

LEGALFOXES LAW TIMES

CAN DECREE OF CONJUGAL RIGHT WAIVE THE RIGHT OF MAINTENANCE?

By Shivani Riya

‘Marriage is a sacred vow between a man and woman, to "become one flesh" as the scripture says. God's view of marriage is the divine plan for sexual relationships, to secure stable families and committed parents and spouses’.

Colossians 3:18:19



INTRODUCTION

Maintenance is a **siqua non** factor that the court takes into account when deciding divorce cases, and also for the well-being of women who are abandoned by their husbands, here we will discuss the court's view of a different one when deciding the issue of maintenance under Section 125 of the Code of Criminal Procedure.

Although the Code of Criminal Procedure is a procedural act, it also confers some substantive rights, the right to maintenance is one of the most important. The legal provisions relating to the wives and child maintenance ordinance are mentioned in Chapter IX, Section 125 to 128 of the 1973 Code of Criminal Procedure. Article 125 of the Code implements the natural and fundamental duty of man to maintain his wife and children. and parents as long as they cannot

support themselves. This provision is a measure for social justice and specially enacted to protect women and children¹.

The procedures in these sections are not punitive in nature. The objective is not to punish a person for neglecting the support of those he is obligated to support, but to prevent vagency and delay by imposing accountability through a summary procedure to provide a quick remedy for those in need. It is a secular provision since it does not distinguish between people belonging to different religions or castes and is not linked to the personal laws of the parties. **In Mohd Ahmed Khan v. Shah Bano Begum**², the SC held that the provisions of section 125 applies to all as it is a secular provision. The rights of a destitute wife or a minor claiming maintenance in this chapter and the remedies provided are essentially civil right.

A first class magistrate may issue an order against that person, ordering him to pay a monthly allowance for the maintenance of that child, father or mother, as the case may be, at the monthly rate that the magistrate deems convenient. In the case of a married minor, if the magistrate is convinced that the husband of a minor does not have sufficient means, an order can be issued against the girl's father to grant this allowance until she reaches the age of majority.



PROCEDURE RELATING TO MAINTENANCE IN CR.P.C

Section 125 of Cr.PC

If any person refusing to maintain his wife child and parents the magistrate will order the the person to pay the maintainance.

Provided that the magistrate may order the father of minor child until she attains majority

Provided further the magistrate may order for the monthly allowance during the pendency of proceeding.

Provided also that an application for the monthly allowance for interim maintenance be disposed within 60 days from the date of service

¹The
² AIR

Any such allowance for the maintenance shall be payable from date of the order , or if so ordered from the date of application for maintainance or interim maintenance.

If any persons ordered and fails to pay without any showcause will be etitled to pay the fine imposed by the court .

No wife shall be entitled to receive allowance if she is living in adultery or without any reason withdraws herself from te society or living seperately by mutual consent.

On proof that the wife in whose favour an order been passed is living in adultery or living seperately by mutual consent the magistrate can cancel the order

Section 126 – procedure related to 125 will be done according to the procedure laid down under section 126 of criminal procedure code.

Section 127 states about Alteration in allowance that means on the proof of change of circumstance like inflation or wife remarries or having extra marital affair the maintenance amount would be altered as the case may be.

Section 128 of Criminal Procedure code states about the enforcement of order of maintenance and it can be enforced or executed by the magistrate in any place where the person against whom it is made may be, on such magistrate being staisfied as to the identity of parties or nonpayment of the due.

The wife filed an application under section 125 of criminal Procedure code against ner husband claiming maintenance in a Court at Delhi on 24.06.1988 .Where as before filing a maintenance ,she had sent notice also to him,in april 1988.

The husband also filed apetition under Section 9 that is restitution of Conjugal rights under section 9 of the Hindu Marriage Act, 1955 in a Court at varanasi in May 1988 and also obtained an exparte- decree for restitution of Conjugal rights against his wife.

