

*** HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

+ Criminal Revision Case No.806 of 2019

% Dated 17-06-2020.

Palla Shanthi Kiran

..... Petitioner

Versus

\$ 1. The State of A.P. rep. by Public Prosecutor, High Court
Buildings, Amaravati & Anr.

..Respondents

! Counsel for the petitioner : Sri Virupaksha Dattatreya Gouda

^ Counsel for respondent No.1 : Learned Additional Public
Prosecutor

^ Counsel for respondent No.2: Sri V.R. Reddy Kovvuri

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? Cases referred:

1. 1985 (2) ALT 123 = 1985 (2) APLJ (HC) 305 = 1986 CriLJ 317
2. 2012 CriLJ 1960
3. (2014) 1 SCC 188 = AIR 2014 SC 869
4. (1993) 3 SCC 406
5. AIR 1961 Guj 202
6. AIR 1967 Ori 163 = ILR (1967) Cut 439
7. AIR 1984 Del 1 : 1984 Hindu LR 124
8. AIR 1971 P & H 141 = ILR (1970) 2 Punj 551
9. AIR 1964 Bom 83 = ILR (1963) Bom 63
10. AIR 1979 P & H 206 = (1979) 81 Punj LR 382
11. AIR 1980 Raj 102 = 1980 Hindu LR 454
12. AIR 1988 All 150 = (1987) 1 Hindu LR 558
13. AIR 1990 Mad 1 : (1989) 2 Hindu LR 41
14. (1986) 1 HLR 363
15. AIR 1989 Bom 220 = (1989) 1 Hindu LR 708
16. (1990) 2 D & MC 208
17. (1988) 1 HLR 26 = AIR 1989 AP 8 = (1987) 1 Andh LT 631
18. (2000) 6 SCC 359
19. (2019) 4 SCC 376
20. 2019 SCC OnLine SC 1641
21. (2005) 2 SCC 33

IN THE HIGH COURT OF THE STATE OF ANDHRA PRADESH**Criminal Revision Case No.806 of 2019**

Palla Shanthi Kiran

..... Petitioner

Versus

1. The State of Andhra Pradesh, rep. by Public Prosecutor, High
Court Buildings, Amaravati. & Anr.

..Respondents

JUDGMENT PRONOUNCED ON: 17-06-2020

HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? ---
2. Whether the copies of judgment may be
marked to Law Reporters/Journals -Yes-
3. Whether His Lordship wish to see the fair
copy of the Judgment? -Yes-

JUSTICE CHEEKATI MANAVENDRANATH ROY

HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**Criminal Revision Case No.806 of 2019****ORDER:**

Challenge in this Criminal Revision Case is to the order dated 29.04.2019 passed in F.C.O.P.No.32 of 2018 on the file of the Judge, Family Court-cum-Additional District Judge, Anantapuramu, whereby the petition filed by the revision petitioner, whose marriage was annulled by a decree of nullity passed under Section 12 of the Hindu Marriage Act, 1955, claiming monthly maintenance under Section 125 Cr.P.C., was dismissed on the ground that she cannot be termed as a wife or a divorcee as contemplated under Section 125 Cr.P.C.

2. The parties will be referred in this revision as they are arrayed before the trial Court for the sake of convenience.

3. Compendious statement of facts leading to the *lis* in this revision case may be stated as follows:

4. The marriage of the petitioner with the respondent was solemnized on 13.08.2017 as per Hindu rites and customs. Prior to the marriage, during the marriage talks, while fixing the marriage alliance, the respondent and his parents gave the bio-data of the respondent stating that he did M.S. and that he is working as a Design and Production Engineer in Sweden. Therefore, believing that the

respondent is well-placed in employment that the marriage alliance was confirmed and the marriage was performed on 13.08.2017. Dowry of Rs.10.00 Lakhs and 76 tolas of gold, as demanded by the respondent and his parents, were given to him by the parents of the petitioner.

5. After the marriage, when the nuptial ceremony was arranged, the respondent has postponed the ceremony on all the three nights on one pretext or the other without leading any conjugal life with the petitioner. Therefore, their marriage was not consummated. When the respondent proposed to have honeymoon trip, the petitioner readily accepted for the same with a fond hope that their marriage would be consummated. So, the couple went to Mauritius on 17.09.2017 for honeymoon trip and stayed in Mauritius till 23.09.2017. However, to the utter misfortune of the petitioner, their marriage was not consummated even during their honeymoon trip. The respondent threatened the petitioner not to disclose the said fact to anyone.

6. The petitioner also came to know that the respondent is not working as a Design and Production Engineer as stated before the marriage and that he is working only as a Bartender. Whiles, both the petitioner and the respondent left for Sweden on 08.10.2017 where he was working at that time as a Bartender. Later, in the month of November, 2017, the Sweden Government expelled

the respondent. Though the couple stayed in Lohalm till 18.11.2017, their marriage was not consummated. The respondent expressed his inability to consummate the marriage. Therefore, a panchayat was held in the presence of the elders. In the said panchayat, the respondent and his parents demanded Rs.15.00 Lakhs as additional dowry. The respondent also admitted about the non-consummation of the marriage. When the parents of the petitioner requested the respondent to stay for three days at their residence for nuptial ceremony, the respondent has postponed the same on one pretext or the other and he did not turn-up for consummation of the marriage. Therefore, she lodged a report with the police and the same was registered as a case in Crime No.4 of 2018 for offences punishable under Sections 420, 498-A, 506 of IPC r/w. Section 34 of IPC and Sections 3 and 4 of the Dowry Prohibition Act.

