

IN THE COURT OF THE JUDGE, FAMILY COURT-CUM-ADDITIONAL DISTRICT JUDGE,  
ANANTAPURAMU.

PRESENT: Sri Tirumala Venkateswarlu,  
Judge, Family Court-cum-Additional District Judge, Ananthapuramu.

Monday, this the 29<sup>th</sup> day of April, 2019

**F.C.O.P. 32/2018**

Between:

Palla Shanthi Kiran W/o Gadde Dileep, D/o P.Achanna, 33 years, Hindu, House  
wife, residing at D.No.12-2-695, Ashok Nagar, Ananthapuramu Town District

... Petitioner

AND

Gadde Dileep S/o G.Vijay Kumar, 34 years, Hindu, Permanent resident of Flat  
No.402, Raja Brindavan Apartment, Municipal Office Road, Proddatur YSR Kadapa  
District

... Respondent

This petition coming on 23-04-2019 for final hearing before me in the  
presence of **Sri P.Guru Prasad, Sri P.Sreedhar Reddy, Sri M.Nagashyam  
Kiran,** Advocates for the petitioner and of **Sri K. Lakmanachar, Sri P.Sarath  
Babu, Sri M.Sudheendra,** Advocates for the respondent and after hearing both  
sides and upon perusing the material on record, the matter having stood over for  
consideration till this day, this Court passed the following:

**ORDER**

1. This petition is filed under section 125 Cr.P.C., seeking maintenance.  
Petitioner is the wife.
2. Petitioner's case, in brief, is that she was married to the respondent on  
13.08.2017 as per Hindu rites and custom. Before the marriage the respondent  
and his parents gave Bio-data stating that respondent did M.S., and he was  
working as Design and Production Engineer at Sweden. Respondent and his  
parents demanded for Rs.10 lakhs cash and 76 tolas of gold. Petitioner and her  
parents believed the information and accepted for the marriage. Petitioner's  
parents gave dowry, spent Rs.15 lakhs to perform the marriage and presented a  
suit for reception, bracelet, gold chain for the respondent and a necklace towards  
Adapaduchu Lanchanalu. After the marriage, though the petitioner and  
respondent were given privacy for three successive days, respondent postponed

the conjugal bliss on some or other pretext and the marriage was not consummated. When the respondent proposed for a Honeymoon trip, petitioner readily accepted with a fond hope that their marriage would consummate and the couple went to Mauritius on 17.09.2017 and stayed there till 23.09.2017. However the marriage was not consummated. Respondent threatened the petitioner not to disclose about their conjugal life. Petitioner also came to know that respondent was not working as a Design and Production Engineer and he was only a Bartender. Later petitioner and respondent left to Sweden on 08.10.2017. At Lohalm town respondent had a shared accommodation. One Kanthi Irani was the shared tenement, who used to come home once in a week and the respondent used to direct the petitioner to arrange food, cleaning of the room etc. during his stay. Respondent demanded Rs.15 lakhs as additional dowry. Later in the month of November, 2017 Sweden Government expelled the respondent. Petitioner pleaded that though she stayed with the respondent till 18.11.2017, the marriage was not consummated and the respondent expressed his incapacity to consummate the marriage. A panchayat was held in the presence of elders namely Narayana Reddy, M.L.C., Surendra Reddy, Subbaiah, Advocates and others and in the said panchayat respondent and his parents demanded for Rs.15 lakhs as additional dowry. Respondent admitted about the non-consummation of the marriage. Though the parents of the petitioner invited the respondent to stay for 3 days and they would arrange nuptials, respondent and his parents postponed on one ground on the other. Since the respondent did not turn up, petitioner lodged a complaint before II Town Police Station, registered as Cr.No.4/2018 U/s 420,498-A, 506 r/w 34 IPC and Secs. 3 and 4 of Dowry Prohibition Act. In the circumstances above, petitioner was forced to stay with her parents. She does not have any source of living. Respondent has huge cash and immovable properties and he has capacity to provide maintenance to the petitioner and refused to maintain the petitioner. Hence, the petition for maintenance at Rs.30,000/- per month.