In the proceeding going in the criminal court the husband pleads that the ex parte decree he has obtained from the district court for restitution of conjugal right will be binding upon the Criminal Court, where the decree establishes that his wife had refused to live with him without sufficient cause and as such, the wife is not entitled to the grant of any maintenance.

ISSUE RAISED

- WHEHER OR NOT THE EXPARTE DECREE OBTAINED BY HUSBAND AGAINST HIS WIFE IS BINDING UPON THE CRIMINAL COURT?
- WHETHER OR NOT WIFE IS ENTITLED TO GRANT ANY MAINTENANCE UNDER SECTION 125 OF CRPC 1973?

ARGUMENT FROM THE SIDE OF RESPONDENT

1. WHEHER OR NOT THE EXPARTE DECREE OBTAINED BY HUSBAND AGAINST HIS WIFE IS BINDING UPON THE CRIMINAL COURT?

It is humbly argued before the honorable court that marriage is a sacred bond where the necessary implication of marriage is that the parties will live together. Each spouse has the right to console the other's consortium. It is a lifelong bond where the parties agree to live together for eternity. Each party has the right to receive certain rights from each other. Therefore, to ensure the prevalence of these rights, some laws have been codified in the form of the Hindu Marriage Act of 1955. One of the remedies mentioned here is the restitution of conjugal rights.

After the solemnity of the marriage, if one of the spouses withdraws from the cohabitation without reasonable justification, the other injured party has the legal right to submit an application to the matrimonial court for the restitution of marital rights.

The court after hearing the petition of the aggrieved spouse, on being satisfied that there is no legal ground why the application shall be refused and on being satisfied of the truth of the statements made in the petition may pass a decree of restitution of conjugal rights³.

³*Sushil Kumari Dang vs. Prem Kumar*, AIR 1976 Delhi 321

A decree of restitution of conjugal rights implies that the guilty party is ordered to live with the aggrieved party⁴. Restitution of conjugal rights is the only remedy which could be used by the abandoned spouse against the other.

Thus, to sum up, the following are the main essentials for restitution of conjugal rights under section 9 of Hindu Marriage Act⁵:

1. Withdrawal by the respondent from the society of the petitioner.
2. The withdrawal is without any reasonable cause or excuse or lawful ground.⁶
3. There should be no other legal ground for refusal of the relief.
4. The court should be satisfied about the truth of the statement made in the petition.

As according to the facts herein stated the husband has obtained a decree of conjugal right against his wife and where the decree establishes that the wife has without any reasonable ground left her matrimonial house and withdrawn herself from the society. And this is the ground where husband pleads that the aforementioned condition of conjugal right under section 9 is fulfilled thus this decree must be enforceable and thus be binding⁷. And if the wife wanted to go under another section the previous decree must be challenged and remedy must be brought for the same for the noncompliance of the responsibility put by the court. The same view is seen reflected in *Girishbhai Babubhai Raja v. Hansaben Girishchandra*⁸ 1986 (1) Gujarat Law Reporter 630, which held that the decree passed by the honourable Civil Court was binding on the Criminal Court and the same issue could not be tried once again by the Magistrate under Section 125 of the Code of Criminal Procedure 1973.

In this sense, the final judgment of a Civil Court competent in the exercise of matrimonial jurisdiction would also be binding with respect to matters other than those of a legal nature and civil status between the parties on which specific questions have been formulated, and the parties have the opportunity to present evidence and the civil court records specific findings. In such a case, the criminal courts cannot be allowed to reopen the conclusions as that would be binding between the parties before the criminal courts..

⁴*Swaraj Garg vs. K.M Garg*, AIR 1978 Del 296

⁵*Shanti Nigam vs. Ramesh Chandra*, AIR 1971 ALL 567

⁶*Saroj Rani vs. Sudarshan Kumar*, AIR 1982SC 1562, 1985 SCR (1) 303

⁷*Smt. Sugandhabai And Others vs Vasant Ganpat Deobhat And Another*, 1992 (2) BomCR 560

⁸*Smt. Renu vs Hiralal @ Harish*, 2002 CriLJ 2599

The wife against whom a decree of restitution of conjugal rights has been passed by the Civil Court, shall not be entitled to claim maintenance under Section 125⁹ of the Code of Criminal Procedure if in the proceedings of restitution of conjugal rights is before the Civil Court.

