
the assessment year 1984-85 though only part of the income related to this year. By agreeing for the addition to be made in one assessment year, the assessee subjected himself to higher tax. It gives rise to a natural presumption that the agreement was conveyed to the Assessing Officer during the course of the assessment proceedings so as to buy peace of mind and to avoid litigation on an understanding and assurance that no further proceedings for the levy of penalty would be initiated. This finding of fact given by the Tribunal does not give rise to any question of law.

(15) In the result, all the applications are rejected.

R.N.R.

Before Sat Pal and N.C. Khichi, JJ.

RAVI KUMAR,—*Petitioner.*

versus

SANTOSH KUMARI,—*Respondents*

Cr. R. 44 of 92

22nd April, 1997

Code of Criminal Procedure, 1973—S. 125—Wife's claim for maintenance u/s 125 Cr. P.C.—Stands extinguished when decree for restitution of conjugal rights is passed against her by the Civil Court after framing a specific issue whether 'without sufficient reason the wife refuses to live with her husband' and giving opportunity to the parties to lead evidence—However, right to maintenance would arise on passing of decree of divorce—Ex parte decree of restitution of conjugal rights would not bind the Criminal Court in proceedings u/s 125 Cr. P.C.—Whether decree for restitution of conjugal rights is passed after order of maintenance is made u/s 125 Cr. P.C., wife is not disentitled to maintenance and husband can apply u/s 125(5) for cancellation of order of maintenance.

Held, that 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 u/s 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 that whether without sufficient reason, the wife refuses to live with the husband, and the parties have been given an opportunity to lead evidence

and thereafter specific findings are recorded by the Civil Court on this issue;

(2) But in case 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 in exercise of its jurisdiction under Section 125 of the Code of Criminal Procedure;

(3) 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, Cr.P.C. 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 the Magistrate under sub-Section (5) of Section 125 of the Code of Criminal Procedure for cancelling the order granting maintenance under Section 125, Cr.P.C., and;

(4) 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.

(Para 11)

K.G. Chaudhary, Advocate with Swaran Singh,
Advocate, *for the Petitioner.*

K.S. Ahluwalia, Advocate with Vinod Arya,
Advocate, *for the Respondent.*

JUDGMENT

Sat Pal, J.

(1) In this case, the respondent Santosh Kumari had filed an application under Section 125 of the code of Criminal Procedure (In short the Code) against her husband Ravi Kumar, who is the petitioner in this case, claiming maintenance. The Sub Divisional Judicial Magistrate, Pathankot, *vide* his order dated 12th July, 1990, dismissed the application of Santosh Kumari holding that she had failed to prove any sufficient reasons for residing separately from her husband and, as such, she was not entitled to claim maintenance in view of the provisions of Section 125(4) of the Code.

(2) Aggrieved by the aforesaid order dated 12th July, 1990, the respondent-wife filed a revision petition before the Sessions Court. During the pendency of this revision petition, the petition

filed by the husband under section 9 of the Hindu Marriage Act was allowed by the Additional District Judge, Gurdaspur, *vide* his judgment dated 17th August, 1990. The revision petition filed by the wife against the order dated 12th July, 1990 of the Sub Divisional Judicial Magistrate, Pathankot, was however allowed by the learned Additional Sessions Judge, Gurdaspur, *vide* his judgment dated 17th September, 1991. By this judgment, the learned Additional Sessions Judge held that Santosh Kumari had left her matrimonial home due to maltreatment meted out to her by the respondent Ravi Kumar and she had not left his company without any reasonable cause. Consequently, the learned Additional Sessions Judge granted maintenance to the respondent-wife at the rate of Rs. 400 per month from the date of the order passed by the learned trial Court.

(3) In this petition, the husband Ravi Kumar has challenged the judgment dated 17th September, 1991 passed by the learned Additional Sessions Judge, Gurdaspur. This petition came up for hearing before a learned Single Judge of this Court on 10th January, 1994. The learned Single Judge found that there was a conflict of authorities of different High Courts on the point as to whether the wife against whom decree for restitution of conjugal rights has been passed, is entitled to claim maintenance under Section 125 of the Code. In view of this, the learned Single Judge directed that the matter be placed before Hon'ble the Chief Justice for constituting a larger Bench to decide this question. This is how this case has come up before this Bench to decide the following question of law :

“Whether the wife against whom decree for restitution of conjugal rights has been passed, is entitled to claim maintenance under Section 125 of the Code of Criminal Procedure.”