3. Respondent filed his counter denying each and every allegation made against him. He pleaded that petitioner used to pick up quarrel for every petty reason; that she used to humiliate him, saying that he was from a low class, Ex-Bartender and that she came from high class and rich family and he is not suitable to her. He also pleaded that petitioner did not allow him to touch her and she always used to drink alcohol and she used to pick up quarrel by opening the doors and on the complaint of neighbours, police came to their house and chastised the petitioner and warned the couple. He alleged that his Boss Kanthi Irani tried to convince the petitioner and advised to lead happy marital life, petitioner gave deaf year and demanded him to send her to India. Petitioner threatened to commit suicide if he informed about her to her parents. Later they returned to India. He stayed at Delhi for some time and his brother's marriage was performed at Proddutur on 24.11.2017 and he requested the petitioner to attend the marriage, but she did not attend and further threatened the respondent to foist a false case, if he attended the marriage. When he came to Ananthapuramu he informed the attitude and behaviour of the petitioner to her parents and they assured to convince her. He pleaded that the marriage was not consummated because of the petitioner only. He pleaded that petitioner was aggressive, she consume alcohol and she is dominating in nature with high level ego. He pleaded that there is no physical or mental problem for him as alleged by the petitioner. He pleaded that in the meeting in the presence of one Narayana Reddy, Minister, Surendra reddy and Subbaiah, advocates and Linga Reddy, Ex-MLA, petitioner and her parents demanded for Rs.50 lakhs for mutual divorce. Since he refused for such demand, petitioner foisted a false case against him and his family members. He pleaded that the marriage was performed against the wishes of the petitioner and the petitioner was a habitual drunkard and her parents intentionally selected the petitioner, since he belongs to middle class family and thus he would adjust with the petitioner. He pleaded that petitioner herself deserted him voluntarily saying she was not expecting single pie. He pleaded that he lost his job and at present he has no source of income. He further pleaded that petitioner's family is rich and petitioner was the MBA student and

she has capacity to maintain herself. He thus sought for dismissal of the petition.

4. In the enquiry, petitioner was examined as PW1. No documents are marked for the petitioner. Reported no evidence for the respondent.

5. Heard both the sides. The counsel for the petitioner would argue that even in cases of annulment of marriage, wife's position shall be that of divorced wife, covered by Explanation (b) to section 125 Cr. P.C. The learned counsel would argue that in view of the language used in Section 25 of Hindu Marriage Act, the court is empowered power to pass orders with regard to permanent alimony or maintenance at the time of passing any decree or any time subsequent thereto and hence this court has ample power to order for maintenance. The learned counsel referred to instances, where the Apex Court accepted to pass orders under section 125 Cr. P.C., taking support from the other laws like Hindu Marriage Act, Hindu Adoptions and Maintenance Act etc., According to the learned counsel, granting of maintenance to daughters till their marriage is one such instance. The learned counsel argued that section 125 Cr.P.C., is provided to prevent destitution and vagrancy and hence the wife's position consequent to annulment of her marriage shall be viewed with wider perspective. The learned counsel would submit that a married woman loses her maidenhood and nobody would accept her virginity and prospects of remarriage will ordinarily be difficult. The learned counsel placed reliance on the following judgments:-

1) T.K.Surendran Vs. P. Najima Bindu<sup>1</sup>

2) T.K.Surendran Vs. P. Najima Bindu<sup>2</sup>

3) Smt. Lata Kamat Vs. Vilas<sup>3</sup>

4) Ramesh Chandra Rampratapji Daga Vs. Rameswari Ramesh Chandra Daga<sup>4</sup>

6. The learned counsel for the respondent would argue that once the

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1. 2012 (1) KLT 768

2. 2014 (3) KLT 719.

3. AIR 1989 SC 1477.

4. AIR 2005 SC 422.

marriage is annulled, her status cannot be equal to divorced wife and in view of the judgment in **K. Siva Rama Krishna Prasad Vs. K. Bharathi**<sup>5</sup>, which is binding on this Court, petitioner is not entitled to maintenance.

7. Now the point for consideration is whether the petitioner is entitled to maintenance as prayed for?

8. POINT:-

The admitted facts are that the petitioner was married to respondent on 13.08.2017 as per Hindu rites and custom. The petitioner/wife, alleging that the respondent/husband deceived her with regard to his job at Sweden and on further allegation that the marriage was not consummated, filed FCOP 33/2018 on the file of this court to declare the marriage as null and void and this Court declared as such on 13.11.2018.