2. WHETHER OR NOT WIFE IS ENTITLED TO GRANT ANY MAINTENANCE UNDER SECTION 125 OF CRPC 1973?

It is humbly pleaded before the honourable Court that the provision of maintenance states that the husband is liable to maintain his wife only when she is unable to maintain herself but here in the aforementioned fact the husband filed a restitution of conjugal right to save his marriage and also he is able to establish from the decree that wife did not give any reason of refusal of her marital obligation. Therefore she is not entitled to claim maintenance. There are various reasons where wife is not entitled to claim maintenance under section 125 of Cr.PC.¹⁰

Under section 125 (4) of the Code of Criminal Procedure, no wife is entitled to receive maintenance or allowance from her husband if she refuses to live with him. The wife should not refuse to live with her husband without sufficient reason to receive alimony. What might be considered sufficient reason why a wife refuses to live with her husband will depend on the facts and circumstances of each case.

The civil court's decision on the abandonment of the wife is binding on the maintenance claim of the criminal court hearing. But, if the civil court were to find, while ordering the divorce, that the wife is not entitled to alimony, it would not deprive her of her right to claim alimony in a criminal court, although the criminal court must take the Court's decision into consideration. Likewise, the civil court's decision on a fact refusing maintenance is not binding on the criminal court. As per explanation to Section 125(3) of the Code, whereas if a husband has solemnized marriage with another woman or keeps a mistress, it shall be considered to be a just ground for his wife's refusal to live with him. The aggrieved person needs to file a petition in the district court. If the court is satisfied with the contentions made by the petitioner and is convinced that there are no grounds on which the petition should be declined, it will act in the favor of the aggrieved party and decree restitution.

⁹*Smt. Vanamala v. Shri H. M. Ranganatha Bhatia*, AIR 1995 SC 342

¹⁰Code of Criminal Procedure, 1974 (Act no. 2 of 1973) section 125 subsection 4.

In the case **Khursheed Ahmad Vs. Smt. Zakira**¹¹, Counsel for the petitioner has sought to assail award of maintenance to the wife primarily on the ground that she herself is a guilty spouse and left the matrimonial home without any reasonable or sufficient cause. To substantiate his contention, he has placed heavy reliance upon the judgment passed by the Court in matrimonial proceedings under Section 9 of the Hindu Marriage Act wherein Raj Kumar prayed for restitution of conjugal rights on the plea that his wife is staying away from the matrimonial home without any reasonable cause or excuse and she be directed to join his company. It is argued that the applicant-wife did not contest the proceedings knowing fully well that she has no case to meet the plea of the husband, therefore, *the judgment and the decree passed in those proceedings by the District Judge, Jind on 10.04.2008 negates the claim of the wife of her entitlement to get maintenance under section 125 of the Code*. The scope of two laws is different.. This section provides a summary remedy and is applicable to all persons. It has no relationship to the personal law of the parties.¹²

*Chapter IX is a self-contained one and relief given under it is essentially of a civil nature. The findings of a magistrate under this chapter are not final and the two parties can legitimately agitate their rights in a civil Court*¹³. *the mere existence of a decree of a civil court awarding maintenance to a wife does not oust the jurisdiction of a magistrate to make an order under this section on the application of the wife. The magistrate however in such case should make it clear in his order that anything paid under the decree of civil court would be taken into account against anything which he may order to be paid.*¹⁴ *But an application of the wife under Section 125 was dismissed because the civil Court had held under the matrimonial law that the wife was not entitled to maintenance.*¹⁵

ARGUMENT FROM THE SIDE OF PETITIONER

¹¹AIR 2015 SC 350

¹²*Nanak Chand vs Nand Kishore* AIR 1970 SC 446

¹³*Nandlal Misra vs K.L Misra*, AIR 1960 SC 446

¹⁴*Taralaxmi*, (1938) 40 Bom LR 1103

¹⁵*Murlidhar vs pratibha*, 1986 CrLJ 1216 (Bom).