7. As the petitioner has no source of income and as she is unable to maintain herself, she has also filed a petition under Section 125 Cr.P.C. against the respondent before the Family Court claiming maintenance at the rate of Rs.30,000/- per month.

8. The respondent opposed the said claim. He has filed his counter denying the allegations made against him in the petition. It is pleaded by him that the petitioner used to pickup quarrels with him on trivial matters and she used to

humiliate him saying that he is a low class, Ex-Bartender and that she came from a high class and rich family and that he is not a suitable match to her. He has pleaded that the petitioner did not allow him to touch her and she always used to drink alcohol and pickup quarrels with him. It is pleaded by him that the marriage was not consummated because of the petitioner as she did not allow him to touch her. It is also stated that the petitioner and her parents demanded Rs.50.00 Lakhs in the presence of the elders and insisted for mutual divorce. As he refused for the same that she foisted a false criminal case against him and his family members. He finally pleaded that as the marriage was performed against the wish of the petitioner and as the respondent belongs to middle class family that she could not adjust with him and she herself discarded him voluntarily. It is his case that at present he lost his job and he has no source of income and as the petitioner hails from a rich family and as she studied M.B.A. that she can maintain herself and thereby prayed for dismissal of the petition.

9. During the course of enquiry, the petitioner alone was examined as PW.1. No other oral or documentary evidence was adduced by her. The respondent reported no evidence and he did not adduce any evidence to substantiate his case.

10. It appears from the record that the petitioner has also filed a petition under Section 12 of the Hindu Marriage Act, 1955, for annulment of her marriage with the respondent on the ground that the respondent is impotent and incapable of performing sexual intercourse with her to fulfill his matrimonial obligations. The said petition in F.C.O.P.No.33 of 2018 on the file of the said Family Court was allowed annulling their marriage by a decree of nullity of marriage passed to that effect.

11. Therefore, before the trial Court, it was contended on behalf of the respondent that in view of the said decree of nullity passed under Section 12 of the Hindu Marriage Act, annulling the said marriage, the petitioner is no more the wife of the respondent and she cannot claim any maintenance under Section 125 Cr.P.C. It is also contended that she does not even come within the inclusive definition of “wife” as per clause (b) of explanation appended to Section 125(1) Cr.P.C. as it is confined only to a divorced wife. In support of the said contention, the learned counsel for the respondent relied on the judgment of this Court rendered in the case of **K. Sivarama Krishna Prasad v. K. Bharathi**¹ wherein a learned Judge of this Court held that when the marriage of the wife was annulled by a decree of nullity passed under Section 12 of the Hindu Marriage Act in a petition filed by her to that effect on the ground that the

¹ 1985 (2) ALT 123 = 1985 (2) APLJ (HC) 305 = 1986 CriLJ 317

husband is impotent, she cannot claim maintenance under Section 125(1) Cr.P.C. and she does not come within the inclusive definition of 'wife' under explanation appended to Section 125 Cr.P.C.

12. The petitioner relied on the judgment of Division Bench of the Kerala High Court before the trial Court, rendered in the case of **T.K. Surendran v. P. Najima Bindu**² wherein it is held that a wife, whose marriage was annulled under Section 12 of the Hindu Marriage Act can be brought within the sweep of inclusive definition of 'divorced wife' as per clause (b) of explanation appended to Section 125 Cr.P.C. and that she is entitled to maintenance under Section 125 Cr.P.C.

13. The learned Judge of the Family Court, after considering the above two judgments of this Court and the Kerala High Court, held that he is bound by the judgment of this Court in **K. Sivarama Krishna Prasad**¹. He further held that as per the ratio laid down in the said judgment, the petitioner, whose marriage was annulled under Section 12 of the Hindu Marriage Act, is not entitled to claim maintenance under Section 125 Cr.P.C. Therefore, he has dismissed the petition filed by her under Section 125 Cr.P.C.

² 2012 CriLJ 1960

14. Aggrieved thereby, the present Criminal Revision Case is preferred by the revision petitioner assailing the legality and validity of the impugned order.

15. Heard learned counsel for the revision petitioner and the learned counsel for the 2nd respondent.

16. The seminal question, in the facts and circumstances of the case, as narrated supra, that emerges for determination in this Criminal Revision Case is, whether a woman, whose marriage was annulled by a decree of nullity passed under Section 12 of the Hindu Marriage Act, can be brought within the sweep of the inclusive definition of “wife” on par with the “divorced wife” as per clause (b) of explanation to Section 125 Cr.P.C. and whether her claim for maintenance under Section 125 Cr.P.C. is legally sustainable? If not, what is the remedy available to her as per law to prevent herself from vagrancy?

17. The material facts in this *lis* are absolutely not in controversy. Admittedly, there was a marriage solemnized between the petitioner and the respondent on 13.08.2017. Admittedly, that the said marriage was not consummated. The petitioner contends that the respondent is impotent and as such, their marriage was not consummated. While admitting the said material fact that their marriage was not consummated, the respondent pleaded in his counter that their marriage was not consummated as the petitioner did

not allow him to touch her. Thus, both the parties are throwing blame against each other for non-consummation of their marriage. Therefore, without entering into any controversy to find out as to who is at fault for non-consummation of their marriage, it is suffice to hold that the fact that remains established in this case is that their marriage is not consummated. It is a matter of record that the petition filed by the petitioner under Section 12 of the Hindu Marriage Act against the respondent to annul their marriage by a decree of nullity on the ground that the respondent is impotent was allowed and a decree of nullity of the said marriage to that effect was passed. The said decree also became final as the respondent did not question the same in the Higher Forum. Therefore, the fact that remains established in this case is that the said marriage was annulled by a decree of nullity passed by a competent court of law under Section 12 of the Hindu Marriage Act on the ground that the respondent is impotent.

