to live separately by mutual consent. Similarly, in **Rohtash Singh versus Ramendri (Smt.) and others (2)**, the Hon'ble Apex Court has held that on account of explanation (b) to sub-section (1) of the Section 125 of the Code, a woman, who has been divorced by her husband on account of a decree passed by the Family Court under the Hindu Marriage Act, continues to enjoy the status of a wife for the limited purpose of claiming maintenance allowance from her ex-husband. The claim of maintenance under Section 125 of the code by a divorced wife is based on the foundation provided under explanation (b) to sub-section (1) of Section 125 of the Code. If the divorced wife is unable to maintain herself, and if she has not re-married, she will be entitled to claim maintenance allowance. A woman after divorce became a destitute. If she is not able to maintain herself and remains unmarried, the man who was once her husband continues to be under a statutory duty and obligation to provide maintenance to her. So, as far as the first part of the question raised by the learned counsel for the petitioner is concerned, the same is squarely covered by the aforesaid decisions of the Hon'ble Apex Court.

(9) Now the question which remains to be answered is whether the respondent-former wife is debarred or estopped from claiming the said maintenance on the plea that at the time of granting of decree of divorce by mutual consent, she had agreed not to claim the

(1) (1995) 5 S.C.C. 299

(2) (2000) 3 S.C.C. 180

maintenance from the petitioner in future. In my opinion, the aforesaid contention of the petitioner cannot be accepted. The right to claim maintenance by the wife, children and the old parents, who are not capable to maintain themselves, has been provided under Section 125 of the Code as a public policy by the State. The definition of "wife" has also been given extended meaning by the statute in order to provide security in life to a wife whose marriage has been dissolved by a decree of divorce and who being a destitute is unable to maintain herself. This is a matter of public policy and not of an individual. In such circumstances, the statutory right which has been conferred on a person under a public policy cannot be waived by the said person by mutual agreement. It is also well settled that any contract which is opposed to public policy is void under Section 23 of the Indian Contract Act, 1872, and the same cannot be enforced in a court of law. If the object or consideration of an agreement would defeat the provisions of any law, and if it is against the public policy, the agreement will be treated as unlawful and void. In a similar situation the Kerala High Court in **Sadasivan Pillai versus Vijayalakshmi (3)** has held that merely the wife in the joint application filed by both the parties under Section 13-B of the Hindu Marriage Act, relinquished her right on each others person or property, is not a bar for claiming maintenance under Section 125 of the Code.

(10) In the instant case, the respondent—former wife, who is living in destitute and has not re-married, and is not capable to maintain herself, cannot be denied the bare minimum of the life to survive in the "survival of the fittest society". A former husband, though he has divorced his wife, cannot be discharged from his statutory duty and obligation to provide the minimum amount of maintenance to his former wife. In my opinion, the amount of Rs. 200 per month is a meagre amount. With this small amount, no one can survive in this world. Therefore, it will be open for the respondent to move to the Judicial Magistrate for enhancement of the amount of interim maintenance.

(11) In view of the aforesaid, there is no merit in this petition and the same is hereby dismissed.

R.N.R.