1. WHEHER OR NOT THE EXPARTE DECREE OBTAINED BY HUSBAND AGAINST HIS WIFE IS BINDING UPON THE CRIMINAL COURT?

It is humbly pleaded to honourable Court that the Court cannot turn a blind eye that in Indian society, a girl with disturbed matrimony has no place. She becomes an eye sore for her parents especially brothers and their families. She is treated as a outcast by the members of the society and people living in the neighbourhood. In this background, it is difficult to accept to reason that a girl would leave her matrimonial home without any serious grievance to express. In the present case, the husband has not pleaded any special reasons for the wife to leave the matrimonial home if she was provided a congenial and comfortable atmosphere, at the risk of being treated shabbily by those who were earlier her near and dear ones before her marriage. Here in the present case if wife able to prove that there are reasons for leaving the matrimonial home as the husband is doing cruelty or torturing her or the atmosphere is not good the restitution of decree will be set aside and it is not binding because as the exparte decree is not an absolute bar.¹⁶

It may be believed that to a certain extent, that the restitution of conjugal rights concept under Section 9 of the Hindu Marriage Act, 1955 is in violation of Article 19(1)(c) of the Indian Constitution¹⁷. This is may be because by this decree, a wife is compelled to stay with his husband or vice-versa against her will. It violates the freedom to form union according to one's wish. Moreover, this may also be contrary to freedom of expression as marriage and staying apart is away of expressing oneself. Once the court orders to do things in a particular way and forces the wife and husband to stay together, it impedes on their right to chose and decide which indirectly violates article 19.

In the case **Dharmendra kumar vs Usha Kumari**¹⁸ The applicant-husband, in his written statement, admitted that there had been no restitution of marital rights between the parties after the promulgation of the decree in previous proceedings, but stated that he had attempted to comply with the decree through several certified letters inviting the accused of living with him but she never replied. Her husband claimed that she herself prevented the restoration of marriage

¹⁶*R.P Gupta vs state of U.P.*, 1990 Cr LJ 2037 (Mad).

¹⁷The Constitution of India, art 19(1)(c)

¹⁸AIR 1977 SC 2218

rights and that she was taking advantage of her wrong that she had no right to do. However, there was no evidence of the same and Section 13 (1A) of HMA was introduced under which the divorce could only be initiated by the party that had given the opportunity of marital rights to the other party and the latter did not had obliged.

However, findings of the Civil Court are binding on the Magistrate in some respects. where an application of a woman under section 9 of the Hindu Marriage Act, 1956, for restitution of conjugal rights had been dismissed on the ground that it was she who had deserted her husband, that finding was binding on a Criminal Court which dealt with her application under section 125 for maintenance on the ground of desertion by husband¹⁹. However was held by the Delhi High Court that merely because the husband had obtained the decree for the restitution of conjugal rights, maintenance could not be denied to the wife.²⁰

2. WHETHER OR NOT WIFE IS ENTITLED TO GRANT ANY MAINTENANCE UNDER SECTION 125 OF CRPC 1973?

Maintenance is granted to wife's who are unable to maintain themselves²¹. The Supreme Court has stated that the delay in the maintenance of the wife is a violation of human rights. The Supreme Court ruled that family courts cannot delay the granting of alimony to a separated wife and said there was no escape for a husband from the responsibility of giving supportive money to his wife despite harsh relationship section 125 of the Code of Criminal Procedure is an economic umbrella that establishes provisions for the provision of alimony to divorced wives to help them support themselves both during and at the end of the divorce process. The essential object of the legal provision is to help improve the economic situation and alleviate the situation of divorced and neglected wives who cannot support themselves. Section 125 is a secular provision that governs child support laws in all personal laws. No conflict can arise between the provisions of personal laws and the CrPC, as the provision operates in parallel with all personal laws. The Supreme Court has ruled that alimony rights of the spouse cannot be limited by personal law.