18. Now as noticed supra the paramount point that arises for determination in this revision case is, whether a woman, whose marriage was annulled by a decree of nullity under Section 12 of the Hindu Marriage Act can claim maintenance under Section 125 Cr.P.C. on par with a divorced wife and whether her claim under Section 125 Cr.P.C. for maintenance is legally sustainable or not?

19. The legal position in this regard has been dealt with by this Court in **K.Sivarama Krishna Prasad**¹ way back in the year 1985 itself. A similar question on identical facts came up for consideration before the learned Single Judge of this Court in the above case. The facts of the said case are also that wife filed a petition under Section 12 of the Hindu Marriage Act for annulment of marriage on the ground that the husband is impotent. The said petition was allowed annulling the marriage by a decree of nullity. Thereafter, wife filed a petition under Section 125 Cr.P.C. claiming maintenance against the respondent therein on the ground that she is unable to maintain herself. It is sought to be contended in the said case also that as per clause (b) of explanation to Section 125 Cr.P.C. “wife includes a woman who has been divorced by, or has obtained a divorce from her husband and has not remarried” and as such a woman whose marriage was annulled under Section 12 of the Hindu Marriage Act also falls within the sweep of the inclusive definition of “wife” as per clause (b) of explanation to Section 125 Cr.P.C. for the limited purpose of claiming maintenance and as such she is entitled to claim maintenance under Section 125 Cr.P.C.

20. This Court did not accept the said contention. After considering the legal effect of the decrees passed under Sections 11 and 12 of the Hindu Marriage Act and also

considering the inclusive definition of “wife” under clause (b) of explanation to Section 125 Cr.P.C., this Court held as follows: “Dissolution of marriage as a sequel to divorce should not be equated to decree of nullity”. It is further held that 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 Section 15 are fulfilled. **In the event of a decree for nullity, the association of marriage is irrevocably terminated with immediate effect. The explanation under Section 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 Section 11 or Section 12 of the Act.**

21. It is finally held that in view of the decree of nullity of the marriage that was passed, the Court below is not competent to grant maintenance under Section 125 Cr.P.C.

22. However, the learned counsel for the revision petitioner while relying on the judgment of the Division Bench of the Kerala High Court in the case of **T.K.**

Surendran² and also particularly relying on Section 25 of the Hindu Marriage Act, vehemently contended before this Court that a narrow interpretation to clause (b) of explanation to Section 125 Cr.P.C. cannot be given and it cannot be restricted only to divorced wife and the benefit of the explanation has to be extended even to the woman whose marriage was annulled by a decree of nullity under Section 12 of the Hindu Marriage Act to prevent her from vagrancy and to alleviate her distress as a destitute woman by way of granting maintenance to her. He would submit that despite passing of decree of annulment of marriage that Section 25 of the Hindu Marriage Act still preserves the right of a woman to claim maintenance and the statute also retained the jurisdiction of the Court passing the said decree for the purpose of granting maintenance either at the time of passing the said decree or even subsequent thereto and as such, the same benefit conferred on such woman of annulled marriage under Section 25 of the Hindu Marriage Act is to be extended to her to enable her to claim maintenance even under Section 125 Cr.P.C. by bringing her within the sweep of the inclusive definition of “wife” on par with a divorcee under clause (b) of explanation to Section 125 Cr.P.C. In other words, it is his contention that Section 25 of the Hindu Marriage Act is to be read into Section 125 Cr.P.C. and also into clause (b) of explanation to Section 125 Cr.P.C. He also submits that this Section 25 of the Hindu Marriage Act was

not considered by this Court in **K.Sivarama Krishna Prasad**'s¹ case. So, the said judgment requires reconsideration.

23. He would also contend that the judgment of the Division Bench of the Kerala High Court in **T.K. Surendran**² was challenged before the Supreme Court by way of filing a petition for Special Leave to Appeal and the Apex Court dismissed the said S.L.P. in view of the judgment of the Supreme Court in **Badshah v. Urmila Badshah Godse**³ stating that the Supreme Court is not inclined to interfere with the impugned judgment and thereby affirmed the law laid down by the Division Bench of the Kerala High Court granting maintenance under Section 125 Cr.P.C. to the wife of annulled marriage and as such, the judgment of the Division Bench of the Kerala High Court received the seal of approval of the Supreme Court. He contends, therefore, that the ratio laid down in the judgment of the Division Bench of the Kerala High Court which is affirmed by the Supreme Court is to be now followed and preferred to the judgment of the learned Single Judge of this Court. So, placing strong reliance on the Division Bench judgment of Kerala High Court and the dismissal of S.L.P. preferred thereagainst by the Supreme Court and relying on Section 25 of the Hindu Marriage Act, he would submit that petition under Section