9. Now before going into her necessity and the capacity of respondent and the quantum of maintenance, the legal issue to be answered is her right to claim maintenance after the decree of annulment of her marriage. The trump card for the petitioner is the judgment of Hon'ble Kerala High Court in **T.K.Surendran's case**, wherein it was held,

"[42] The precise question to be considered is whether a woman whose marriage is annulled under Section 12 of the Hindu Marriage Act can be included within the sweep of Explanation (b) to S.125(1) Cr.P.C. A reference to the language of S.12 may be of relevance. A marriage attracting Grounds (a) to (d) of S. 12(1) "shall be voidable and may be annulled by a decree of nullity." This is all that is mentioned in S. 12. The effect or consequence of a marriage annulled under Section 12 is not declared by the legislature in any provision of the Hindu Marriage Act. The marriage is said to be voidable and may be annulled by a decree of nullity. This is all that is stated. We note again that such a marriage shall remain and continue to be valid for all purposes unless it is annulled by a decree under Section 12 of the Hindu

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5. 1985 (2) ALT 200.

Marriage Act. Parties have the option to treat the marriage as valid. If they do not go to court and seek a decree annulling the marriage under S. 12 the same shall continue to be valid for all intents and purposes. A marriage duly solemnized gets annulled only if parties in their volition approach the court to get the same terminated in accordance with the provisions of S. 12 of the Hindu Marriage Act. The consequence of such annulment is not specifically declared.

**[43]** What are the consequences in fact and in law? This has to be considered. The learned counsel for the respondent/husband contends that once a marriage is annulled under Section 12 as a voidable marriage, it ceases to exist in the eye of law. Thereafter impermissible to reckon such voidable marriage as valid for any purpose. A decree of annulment under Section 12 will have the effect of obliterating and annihilating the marriage solemnized. Therefore it is not a case of a marriage being terminated as in the case of a decree for divorce/dissolution under Section 13. It is a case of there being no marriage at all. No rights or liabilities can stem or emanate from such a marriage which is annulled under Section 12 of the Hindu Marriage Act, contends counsel.

**[44]** We find it difficult to persuade ourselves to accept this contention. The learned counsel for the claimant/wife contends that a decree of annulment cannot certainly restore the parties to their position prior to marriage, in fact. The solemnized marriage is a reality. Law cannot close its eyes to such solemnized marriage. Law cannot ignore the fact that the spouses had lived as husband and wife in such matrimony for some period of time. Law cannot afford to ignore the fact that it is the volition of the parties which had led to the annulment of the marriage under Section 12 of the Hindu Marriage Act. They could have treated the same to be valid. Conduct of parties has a crucial bearing in a decree of annulment under Section 12.

**[45]** We find force in this submission. In the Indian context where the virginity of a woman is given utmost importance, she can never, in fact, re-claim her status as a spinster after annulment of her marriage under Section 12 of the Hindu Marriage Act. She has lost her maidenhood. In the eye of society she has lost her

virginity. Whatever be the law, on declaration of nullity or voidness of the marriage, in fact, she will continue to be the woman in a terminated marriage. Her maidenhood is lost. If she wants to enter matrimony again, society will reckon the same only as a re-marriage with all its inadequacies and inconveniences. One cannot wish away a solemnized marriage merely because such marriage has been annulled at the volition of parties by a court by passing a decree under Section 12. What we intend to note is that there is undoubted transformation of the status of a woman from a maiden to the woman in a terminated marriage. In fact, consistent with the societal norms she ceases to be a maiden. Her re-marriage will ordinarily be a difficult and uphill task. She would be left in the lurch without any one to support until her re-marriage takes place. We are only attempting to satisfy and convince ourselves that such a woman certainly falls within the target group of unfortunate women in whose favour the legislative compassion gets eloquent expression by the enactment of Explanation (b) to S.125 Cr.P.C.

**[46]** It is not as though the law assumes that such an annulled marriage can be ignored, overlooked or forgotten for all purposes. We shall now look into the eventualities pointed out by the learned amicus curiae and the learned counsel for the claimant/wife where the law realistically takes into account the different status of spouses in an annulled marriage. The law also does not reckon or accept that because of a decree for annulment, such marriage can be ignored, overlooked or forgotten for all purposes.”

10. The Hon’ble Kerala High Court in para 71 of the judgment, concluded that in the circumstances discussed by it, it was evident that the wife in that case was entitled to enforce the order passed under Section 125 Cr.P.C., notwithstanding the decree for annulment of marriage with the respondent/husband. While concluding so, the Hon’ble Court gave a finding that a woman after annulment of her marriage falls within the sweep of the definition of ‘wife’ under Explanation(b).