¹⁹*Mohd Shakeel vs Smt. Shaehna Parveen*, 1987 CrLJ 1509(Del)

²⁰*Teja singh vs Chhoto*, 1981 CrLJ 1467 (Punj).

²¹Code of Criminal Procedure, 1974 (Act no.2 of 1973) section 125

Maintenance provision under Section 125 is not treated as a means to punish the husband but as a means to ensure support for the estranged woman who is unable to support herself.²²

The factors that are taken into consideration by the Courts for granting interim maintenance have been reiterated by the Delhi High Court in the case of **Manpreet Singh Bhatia vs Sumita Bhatia**:²³

- The reasonable needs of the spouse claiming maintenance
- The status of the parties
- The independent income and property possessed by the spouse claiming maintenance
- The number of persons the spouse providing maintenance has to maintain apart from the claimant
- The lifestyle that spouse claiming maintenance used to enjoy in her matrimonial home
- The liabilities of the spouse providing maintenance
- The provisions of the basic necessities of the spouse claiming maintenance such as food, shelter, clothing, medical needs, etc.
- The payment capability of the spouse providing maintenance
- The Court may use its discretion when all specific sources of income of the spouse providing maintenance are undisclosed
- The spouse paying maintenance must discharge the cost of litigation of the divorce proceedings
- The amount awarded under Section 125 is adjustable against the amount awarded under Section 24 of the Hindu Marriage Act, 1955. The Delhi High Court further stated that the Court must grant interim maintenance in appropriate cases as a discharge of judicial duty so as to ensure that the distress spouse doesn't suffer at the hands of the affluent spouse.

Section 125 also makes provision for such circumstances in which the wife is no longer eligible to receive the maintenance amount:

- When the wife is living in adultery

²²*Sriram Manikama v. Sriram Appoji*, 1992 CrLJ 1794 (Ori).

²³AIR 2016 Del 372

- When the wife has refused to live with her husband without sufficient means
- When the husband and wife have separate and have decided to live separately by mutual consent
- When the competent Court rules that no maintenance must be awarded
- When the wife remarries after the divorce, the maintenance amount stands cancelled from the date of such marriage.

In the present case, the husband cannot prove any reason why she refused to live with him nor does he intend to resume the marriage because he too did nothing after the ex parte decree approved by the civil court. The decree of civil Court is not binding upon the Criminal Court²⁴. **Right to seek maintenance under section 125 Criminal PC is an independent right and the pendency of the proceeding under the Hindu Marriage Act in the Family Court is no bar for its maintainability outside the jurisdiction²⁵ of Family Court. The decree of restitution of conjugal right is not a bar to the proceedings under section 125.**²⁶ Therefore in the present petition it is argued before the honourable Court that the wife should be entitled to maintenance. As section 125 of Cr.PC is a summary remedy where as all the facts and circumstances should be prima facie being taken into consideration while deciding the facts under section 125 of granting maintenance to wife if she is able to prove that why she has withdrawn herself in the proceeding the decree passed by the civil court²⁷ will be stayed and ipso facto the fresh start proceeding under section 125 will be continued.

CONFLICTING VIEWS OF VARIOUS HIGH COURTS

One important judgement which elaborately deal with the issue is that by a division bench of Punjab and Haryana High Court in **Ravi Kumar v. Santosh Kumar**,²⁸ 1997 (3) RCR (Criminal). It was held:

- The wife against whom a decree of restitution of marital rights has been issued by the Civil Court will not have the right to request maintenance under section 125 of the Code

²⁴*Vishwanath pundlik Chavan v. Shaila Karmarkar*, 192 Cr LJ 1845 (Bom).