³ (2014) 1 SCC 188 = AIR 2014 SC 869

125 Cr.P.C. filed by the petitioner is maintainable and her claim under Section 125 Cr.P.C. is legally sustainable.

24. I have meticulously gone through the ratio laid down in **T.K. Surendran²** and also meticulously considered the scope and object of Section 25 of the Hindu Marriage Act. A perusal of the judgment of the Kerala High Court in **T.K. Surendran²** shows that considering the prime object of Section 125 Cr.P.C. which is to prevent a destitute woman from vagrancy and also considering the fact that provision of Section 125 Cr.P.C. is a measure of social justice, specifically enacted to protect woman and children which falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India, the Kerala High Court held that a narrow interpretation cannot be given to the inclusive definition of wife under clause (b) of explanation to Section 125 Cr.P.C. and a wide and broad definition is to be given to it so as to include even a woman whose marriage was annulled by a decree of nullity passed under Section 12 of the Hindu Marriage Act within the sweep of the said explanation of a divorced woman to enable her to claim maintenance under Section 125 Cr.P.C. to prevent such destitute woman from vagrancy. In a way, in arriving at the said conclusion, the Kerala High Court mainly relied on Section 25 of the Hindu Marriage Act which enables the Court to grant maintenance to a woman while passing any

decree under the Hindu Marriage Act and taking a clue from Section 25 of the Hindu Marriage Act, held that when maintenance to such woman of annulled marriage can be granted under Section 25 of the Hindu Marriage Act, that the said maintenance can also be granted under Section 125 Cr.P.C. to the said woman. Therefore, the Division Bench of the Kerala High Court held that such a woman whose marriage was annulled under Section 12 of the Hindu Marriage Act can be brought within the sweep of inclusive definition of “wife” in clause (b) of explanation to Section 125 Cr.P.C. on par with the divorced woman and her claim for maintenance under Section 125 Cr.P.C. is maintainable.

25. As strong reliance is placed on the ratio laid down in the judgment of the Kerala High Court in **T.K. Surendran²** and on Section 25 of the Hindu Marriage Act, to buttress the contention raised by the learned counsel for the petitioner, this Court has given its anxious and thoughtful consideration to the said contention raised by the learned counsel for the revision petitioner. I am unable to persuade myself to countenance the said contention in view of the specific, clear and unambiguous legal phraseology used both in Section 125 Cr.P.C. and in Section 25 of the Hindu Marriage Act and the interpretation given to Section 25 of the Hindu Marriage Act by the Supreme Court. For better appreciation of the same, it is expedient to extract

explanation to Section 125 Cr.P.C. and Section 25 of the Hindu Marriage Act for a comparative study.

26. Explanation to Section 125 Cr.P.C. reads thus:

“Explanation.- For the purposes of this Chapter, -

(a)

(b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.”

27. Chapter-IX of Cr.P.C. deals with grant of maintenance to a wife. It starts with Section 125 Cr.P.C. “Wife” for the purposes of Chapter-IX means a legally wedded wife of a subsisting marriage. The intention of the legislature under Section 125 Cr.P.C. is to provide maintenance to a legally wedded wife who was neglected by her husband. The only exception is a divorced wife as per explanation (b) of Section 125 Cr.P.C. The intention of the legislature to confine the said inclusive definition only to a divorced wife for the purpose of granting maintenance under Section 125 Cr.P.C. is very much clear from the language used in Section 125 Cr.P.C. It is not the intention of the legislature to include any other woman viz., wife of a void marriage, or a wife of an annulled marriage, under Sections 11 and 12 of the Hindu Marriage Act, within the ambit of the said explanation.

28. Section 25 of the Hindu Marriage Act reads thus:

“25. Permanent alimony and maintenance.- (1) Any court exercising jurisdiction under this Act, may, at the time

of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.”

29. A reading of this Section makes it manifest that either at the time of passing any decree under the said Act or at any time subsequent thereto that the Court which passed the said decree on an application made to it either by the wife or the husband as the case may be order the respondent to pay to the applicant for her or his maintenance which the Court deems just in the circumstances of the case. Therefore, when a decree under Section 12 of the Hindu

Marriage Act is passed, the wife of such annulled marriage can claim maintenance under Section 25 of the Act. It is only the said Court, which passed the decree alone is competent to grant maintenance under Section 25 of the Hindu Marriage Act. The said power under Section 25 of the Hindu Marriage Act cannot be exercised by a Court exercising jurisdiction under Section 125 Cr.P.C.

30. It is significant to note that the very opening words of the Section starts with the expression “any Court exercising jurisdiction under this Act” which clearly indicates that it is only the Court which passed any decree while exercising the jurisdiction under the Hindu Marriage Act alone is competent to exercise the power conferred under Section 25 of the Hindu Marriage Act to grant any such maintenance either at the time of passing such decree or subsequent thereto on an application made to that effect either by the wife or the husband as the case may be. Therefore, it is a special provision which is an enabling provision which conferred exclusive jurisdiction only on the Court exercising jurisdiction under the Hindu Marriage Act while passing any decree under the Hindu Marriage Act or at any time subsequent thereto to grant maintenance to the deserving party to the marriage which was annulled. The expression “at the time of passing **any** decree” again makes it clear that it is wide enough to include all decrees which

may be passed under the Hindu Marriage Act i.e., a decree under Section 9 for restitution of conjugal rights; a decree under Section 10 for judicial separation; a decree under Section 11 declaring the marriage null and void *ab initio*; a decree under Section 12 annulling the marriage by a decree of nullity; and a decree of divorce under Section 13 of the Hindu Marriage Act etc. It is not confined to only one or any particular decree that may be passed under the Act. It encompasses all decrees that may be passed under the Act which includes a decree passed under Section 12 of the Hindu Marriage Act of annulling the marriage by way of a decree of nullity.