11. Now, let us look into the other authorities on the point. In **Smt.**

**Yamunabai Anantrao Adhav A vs Ranantrao Shivram Adhav**<sup>6</sup>, with regard to marriages void ab initio, covered by section 11 of Hindu Marriage Act, 1955, it was held,

“4. The question, then arises as to whether the expression 'wife' used in [s. 125](#) of the Code should be interpreted to mean only a legally wedded wife not covered by [s. 11](#) of the Act. The word is not defined in [the Code](#) except indicating in the Explanation its inclusive character so as to cover a divorcee. A woman cannot be a divorcee unless there was a marriage in the eye of law preceding that status. The expression must, therefore, be given the meaning in which it is understood in law applicable to the parties, subject to the Explanation (b), which is not relevant in the present context.

5. It has been contended on behalf of the appellant that the term 'wife' in [s. 125](#) of the Code should be given a wider and extended meaning so as to include therein not only a lawfully wedded wife but also a woman married in fact by performance of necessary rites or following the procedure laid down under the law. Relying upon the decision of this Court in [Mohd. Ahmed Khan v. Shah Bano Beghum](#), [1985 ] 3 SCR 844, it was argued that the personal law of the parties to a proceeding under [s. 125](#) of the Code should be completely excluded from consideration. The relationship of husband and wife comes to an end on divorce, but a divorcee has been held to be entitled to the benefits of the section, it was urged, and therefore applying this approach a woman in the same position as the present appellant should be brought within the sweep of the section. We are afraid, the argument is not well founded. A divorcee is included within the section on account of clause (b) of the Explanation. The position under the corresponding [s. 488](#) of the Code of 1898 was different. A divorcee could not avail of the summary remedy. The wife's right to maintenance depended upon the continuance of her married status. It was pointed out in *Shah Bano's* case that since that right could be defeated by the husband by divorcing her unilaterally under the Muslim Personal Law or by obtaining a decree of divorce under any other system of law, it was considered desirable to remove the hardship by extending the benefit of the provisions of the section to a divorced woman so long as she did not remarry, and that was achieved by including clause (b) of the

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6. AIR 1988 SC 644.

Explanation. Unfortunately for the appellant no corresponding provision was brought in so as to apply to her. The legislature decided to bestow the benefit of the section even on an illegitimate child by express words but none are found to apply to a de facto wife where the marriage is void ab initio.”

12. It is relevant at stage to note that even in **T.K.Surendran’s case**, the Hon’ble Kerala High Court did not touch cases of wives, whose marriages were expressly declared by law to be null and void without intervention of the courts as in section 11 of Hindu Marriage Act and it was held,

“we do not express any final opinion in the light of the decisions in Anantarao, Vimala and Savitaben (supra), though we are certainly of the opinion that in view of section 20 and section 26 of the DVA they also deserve to be included.”

13. Now, let us come to the case of annulment of marriage with the intervention of courts under section 12 of Hindu Marriage Act. Annulment is a legal procedure for declaring a marriage null and void. With the exception of bigamy and not meeting the minimum age requirement for marriage, it is rarely granted. A marriage can be declared null and void if certain legal requirements were not met at the time of the marriage. If these legal requirements were not met then the marriage is considered to have never existed in the eyes of the law. This process is called annulment. It is very different from divorce in that while a divorce dissolves a marriage that has existed, a marriage that is annulled never existed at all. Thus unlike divorce, it is retroactive and an annulled marriage is considered never to have existed. We have the direct judgment on the point. In **K.Sivarama Krishna Prasad case (cited above)**, our Hon’ble High Court held,