²⁵*Smt. P. Jayalakshmi v. V. Revichandran*, 192 Cr LJ 1315 (AP).

²⁶*R.P. Gupta v State of UP.*, 1990 Cr LJ 1912 (All).

²⁷Hindu Marriage Act, 1955 (Act no. 25 of 1955) section 9

²⁸ 1997 (3) RCR (Criminal)

of Criminal Procedure if in the phase of restitution of marital rights before the Civil Court, A specific question has been made to the effect that if, without sufficient reason, the wife refuses to live with her husband, and the parties have had the opportunity to present evidence and, subsequently, the Civil Court records the specific findings in merit.

- But in the case of the husband has got an ex-parte decree of restitution of conjugal rights from the Civil Court, such decree shall not be binding on the Criminal Court ²⁹in exercise of its jurisdiction under Section 125 of the Code of Criminal Procedure.
- In case the decree for restitution of conjugal rights has been obtained by the husband subsequent to the order for maintenance passed by the Magistrate under Section 125, Code of Criminal Procedure then the decree ipso facto, shall not disentitle the wife to her right of maintenance and in that case, the husband will have to approach the Court of Magistrate under Sub-Section (5) of Section 125 of the Code of Criminal Procedure for cancelling the order granting maintenance under Section 125, Code of Criminal Procedure.
- The wife, against whom decree of restitution of conjugal rights in the manner indicated in our first conclusion has been passed, will get the right to claim maintenance from the husband with effect from the date when she is granted divorce and she will continue getting this maintenance till she re-marries.

The same view is seen reflected in **Girishbhai Babubhai Raja v. Hansaben Girishchandra**³⁰, which held that the decree passed by the Civil Court was binding on the Criminal Court and the same issue could not be tried once again by the Magistrate under Section 125 of the Code of Criminal Procedure.

The Himachal Pradesh High Court, in **Hem Raj v. Urmila Devi**,³¹ has held that, once a Civil Court has found in a contested proceeding on the basis of evidence that the wife had no just or reasonable cause to withdraw her society from the husband, she cannot claim maintenance under Section 125 of the Code of Criminal Procedure. Distinguishing this judgement, the Kerala High Court in *Haizaz Pashaw v. Gulzar Banu*³², has held that the ex parte decree for restitution of

²⁹*R.P Gupta vs State of UP.*,1990 Cr

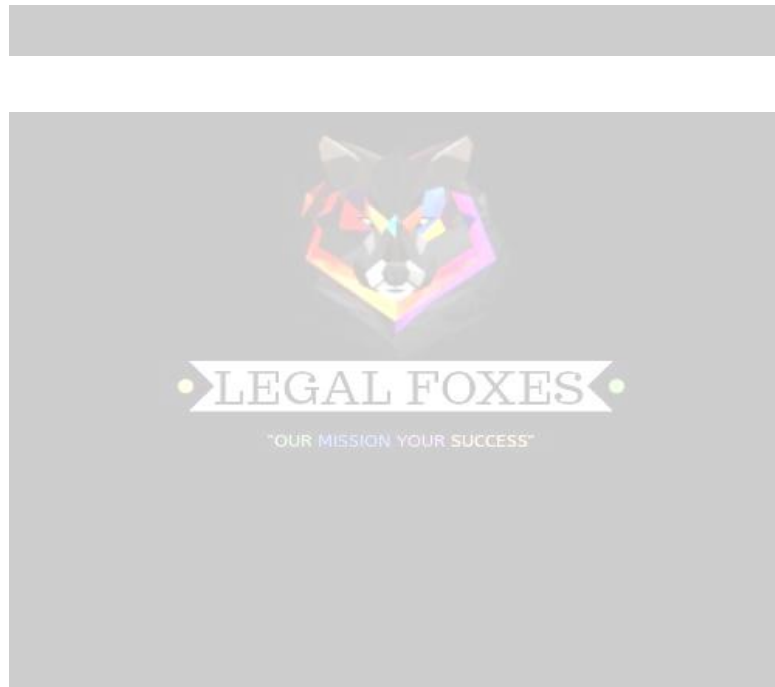
³⁰1986 (1) Gujarat Law Reporter 630

³¹I (1997) DMC 467

³²2002 (2) ALT Cri 322

conjugal rights obtained by the petitioner against the his wife is not an absolute bar to the consideration of the petition under Section 125 Code of Criminal Procedure.