31. Now, the crucial question that needs to be considered, in the light of the submissions made by the learned counsel for the revision petitioner, is owing to the fact that the statute enables the wife of annulled marriage to claim maintenance under Section 25 of the Hindu Marriage Act either at the time of passing of the decree or subsequent thereto, whether it is to be held that she is also entitled to claim maintenance under Section 125 Cr.P.C. To put it differently, by virtue of such right conferred on a woman of annulled marriage to claim maintenance under Section 25 of the Hindu Marriage Act, whether she can be brought within the sweep of inclusive definition of “divorced wife” as per clause (b) of explanation to Section 125 Cr.P.C. or not?

32. In the considered view of this Court, the answer must be emphatic no. In this regard, it is relevant to note that the proceedings under Section 25 of the Hindu Marriage Act and the proceedings under Section 125 Cr.P.C. are independent and distinct proceedings. They are not complementary to each other. They do not go together. Section 125 Cr.P.C. is also not supplementary to Section 25 of the Hindu Marriage Act, except for a divorced wife. As already noticed supra, the very opening words of Section 25 starts with “any Court exercising jurisdiction under this Act may at the time of passing any decree or any time subsequent thereto”. So, it clearly indicates that the said power to grant maintenance under Section 25 is exclusively conferred on the Court exercising jurisdiction under the Hindu Marriage Act. So, the said exclusive power conferred on the said Court exercising jurisdiction under the Hindu Marriage Act cannot be extended to the Judicial Magistrate of First Class or to the Court, which is exercising jurisdiction under Section 125 Cr.P.C.

33. In this context it is relevant to consider the law enunciated by the Supreme Court in the case of **Chand Dhawan v. Jawaharlal Dhawan**⁴. It is held by the Apex Court in no uncertain terms that relief under one statute cannot be claimed in proceedings under another statute. It is further held at the end of para.25 of the judgment as

⁴ (1993) 3 SCC 406

follows: “The court is not at liberty to grant relief of maintenance simpliciter obtainable under one Act in proceedings under the other. As is evident, both the statutes are codified as such and are clear on their subjects and by liberality of interpretation inter-changeability cannot be permitted so as to destroy the distinction on the subject of maintenance.”

34. At para.28 of the said judgment, it is held as follows:

“On the afore-analysis and distinction drawn between the fora and perceptives, it is difficult to come to the view that a claim which is ancillary or incidental in a matrimonial court under the Hindu Marriage Act could be tried as an original claim in that court; a claim which may for the moment be assumed as valid, otherwise agitable in the civil court under the Hindu Adoptions and Maintenance Act, 1956. As said before, these two enactments keeping apart, the remaining two, i.e., Hindu Succession Act, 1956 and Hindu Minority and Guardianship Act, 1956 are a package of enactments, being part of one socio-legal scheme applicable to Hindus. **When distinctive claims are covered distinctly under two different statutes and agitable in the courts conceived of thereunder, it is difficult to sustain the plea that when a claim is otherwise valid, choosing of one forum or the other should be of no consequence. These are not mere procedural technicalities or irregularities, as termed by one line of reasoning by some of the High Courts. These are matters which go to the root of the jurisdiction.**”

35. Thus, the Apex Court rejected the contention of the appellant therein that if the claim of the wife for maintenance was otherwise justified on fact and law, the procedures and the fora should not stand in her way of claiming maintenance.

36. Therefore, the legal position is now clear that a power conferred on the Court under one statute cannot be exercised by the Court under different statute. To elucidate more clearly, the incidental power conferred on the Court exercising jurisdiction under the Hindu Marriage Act under Section 25 of the Act either at the time of passing decree under the said Act or subsequent thereto, cannot be extended to the Court exercising its jurisdiction under Section 125 Cr.P.C. So, also the benefit or legal right conferred under Section 25 of the Hindu Marriage Act cannot be claimed under Section 125 Cr.P.C. The right to claim maintenance under Section 125 Cr.P.C. by a woman of annulled marriage cannot be derived from Section 25 of the Hindu Marriage Act. Even the power of the Court exercising jurisdiction under the Hindu Marriage Act to grant maintenance to woman of annulled marriage under Section 25 is ancillary and incidental power. The said power can be exercised by the said Court only at the time of passing decree disrupting the marital status of the spouses or subsequent

thereto. Therefore, the said contention of the learned counsel for the revision petitioner is legally unsustainable.

37. The important legal aspect to be considered in the present context is the scope, extent and the field of operation of Section 25 of the Hindu Marriage Act. The phrase “at the time of passing any decree under this Act” used in Section 25 of the Hindu Marriage Act, has a different connotation.

38. Several High Courts have taken a view that the expression “passing a decree” used in Section 25 of the Hindu Marriage Act means granting a relief by allowing the petition disrupting the marriage and held that maintenance under Section 25 of the Hindu Marriage Act can be claimed only when petitions are allowed by passing decrees and the said power under Section 25 of the Hindu Marriage Act cannot be invoked when the petitions are dismissed and the reliefs sought for are not granted. A few High Courts have taken a different view and held that passing a decree means either allowing the petition or dismissing the petition and as such, the power under Section 25 of the Hindu Marriage Act can be invoked even when the petitions are dismissed. The Division Benches of Gujarat High Court in **Kadia Harilal Purshottam v. Kadia Lilavati Gokaldas**⁵, Orissa High Court in **Akasam Chinna Babu v. Akasam Parbati**⁶, Delhi High

