father-in-law has not been made liable to maintain the daughter-in-law under S. 125, Criminal Procedure Code, 1973.

(6) According to section 2(y) of the Code "words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860) have the meanings respectively assigned to them in that Code". Under section 8 of the Indian Penal Code, the pronoun "he" and its derivatives are used of any person whether male or female and under section 11 of the Indian Penal Code, the word "person" includes any company or association or body of persons whether incorporated or not. The words used in section 125 of the Code are "any person" and "such person". The meanings of the word "he", therefore, cannot be applied to the words "any person" and "such person" as used in section 125 of the Code. Moreover, the scheme of section 125 of the Code, for providing maintenance to the father and mother seems to be that of a son, who is possessed of sufficient means and he can be directed to maintain his father and mother, if they are unable to maintain themselves. Mst. Raj Kumari, as would appear from the petition, is the wife of Jagtar Singh which shows that she is married one. After her marriage, Raj Kumari has shifted to another family and as such she cannot be held liable to maintain her parents.

(7) In view of the aforesaid facts the application of Yashodha Devi for her maintenance against her married daughter is not legally competent. Therefore, the proceedings of the case pending in the Court of Judicial Magistrate 1st Class, Jullundur, are quashed.

K.T.S.

REVISIONAL CIVIL

Before R. S. Narula, C. J. and P. C. Jain, J.

SUDARSHAN KAUR,—*Petitioner.*

versus

MANMOHAN SINGH DHATT,—*Respondent.*

Civil Revision No. 5 of 1976

July 22, 1977.

Hindu Marriage Act (XXX of 1955)—Sections 4 and 29(2)—Customary Law of Hoshiarpur District—Questions 19 to 22—Male Jat releasing his wife from marital relations under custom—Suit

by husband seeking declaration that such relationship with his wife has ceased to exist—Such suit—Whether barred under the Act.

Held, that if a matter covered by a suit is a matter for which provision is made in the Hindu Marriage Act, 1955, it goes without saying that subject to the exception contained in sub-section (2) of section 29 any custom relating to such matter would be deemed to have been abrogated by section 4(a) and must be said to be non-existent and, therefore, the suit would be barred. If, however, the matter in the suit is not a matter for which any provision has been made in the Act, the bar of clause (a) of section 4 cannot possibly be attracted. The matters for which provision has been made in the Act relate to conditions for a Hindu Marriage, guardianship in marriage, ceremonies for a Hindu marriage, registration of Hindu marriages, restitution of conjugal rights, judicial separation, void and viodable marriages, divorce, dissolution of marriage, maintenance *pendente lite*, permanent alimony, custody of children and disposal of property. The claim in a suit filed by a male Jat for a declaration that his relationship with the wife has ceased to exist by his releasing his wife from marital relations under a special custom is not covered by any of the abovementioned matters. The abandonment covered by question No. 19 or even release covered by question No. 22 in the customary law of Hoshiarpur district does not amount to either divorce or dissolution of marriage. That being so, the said special custom is not a matter for which provision has been made in the Act. Therefore, a suit based on such a custom cannot be said to be barred by section 4(a) of the Act. (Paras 5 and 6).

Petition for revision of the order of Shri Surjit Singh, Sub-Judge, Jullundur dated the 16th December, 1975 holding that the present suit is not barred under the provision of the Hindu Marriage Act, 1955, and this issue is decided in favour of the plaintiff and against the defendant.

Gurbachan Singh and Bhag Singh, Advocates, *for the Petitioner.*

H. L. Mittal and J. V. Gupta, Advocates, *for the Respondent.*

JUDGMENT

R. S. Narula, C.J. (Oral).—(1) The respondent filed a suit against the petitioner in October, 1975, wherein he claimed that a marriage was performed between them in 1968 according to the Anand marriage rites, that the parties cohabited as husband and wife for about a fortnight, that the husband got doubts about the morality of the wife on the very first day and that finally in January, 1972, the husband

gave a release to the wife at Jullundur which she accepted willingly and on which release removed all her belongings to her father's place. He has claimed that the parties have ever since been living separately without treating each other as their respective spouses. The plaintiff has claimed that the parties are Jats of Hoshiarpur district and are governed by custom under which a male Jat can release his wife from marital ties and thereby the relationship of husband and wife ceases. The claim made in the suit is for a declaration to the effect that the relationship of husband and wife between the parties has ceased to exist and the defendant-petitioner is not the wife of the plaintiff-respondent.

(2) The suit was contested by the petitioner. She took various preliminary objections in her amended written statement dated January 3, 1976. Preliminary objections Nos. 4 and 6 are reproduced below:—

> "4. That the suit is not maintainable. It is barred by the provisions of the Hindu Marriage Act, 1955.
>
> 6. That this Hon'ble Court has no jurisdiction to entertain and try this suit."

Out of the issues framed by the trial Court, the following issue was treated as preliminary:—

> "Whether the suit is barred by the provisions of the Hindu Marriage Act."

By his order dated December 16, 1975, the learned Subordinate Judge, Jullundur, held that the suit of the respondent is not under the provisions of the Act as no relief under the Act is being claimed by him and, therefore, it is not barred by any provision of the Act.