On the contrary, in **Babulal v. Sunita**³³, a single bench of Madhya Pradesh High Court has held that, in the absence of any statutory bar, the wife's application for maintenance under that section cannot be rejected merely because the husband had obtained a decree of restitution o of conjugal rights against her and she declined to comply with it.



RELATION BETWEEN SECTION 9 OF H.M.A AND SECTION 125 OF
CR.P.C

³³1987 CriLJ 525



Section 9 – Restitution of Conjugal Rights

Section 125 of criminal procedure code.

Person entitled to maintenance

Wife

1. The other spouse has withdrawn from the society of the petitioner.
2. There is no reasonable excuse for such withdrawal. Should the respondent allege reasonable excuse, the burden of proof lies on him/her.
3. The court satisfied as to the truth of the statements made in the petition.
4. No legal grounds exist for refusing the decree.

ENTITLED

- Legally married
- Husband refused to maintain
- Wife separated on reasonable cause.
- Wife unable to maintain herself.
- Husband has sufficient means

NOT ENTITLED

- Living in adultery
- Has sufficient means
- Refusing to live with husband
- Living separately by mutual consent.
- Remarries after divorce

this case, the husband must apply to the Magistrate Court under subsection 5 of section 125 of

³⁴AIR 2014 SC 276

the code of criminal procedure to cancel the order to grant alimony under section 125 of the code of criminal procedure. The wife against whom the marital rights restitution decree has been issued in the manner outlined in our first conclusion will obtain the right to claim alimony from her husband with effect from the date it was granted. continue to receive this support until she remarries. *"This apart, as has been rightly argued by counsel for Sunita, proceedings under Section 125 of the Code are summary in nature and the standard of proof in criminal trial stands on a much higher footing than evidence required for claiming maintenance under Section 125 of the Code. In this view of the matter, the petitioner cannot gain any advantage to his contention from findings recorded by Sub Divisional Judicial Magistrate, Hansi.*

- **AMIN CHAND V. SHAKUNTLA DEVI**³⁵

The learned Counsel who appeared in the name of the accused, however, presented that the decree of restitution of the marital rights against the wife ipso facto will not prevent the magistrate from granting alimony pursuant to Section 125, Cr. PC. Furthermore, it held that the judgment of a civil court exercising matrimonial jurisdiction would be binding only as regards the marital status between the parties and will not be binding for matters other than the matrimonial status. The learned lawyer further argued that if a marital rights decree were obtained after an alimony order, the decree would not ipso facto terminate the right to alimony. the opinion that the spouse against whom the marital rights restitution decree was issued would not have the right to claim maintenance under Section 125 of the Code of Criminal Procedure if in the process of restitution of marital rights a specific issue in the State "if, without sufficient reason, the wife refused to live with her husband" and the parties were given the opportunity to present evidence and, subsequently, the Civil Court records the specific findings. a fortiori, in the event that the husband has obtained an ex parte decree of conjugal rights from the Civil Court, it will not be binding on the Criminal Court which exercises its jurisdiction pursuant to Section 125, Cr. PC. Furthermore, we are of the opinion that In the event the husband obtains a decree of conjugal rights after the maintenance order approved by the Magistrate pursuant to Section 125, Cr. P. C, therefore the ipso facto decree will not end the right to alimony and in this case the husband must go to the Magistrate Court pursuant to subsection (5) of section 125, Cr. PC for the cancellation of the order to grant maintenance pursuant to Section 125, Cr. P.C