⁵ AIR 1961 Guj 202

⁶ AIR 1967 Ori 163 = ILR (1967) Cut 439

Court in **Sushama (Smt) v. Satish Chander**⁷, a three-Judge Full Bench of Punjab and Haryana High Court in **Durga Das v. Tara Rani (Smt)**⁸, a single Judge Benches of Bombay High Court in **Shantaram Dinkar Karnik v. Malti Shantaram Karnik**⁹, Punjab and Haryana High Court in **Gurcharan Kaur v. Ram Chand**¹⁰, Rajasthan High Court in **Darshan Singh v. Mst Daso**¹¹, Allahabad High Court in **Vinod Chandra Sharma v. Rajesh Pathak (Smt)**¹² and the Madras High Court in **Ranganatham v. Shyamala**¹³ have taken a view that only when the petitions filed under Sections 9 to 13 of the Hindu Marriage Act are allowed that Section 25 of the Hindu Marriage Act can be invoked for grant of maintenance and when such petitions are dismissed, Section 25 of the Hindu Marriage Act cannot be invoked, whereas a single Judge Bench of the Punjab and Haryana in **Swaran Lata (Smt) v. Sukhvinder Kumar**¹⁴, Bombay High Court in **Sadanand Sahadeo Rawool v. Sulochana Sadanand Rawool**¹⁵, Madhya Pradesh in **Surendra Singh Chauhan v. Mamta Chauhan**¹⁶ and Andhra Pradesh High Court in **Silla Jagannadha Prasad**

⁷ AIR 1984 Del 1 : 1984 Hindu LR 124

⁸ AIR 1971 P & H 141 = ILR (1970) 2 Punj 551

⁹ AIR 1964 Bom 83 = ILR (1963) Bom 63

¹⁰ AIR 1979 P & H 206 = (1979) 81 Punj LR 382

¹¹ AIR 1980 Raj 102 = 1980 Hindu LR 454

¹² AIR 1988 All 150 = (1987) 1 Hindu LR 558

¹³ AIR 1990 Mad 1 : (1989) 2 Hindu LR 41

¹⁴ (1986) 1 HLR 363

¹⁵ AIR 1989 Bom 220 = (1989) 1 Hindu LR 708

¹⁶ (1990) 2 D & MC 208

alias Ram v. Silla Lalitha Kumari (Smt)¹⁷ have taken a different view that whether the relief is granted or not, it culminates in a decree and the wife can claim maintenance under Section 25 of the Hindu Marriage Act irrespective of the fact that whether the main petition is allowed or dismissed. Thus, in view of the divergent views expressed by various High Courts, the Supreme Court in **Chand Dhawan**'s⁴ case, after considering all these judgments of various High Courts, ultimately, authoritatively held that the expression "at the time of passing any decree", in the context, refers to only any decree passed under Sections 9 to 13 of the Hindu Marriage Act **affecting or disrupting the marital status by allowing the said petitions, but does not include any order dismissing the petition under any of those Sections, thereby sustaining the marital status.** The Supreme Court overruled the judgments of the High Courts which have taken the contrary view.

39. Therefore, it is clear as per the ratio laid down in the above judgment of the Apex Court that in case of dismissal of petition filed under Sections 9 to 13, no maintenance can be granted to wife petitioning under Section 25 of the Hindu Marriage Act. However, she can claim maintenance under Section 18(1) of the Hindu Adoptions and Maintenance Act or under Section 125 Cr.P.C.

¹⁷ (1988) 1 HLR 26 = AIR 1989 AP 8 = (1987) 1 Andh LT 631

40. In this context, it is also relevant to note that the Rajasthan High Court in the case of **Darshan Singh**¹¹ explained the distinction between the expressions “passing any decree” occurring in Section 25 and the expression “decree made” used in Section 28 of the Hindu Marriage Act. The Rajasthan High Court has noticed that the expression “passing any decree” is used in Section 25, whereas the expression “decree made” is used in Section 28 of the Hindu Marriage Act and held that passing of any decree as mentioned in Section 25 means granting any relief of the nature stated in Sections 9 to 13 of the Hindu Marriage Act and the words making any decree used in Section 28 of the Act means granting or refusing any relief.

41. A Division Bench of the Delhi High Court in **Sushama (Smt.)**⁷ affirmatively took the view that passing of the decree in Section 25 means the passing of a decree of divorce, nullity, restitution of conjugal rights or judicial separation and not the passing of a decree dismissing the petition. It is further held that if the petition fails then no decree is passed, i.e., the decree is denied to the applicant and therefore, alimony cannot be granted in a case where a decree is refused because in such a case the marriage subsists. The word “decree” in matrimonial cases was held to have been used in a special sense different from that in which it is used in the Civil Procedure Code.

42. Thus, having noticed the two different expressions used in Sections 25 and 28 of the Hindu Marriage Act i.e., “passing any decree” and “making any decree”, it was interpreted that the expression “passing any decree” under Section 25 means granting the relief of the nature specified in Sections 9 to 13 of the Hindu Marriage Act disrupting the marital status and it does not include the dismissal of the petitions refusing to grant the said reliefs. These judgments are quoted with approval by the Supreme Court in the above **Chand Dhawan**'s⁴ case and the Supreme Court after detailed survey of law, authoritatively held that Section 25 of the Hindu Marriage Act can be invoked only when the petitions are allowed granting reliefs under Sections 9 to 13 of the Hindu Marriage Act disrupting the marital status of the parties and the same cannot be invoked when the petitions are dismissed sustaining the marital status between the parties to the marriage.