(4) Mr. Chaudhary, learned counsel appearing on behalf of the petitioner submitted that the learned trial Court in his order dated 12th July, 1990, had given a clear finding that the respondent-wife had failed to prove any sufficient reasons for residing separately from the petitioner-husband and in view of the provisions contained in Section 125(4) of the Code, the respondent was not entitled to receive maintenance allowance from the petitioner. He further submitted that during the pendency of the revision petition filed by the respondent-wife against the aforesaid order dated 12th July, 1990, the petition filed by the husband under Section 9 of the Hindu Marriage Act has been allowed by the learned

Additional District Judge, Gurdaspur, *vide* his order dated 17th August, 1991. He drew our attention to this judgment and submitted that from this judgment it was clear that on the basis of the pleadings in that case, one of the issues framed was :

“Whether the respondent withdrew from the society of the petitioner without reasonable and sufficient cause.”

After the parties led evidence on this issue, the learned Additional District Judge came to the conclusion that the respondent-wife was guilty of deserting the petitioner without any sufficient and reasonable cause. Consequently, he allowed the petition of the husband under Section 9 of the Hindu Marriage Act. Mr. Chaudhary, therefore, contended that since the respondent-wife herself was guilty for withdrawal from the society of the husband, she could not claim maintenance under Section 125 of the Code. In support of his submissions, the learned counsel placed reliance on the following judgments:

- (1) *Chander Kumar Sharma v. Smt. Shamvita Sharma* (1),
- (2) *Joginder Singh v. Dilbir Kaur* (2)
- (3) *Piara Singh v. Satwant Kaur* (3)
- (4) *Jasbir Singh v. Amrit Kaur Walia* (4)
- (5) *Murlidhar Chintaman Waghmare v. Smt. Pratibha Murlidhar Waghmare and another* (5)

(5) Mr. Ahluwalia, learned counsel appearing on behalf of respondent, however, submitted that the decree of restitution of conjugal rights against the wife *ipso facto* shall not debar the Magistrate to grant maintenance under section 125 Cr. P.C. He, further submitted that the judgment of a Civil Court in exercise of matrimonial jurisdiction would be binding only in respect of matrimonial status between the parties and it will not be binding in respect of matters other than matrimonial status. In support of his submission, the learned counsel placed reliance on the following judgments :

- (1) *K. Narayan Rao v. Bhagya Laxmi*(6)

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- (1) 1989 (1) Ch. L.R. 486
 - (2) 1980 Vol. 82 PLR 665
 - (3) 1988 RCR 389
 - (4) 1991 (2) RCR 306
 - (5) 1986 CrL. L.J. 1216
 - (6) 1984 CrL. L.J. 276

(2) *Amin Chand v. Shakuntla Devi* (7)

(3) *Babu Lal v. Sunita*(8)

(6) The learned counsel further submitted that if a decree for conjugal rights was obtained subsequent to an order for maintenance the decree would not *ipso facto* end the right of maintenance. In support of this contention, he placed reliance on the following judgments :

(1) *Smt. Sheela Rani v. Durga Parshad* (9)

(2) *Jhanwar Lal v. State of Rajasthan* (10); and

(3) *Kundan Lal v. Shanti Devi* (11)

(7) We have given our thoughtful consideration to the submissions made by the learned counsel for the parties and have perused the records. Before dealing with the rival contentions of the learned counsel for the parties, it will be appropriate to refer to sub-section (1) and (4) of Section 125, Cr. P.C. which read as under :

“125. *Order for maintenance of wives, children and parents,—*

(1) If any person having sufficient means neglects or refuses to maintain :—

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as

(7) 1996 (1) RCR 143

(8) 1987 CrL. L.J. 525

(9) AIR 1965 Punjab 79

(10) AIR 1969 Raj 29

(11) 1988 CrL. L.J. 987

such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct :

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Explanation,—For the purposes of this Chapter,—

- (a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;
- (b) “wife” includes a woman who has been divorced by, or has obtained a divorce from her husband and has not remarried.

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- (4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.”