[Section 16](#) of the Act while providing a deeming provision regarding legitimacy of the child notwithstanding decree of nullity clearly postulates that the proceedings either under [S. 11](#) or [S. 12](#) peter out to the same end namely, nullity of marriage. The only distinction is that the marriage referred to under [S. 11](#) is null since inception and should

be considered in law as not conceived at all and the marriage under [S. 12](#) can be avoided and the end result of contingencies in both the provisions is a decree of nullity. Further [S. 16](#) visualises a seminal distinction between dissolution of marriage and decree of nullity annulling the marriage. This distinction is appropriate in the context of wife surviving the dissolution or divorce under [S. 125](#), [Cr.P.C.](#) The wife as defined under [S. 125](#) of the Code of Criminal Procedure continues to be wife and eligible for maintenance under [S. 125](#) notwithstanding divorce. Dissolution of marriage as a sequel to divorce should not be equated to decree of nullity. S. 13 of the Act is concerned with dissolution of marriage by a decree of divorce on the grounds enumerated therein. S. 15 permits either party to remarry again in the event of there being no right of appeal against decree, or time for appeal expired without any appeal having been presented, or appeal which has been presented has been dismissed. The proviso to [S. 15](#) prohibits performance of marriage within one year from the date of decree for dissolution of marriage or divorce in the Court of the first instance. Therefore, the distinction between dissolution of marriage on divorce and nullity of marriage is clearly discernible. In the event of dissolution of marriage on divorce the remarriage by either party is intertwined by certain strings and conditions and the mere decree for divorce does not result in fanning the wings and getting away from the tie unless the conditions stipulated in [S. 15](#) are fulfilled. In the event of a decree for nullity, the association of marriage is irrevocably terminated with immediate effect. The explanation under [S. 125](#) of the Code relating to 'wife' is solely confined to the situation of divorce only till remarriage and definition aimed at a singular situation cannot be stretched, associated or linked to nullity of marriage envisioned under [S. 11](#) or [S. 12](#) of the Act.”

14. When there is a direct judgment on any question of law from the same High Court, in the absence of judgment of Supreme Court on said question of law, the Subordinate Courts of the said High Court are bound to follow the same. In **Commissioner of Income Tax Vs. Thane Electricity Supply Ltd.**<sup>7</sup> the following observations were made by the Bombay High Court:

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1. (2012 (1) KLT 769).  
2. (1994) 206 ITR 727

“(a) The law declared by the Supreme Court being binding on all courts in India, the decisions of the Supreme Court are binding on all courts, except, however, the Supreme Court itself which is free to review the same and depart from its earlier opinion if the situation so warrants. That is binding is, of course, the ratio of the decision and not every expression found therein.

(b) The decisions of the High Court are binding on the subordinate courts and authorities or Tribunals under its superintendence throughout the territories in relation to which it exercises jurisdiction. It does not extend beyond its territorial jurisdiction.

(c) The position in regard to the binding nature of the decisions of a High Court in different Benches of the same court, may be summed up as follows:

(i) A single Judge of a High Court is bound by the decision of another single judge or a Division Bench of the same High Court. It would be judicial impropriety to ignore that decision. Judicial comity demands that a binding decision to which his attention had been drawn should neither be ignored nor overlooked.

(ii) A Division Bench of a High Court should follow the decision of another Division Bench of equal strength or a Full Bench of the same High Court. If one Division Bench differs from another Division Bench of the same High Court, it should refer the case to a larger Bench.

(iii) Where there are conflicting decisions of courts of coordinate jurisdiction, the later decision is to be preferred if reached after full consideration of the earlier decisions.

(d) The decision of one High Court is neither binding precedent for another High Court nor for courts or Tribunals outside its territorial jurisdiction.”

15. The judgment of our High Court in **K. Sivarama Krishna Prasad case (cited above)** is not overruled by the Supreme Court nor there is direct judgment from Supreme Court on the issue and hence, though their Lordships observed in **T.K. Surendran’s case** that they could not accept the proposition laid down in **Sivarama Krishna prasad case**, this court is bound to follow the

ratio laid down by our Hon'ble High Court in **K. Sivarama krishna Prasad case.** Thus in view of the proposition in Sivaramakrishna Prasad case, it is held that petitioner, whose marriage was annulled under section 12 of Hindu Marriage Act, 1955, is not entitled to maintenance under section 125 Cr.P.C.

In the result, petition is dismissed. No costs.

Typed to my dictation by Stenographer Gr.I, corrected and pronounced by me in open Court on this the 29<sup>th</sup> day of April, 2019.

Judge, Family Court -cum-  
VII Addl. District & Sessions  
Court, Anantapuramu.

Appendix of evidence  
Witnesses examined for

Petitioner:-

PW1: Palla Shanthi Kiran

Respondent:

-None-

Exhibits marked on behalf of both sides

-NIL-

Judge, Family Court,  
Ananthapuramu.