(3) Not satisfied with the decision of the trial Court on the above issue, the defendant has preferred this revision petition. When the petition came up for hearing before my learned brother Jain, J., on May 3, 1977, it was directed to be placed before me for constituting a larger Bench, as the point involved in the petition is of considerable importance and there is no direct decision of this Court thereon. That is how this case has come up before us today.

(4) Section 4 of the Hindu Marriage Act provides as under:—

"4. Save as otherwise expressly provided in this Act,—

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act."

It is apparent from the opening words of the section that its terms are not absolute but are subject to any other express provision contained in the Act. The only exception to the provision which is relevant for our purposes to which our attention has been invited is sub-section (2) of section 29 which states:—

"29. (2) Nothing contained in this Act shall be deemed to effect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act."

(5) The first point that calls for decision is whether the present suit is or is not with respect to any matter for which provision is made in the Act. If the matter covered by the suit is a matter for which provision is made in the Act, it goes without saying that subject to the exception contained in sub-section (2) of section 29, any custom relating to such matter would be deemed to have been abrogated by section 4(a) and must be held to be non-existent and, therefore, the suit would be barred. If, however, the matter in the suit is not a matter for which any provision has been made in the Act, the bar of clause (a) of section 4 cannot possibly be attracted. The matters for which provision has been made in the Act relate to guardianship in marriage, ceremonies for Hindu marriage, registration of Hindu marriages, restitution of conjugal rights, judicial separation, void and voidable marriage, divorce, dissolution of marriage, maintenance *pendente lite*, permanent alimony, custody of children and

disposal of property. After hearing the counsel for the parties, we are of the opinion that the matter in suit is not covered by any of the above-mentioned matters. We asked Mr H. L. Mittal, the learned counsel for the plaintiff-respondent, as to the nature of the suit filed by his client. He has fairly and frankly stated that it is a suit for a declaration based on a special custom of Hoshiarpur district. Questions Nos. 19 to 22 in the Customary Law of Hoshiarpur district by R. Humphreys are reproduced below:—

"Question 19. Upon what grounds may a woman be divorced? Is change of religion sufficient reason? May a husband divorce his wife without assigning any cause?

Answer.—A Muhammadan may divorce his wife without assigning any reason; change of religion by either the man or the woman cancels the marriage. There is no divorce among Hindus, but Jats and Sainis say a man may abandon his wife by executing a deed to that effect. In such cases there must have been good cause such as immorality on the part of the woman.

Question 20.—What are the formalities attending divorce? Is there any distinction between *talak* and *khula*?

Answer.—Among Hindus there is no divorce, but in some cases a man may abandon his wife as described in the answer to question No. 19. Among Muhammadans, Muhammadan law is followed. *Khula* is not known or practised.

Question 21.—Has the divorced wife any claim against her husband for maintenance, if she be divorced for adultery?

Answer.—Among Muhammadans generally a divorced woman does not lose her claim to her dowry, or to her right to maintenance during the period of her *iddat*, no matter for what reason she may have been divorced. Pathans, however, state that if a woman is divorced without cause she can claim maintenance until she marries again. Hindus do not recognise divorce at all but Sainis add that if a man formally abandons his wife she ceases to have any claim on the husband.

Question 22.—On what grounds has the wife a right to claim release from marriage tie?

Answer.—Muhammadans follow Muhammadan law. Among Hindus generally no grounds are recognised on which a wife can claim release from the marriage tie; Saini, however, say that a wife can claim release on account of change of religion or leprosy on the part of the husband, but change of religion does not include conversion to Sikhism."

After reading the above-mentioned questions and answers, Mr Mittal was left with no alternative but to claim that the precise custom on which the plaintiff's suit is based is on abandoning the wife by Jats and Sainis of Hoshiarpur district. He further says that when a wife is abandoned under such custom she stands released from her conjugal liabilities to the husband and that is why the word "release" has been used in the plaint.

(6) Counsel for the defendant-petitioner submits that the case of the plaintiff-respondent is not squarely covered by the alleged custom. That is not a matter with which we are concerned at this stage. All that we have to decide is whether the right claimed under the custom covered by Question No. 19 of the Customary Law of Hoshiarpur district is a matter for which provision has or has not been made in the Act. After carefully considering the submission made by the learned counsel for both sides, we are of the opinion that abandonment covered by Question No. 19 or even release covered by Question No. 22 does not amount to either divorce or dissolution of marriage. That being so, the said special custom is not a matter for which provision has been made in the Act and a suit based on such custom cannot be held to be barred by section 4(a) of the Act.

(7) In view of our finding on the preliminary issue, it is clear that the suit of the plaintiff-respondent is triable by the ordinary original Court of civil jurisdiction and not exclusively triable by the District Court.

(8) For the foregoing reasons, both the findings of the trial Court are upheld though for reasons ascribed by us. Consequently this revision petition must fail and is accordingly dismissed though without any order as to costs. Parties have been directed to appear in the trial Court on August 18, 1977.

H.S.B.