(8) From sub-section (4) it is clear that the wife shall not be entitled to receive allowance from her husband under section 125, Cr. P.C. if without any sufficient reason, she refuses to live with her husband. Admittedly, proceedings under Section 125, Cr. P.C. are summary proceedings. It is settled law that the judgment of a Civil Court in exercise of matrimonial jurisdiction would be binding between the parties in respect of matters pending before the matrimonial Court under Section 125, Cr. P.C. only if in the proceedings before the Civil Court, specific issues have been framed and the parties have been given opportunity to lead evidence and specific findings are recorded by the Civil Court. In this connection reference may be made to a Division Bench judgment of this Court in the case of *Chander Kumar Sharma* (supra) relevant portion of which is reproduced below :—

“In this view of the matter, final judgment of a competent Civil Court in exercise of matrimonial jurisdiction would be binding even in respect of matters other than dealing with legal character, and, marital status between the parties regarding which specific issues have

been framed, and the parties have been given opportunity to lead evidence and specific findings are recorded by the Civil Court. In that eventuality criminal Courts cannot be permitted to re-open such findings which would be binding between the parties before the criminal courts. Query with regard to question No. 1 is answered accordingly.”

(9) With respect, we also agree with the ratio of the Division Bench judgment in the case of *Chander Kumar Sharma* (supra). We are, therefore, of the opinion that the wife against whom decree of restitution of conjugal rights has been passed would not be entitled to claim allowance under Section 125 of the Code of Criminal Procedure if in the proceedings of restitution of conjugal rights, a specific issue has been framed on the point ‘as to whether without any sufficient reason, the wife refused to live with the husband’ and the parties have been given an opportunity to lead evidence and thereafter specific findings are recorded by the Civil Court. A fortiori, in case the husband has got an *ex parte* decree of conjugal rights from the Civil Court, it shall not be binding on the Criminal Court in exercise of its jurisdiction under Section 125, Cr. P.C. We are further of the opinion that in case decree for conjugal rights is obtained by the husband subsequent to the order for maintenance passed by the Magistrate under Section 125, Cr. P.C., then the decree *ipso facto* shall not end the right of maintenance and in that case the husband will have to approach the court of the Magistrate under sub-section (5) of Section 125, Cr. P.C. for cancelling the order granting maintenance under Section 125, Cr. P.C.

(10) 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 remarries. In this connection, reference may be made to a recent judgment of the Supreme Court in *Smt. Vanamala v. Shri H.M. Ranganatha Bhatia*(12). The relevant portion from this judgment is reproduced herein below :—

“On a plain reading of this Section [S. 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 divorce woman living in adultery or without sufficient reason refusing to live with her husband. After divorce where is the occasion for the women 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 not 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.”

(11) We, therefore, answer the question of law referred to us as follows :—

- (1) 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 that whether without sufficient reason, the wife refuses to live with the husband, and the parties have been given an opportunity to lead evidence and thereafter specific findings are recorded by the Civil Court on this issue;
- (2) But in case 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 in exercise of its jurisdiction under Section 125 of the Code of Criminal Procedure;
- (3) 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, Cr. P.C. 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 the Magistrate under sub-section (5) of Section 125 of the Code of Criminal Procedure for cancelling the order granting maintenance under Section 125, Cr.P.C.;

and

- (4) 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.

(12) List the case for disposal before the learned Single Bench dealing with the Criminal Revision Petition.

R.N.R.

Before Jawahar Lal Gupta, J.

P.S.E.B. PATIALA AND ANOTHER,—*Appellant*

versus

NARINDER SINGH,—*Respondent*

R.S.A. No. 1660 of 95

21st March, 1997

Code of Civil Procedure, 1908—S. 100—Punjab State Electricity Board Employees (Punishment and Appeals) Regulations, 1971—Preliminary enquiry report—Supply of copy—Failure to supply copies of preliminary report especially if report is taken as evidence—Amounts to denial of reasonable opportunity and is violative of principles of natural justice.

Held, that whenever a disciplinary authority gets a complaint against an employee, it is entitled to have it investigated. If as a result of the investigation, it is found that there is substance in the complaint, it can initiate a regular inquiry. Otherwise, the complaint can be filed. Still further, if the report of the preliminary enquiry is not relied upon during the course of regular enquiry, the employee may not be entitled to a copy thereof. However, in a case where the statements of various persons are recorded and preliminary enquiry reports are submitted which are taken on record, failure to supply copies of the statements during the preliminary enquiry and also the reports can result in denial of a reasonable opportunity.

(Para 6)

Further held, that the factum of the statements having been recorded during the preliminary enquiry as also the reports was