43. The logic is simple that if the petition of the spouse to declare the marriage as null and void under Section 11 or to annul the marriage under Section 12 of the Hindu Marriage Act is dismissed then the wife retains her status as legally wedded wife and she can claim maintenance as per the right conferred on her under various enactments like Section 18 of the Hindu Adoptions and Maintenance Act, Section 125 Cr.P.C. and even under the Protection of Woman

from Domestic Violence Act etc. It is only in the event of allowing the petition for declaring the marriage as null and void or annulling the marriage by a decree of nullity under Sections 11 or 12 of the Hindu Marriage Act, she loses her status as the wife of the respondent therein. So, in the said situation, when a woman loses her status as wife consequent upon passing decrees under Sections 11 and 12 of the Hindu Marriage Act, to prevent such woman, whose marriage is terminated by such decrees, from vagrancy and from being a destitute woman, Section 25 of the Hindu Marriage Act, a special provision is incorporated in the Hindu Marriage Act to enable such woman of annulled marriages to claim maintenance notwithstanding the decree that was passed annulling the marriage or declaring the marriage as void *ab initio*.

44. The legal position in this regard has been also authoritatively held and clearly enunciated by the Supreme Court in the above **Chand Dhawan**'s⁴ case. It is held, in the said judgment, while dealing with scope and field of operation of Section 25 of the Hindu Marriage Act in detail, as follows:

“...the legislature while codifying the Hindu 'Marriage Act preserved the right of permanent maintenance in favour of the husband or the wife, as the case may be, dependent on the court passing a decree of the kind as envisaged under Sections 9 to 14 of the Act. In other words without the marital status being affected or disrupted by the matrimonial court under the Hindu

Marriage Act the claim of permanent alimony was not to be valid as ancillary or incidental to such affectation or disruption. The wife's claim to maintenance necessarily has then to be agitated under the Hindu Adoptions and Maintenance Act, 1956 which is a legislative measure later in point of time than the Hindu Marriage Act, 1955, though part of the same socio-legal scheme revolutionizing the law applicable to Hindus.”

45. At para.25 of the judgment, the Supreme Court held as follows:

“We have thus, in this light, no hesitation in coming to the view that when by court intervention under the Hindu Marriage Act, affectation or disruption to the marital status has come by, at that juncture, while passing the decree, it undoubtedly has the power to grant permanent alimony or maintenance, if that power is invoked at that time. It also retains the power subsequently to be invoked on application by a party entitled to relief. And such order, in all events, remains within the jurisdiction of that court, to be altered or modified as future situations may warrant. **In contrast, without affectation or disruption of the marital status, a Hindu wife sustaining that status can live in separation from her husband, and whether she is living in that state or not, her claim to maintenance stands preserved in codification under Section 18 (1) of the Hindu Adoptions and Maintenance Act.**”

46. Thus, from the ratio laid down in the above judgment, while interpreting Section 25 of the Hindu Marriage Act, it is made clear that Section 25 of the Act for the purpose of granting maintenance can be invoked only when the petition is allowed granting a decree of declaring the marriage as void or annulling the marriage which would have the effect of affectation or disruption of the marital

status. But, it does not include order dismissing the petition under any of those Sections thereby sustaining the marital status. Therefore, when the petitions under Sections 11 and 12 of the Hindu Marriage Act are dismissed, no maintenance can be granted to the wife under Section 25 of the Hindu Marriage Act. However, she can claim maintenance under Section 18(1) of the Hindu Adoptions and Maintenance Act or under Section 125 Cr.P.C. as her marital status is not disrupted and her status as legally wedded wife continues.

47. So, this analogy clearly shows that Section 25 of the Hindu Marriage Act is enacted for a specific purpose and with a laudable object to enable the wife whose marriage was disrupted by way of passing such decrees to claim maintenance notwithstanding passing of such decrees terminating the marriage, to prevent herself from vagrancy and being a destitute. Therefore, Section 25 of the Hindu Marriage Act completely operates in a different field, sphere and in a different situation. Its application completely depends on disrupting the marital status by a decree of the Court, whereas, Section 18 of the Hindu Adoptions and Maintenance Act and Section 125 Cr.P.C. etc, operates in a different sphere where the wife still enjoys her status as a legally wedded wife. Divorced wife is only an exception under Section 125 Cr.P.C. This is the dichotomy which lies between the two provisions i.e. between Section 25 of the

Hindu Marriage Act on one hand and Section 125 Cr.P.C. and Section 18 of the Hindu Adoptions and Maintenance Act on the other hand. Thus, it is clear that they are distinct and independent provisions of law completely operating in two different situations.

48. At the first blush on a superficial examination of the scope, extent and the field of operation of the said provisions it may appear that there is no distinction between these two provisions, but, in fact, on a deeper examination, it would be clear that there is a vast difference which can be clearly perceived from the law laid down by the Apex Court in the above **Chand Dhawan**'s⁴ case. Therefore, when Section 125 Cr.P.C. and Section 25 of the Hindu Marriage Act are two independent provisions of law, with different scope and extent and when they operate in two different fields i.e. one operates when the wife enjoys the status as legally wedded wife and the other operates when the wife loses her status as legally wedded wife, it is legally impermissible to bring such category women whose marriages are annulled by decree of nullity under Section 12 of the Hindu Marriage Act within the sweep of inclusive definition of "wife" in clause (b) of explanation to Section 125(1) Cr.P.C.

49. Thus, after examining the matter from all possible angles, the only irresistible conclusion that can be arrived at in the facts and circumstances of the case is that a woman of

annulled marriage cannot claim maintenance under Section 125 Cr.P.C.

50. The legal quandary prevailing in this regard prior to the judgment of the Supreme Court in **Chand Dhawan's**⁴ case now stands completely cleared by the ratio laid down by the Apex Court in the said case.