³⁵1996 (1) RCR 143

- **SMT. VANAMALA V. SHRI H. M. RANGANATHA BHATIA,**³⁶

We may also make it clear that in case the wife against whom decree of restitution of conjugal rights in the manner indicated above has been passed, will get the right to claim maintenance from the date when she is granted divorce and she will be entitled to this maintenance till she re-marries."on a plain reading of this section [section 125 (4)] 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. "The wife against whom a decree of restitution of conjugal rights has been passed by the Civil Court, shall not be entitled to claim allowance under Section 125 of the Code of Criminal Procedure if in the proceedings of restitution of conjugal rights before the Civil Court, a specific issue has been framed.



CONCLUSION

The main reason behind the concept of maintenance is to see that if one spouse is not financially independent, the other spouse helps him make another person's life possible. In the event of a divorce or in the event that both spouses do not live together, the spouse who is financially dependent on the other spouse can claim maintenance. So that they can maintain themselves when they lived together. This maintenance is paid from the date of filing of the petition until the date of rejection of the application. Its main purpose is to meet the immediate needs of the petitioner, an amount that includes the costs of the process and other expenses during the process.

³⁶ 1995 SCC (5) 299

As per Section 125 of the Code of Criminal Procedure, only a woman either take divorce or given divorce by her husband and who hasn't remarried any other man is entitled to get maintenance.³⁷ A married woman who refuses to live with her husband because her husband is responsible for neglect or cruelty or suffers from leprosy or is responsible for bigamy or converts her religion without her wife's consent can apply for a special benefit under this law.

From the previous analysis of the sentences issued by various Higher Courts and by the Supreme Court, it can be deduced that contradictory decisions have been issued on the burning issue of the granting of maintenance to the wife pursuant to section 125 against the husband who obtained the ex parte decree of the Civil Court. The mere existence of a civil court decree granting maintenance to a wife does not invalidate a magistrate's competence to issue an order under this section on the wife's application. The Magistrate, however, in such a case, must clarify in his order and anything that is paid under the Civil Court decree will be taken into consideration against anything he may order to be paid.

However, the civil court's findings are binding on the magistrate in some respects, where a woman's application under section 9 of HMA 1956 for conjugal rights was rejected on the grounds that she had abandoned her husband, that the decision was binding on a criminal court dealing with her application under section 125 of maintenance for abandonment of her husband; However, the Delhi High Court found that merely because the husband had obtained the decree for the restitution of conjugal rights, the maintenance cant be rejected.

could not be denied to the wife³⁸. The decree of restitution of conjugal right is not a bar to the proceeding under the section 125.³⁹

Therefore we can conclude from the facts of the case that if the decree is ex-parte passed against wife for the restitution of conjugal right then it will not ipso facto debar the claim of maintenannce and will be binding upon criminal court because the proceeding under section 125 is summary in nature and the evidence taken on that ground has high contention than the civil court, but if the decree passed subsequent to section 125 order of maintenannce then the entire

³⁷Ratanlal and Dheerajlal, The Code of Criminal Procedure 145 Principles of Administrative Law (Wadhawa, Nagpur, 2010)

³⁸*Mohd . Shakeel v. Smt. shaehna Parveen*, 1987 Cr LJ 1509 (Del)

³⁹*Vishwanath Pundlik Chavan v. Sau Nirmala*, 1992 Cr LJ 1845 (Bom)

order of civil court will be binding on criminal court if the issue has been particularly framed that the wife has specifically withdrawn herself from the society. Thus from the aforementioned fact that ex parte decree has been obtained by husband prior to maintenance proceeding will not be binding if it has not shown a particular excuse that why wife has withdrawn herself from the society and evidence will be taken from both the side and if the husband able to prove the same fact then the maintenance order by wife will be set aside or cancelled under section 125 subsection 4 of Cr.P.C.