51. To sum-up the legal position, it is made clear that Section 25 of the Hindu Marriage Act is specifically meant to enable the women whose marriages are terminated and disrupted by way of decrees passed under the Hindu Marriage Act to claim maintenance, whereas, Section 18(1) of the Hindu Adoption and Maintenance Act and Section 125 Cr.P.C. are meant to enable woman who enjoys the status as legally wedded wife to claim maintenance. However, divorced wife is the only exception under Section 125 Cr.P.C. These provisions completely operate in two different fields and in two different situations. Both statutes are codified as such and are clear on their subjects and by liberality of interpretation interchangeability cannot be permitted so as to destroy the distinction on the subject of maintenance.

52. As regards the other judgment relied on by the learned counsel for the revision petitioner of the Apex Court in the case of **Badshah**³, it is a case where the husband played fraud by suppressing the material fact of his previous

marriage and married a woman for the second time. He resisted the claim of the second wife for maintenance under Section 125 Cr.P.C. on the ground that his second marriage with her during the subsistence of his first marriage is a nullity and void *ab initio*. The Supreme Court held that the husband cannot take advantage of his own fault and defeat the claim of the innocent woman who married him without the knowledge of his first marriage and that her claim under Section 125 Cr.P.C. is maintainable.

53. This judgment, in my considered view, does not throw any light on the present controversy to resolve the same. This case is not dealing with the effect of annulling the marriage by a decree of nullity under Section 12 of the Hindu Marriage Act on the claim made under Section 125 Cr.P.C. It was a straight case where wife claimed maintenance under Section 125 Cr.P.C. and husband without obtaining any decree of nullity sought to defeat the claim of his second wife on the ground that his second marriage is a void marriage. The Supreme Court did not accept his contention on the ground that he cannot take advantage of his own fault and defeat the claim of innocent second wife who married him without the knowledge of his first marriage. It is significant to note that the right of wife, whose marriage was annulled under Section 12 of the Hindu Marriage Act, to claim maintenance under Section 125

Cr.P.C. is not the issue involved in the said case. Therefore, this case is clearly distinguishable on facts and law. So, this judgment cannot be considered as an authority of laying down any law relating to the actual controversy involved in this case.

54. Learned counsel for the revision petitioner would further submit that when the judgment of the Division Bench of Kerala High Court in **T.K. Surendran²** was challenged before the Supreme Court by way of preferring Special Leave Petition, the same was dismissed by the Supreme Court relying on the ratio laid down in the above **Badshah's³** case and as such, it shall be construed that the ratio laid down in the judgment of **T.K. Surendran²** case received the seal of approval by the Apex Court and **T.K. Surendran²** case is to be considered as a binding precedent on the point of law. The said contention is again legally unsustainable.

55. It may be seen here that the Supreme Court did not grant leave in the said S.L.P. and it was not converted into appeal and the case is not considered by the Supreme Court on merits and no reasoned order was passed affirming the ratio laid down by the Division Bench of the Kerala High Court in **T.K. Surendran²**. It is now well settled law that when S.L.P. was dismissed without granting leave as sought for, it does not amount to accepting the findings or ratio laid

down by the Court in the judgment under challenge and it also does not amount to giving stamp of approval by the Supreme Court to the ratio laid down in the judgment under challenge. It is only when leave is granted in the S.L.P. and it is converted into appeal and the Supreme Court while dealing with the merits of the case in detail, passes a reasoned order affirming the ratio laid down in the judgment under challenge, then the said Judgment merges into the judgment of the Supreme Court in the appeal and it can be treated as a binding precedent. The legal position in this regard is not an undecided question of law and it is well-settled.

56. In **Kunhayammed v. State of Kerala**¹⁸ the Apex Court held that an order refusing special leave to appeal may be a non-speaking order or a speaking one, in either case, it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed. It is also held in the said case that the said view has been adopted in plethora of judgments of the Supreme Court. In **Khoday Distilleries v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.**¹⁹, the Apex Court held that “there has been no pronouncement by

¹⁸ (2000) 6 SCC 359

¹⁹ (2019) 4 SCC 376

this Court constituting the law of the land as to the interpretation. In such a situation, it is open for us to proceed to decide the instant appeals uninfluenced by the prior orders of this Court dismissing SLPs against the grant of relief to drivers placed similarly as the appellants herein.”

57. Relying on the aforesaid earlier judgments of the Supreme Court, the Supreme Court in the case of **P. Singaravelan v. District Collector, Tiruppur & D.T.**²⁰, held that it is well-settled that the dismissal of an SLP against an order or judgment of a lower forum is not an affirmation of the same. If such an order of the Supreme Court is non-speaking, it does not constitute a declaration of law under Article 141 of the Constitution of India, or attract the doctrine of merger.

58. Therefore, the legal position is now made very clear that the mere fact that the Supreme Court dismissed the SLP preferred against the Division Bench judgment of the Kerala High Court, cannot be taken as affirming the ratio laid down in the judgment of the Kerala High Court as has been contended by the learned counsel for the petitioner.

59. In view of the legal position discussed supra in detail, this Court is of the view that the object of preventing woman of annulled marriage from vagrancy and from being

²⁰ 2019 SCC OnLine SC 1641

destitute stands fulfilled in the circumstances of the case on account of making a provision for the said purpose by way of incorporating Section 25 of the Hindu Marriage Act to enable a woman who obtained a decree for annulment of marriage to claim maintenance under Section 25 of the Hindu Marriage Act. She can as well claim maintenance under Section 25 of the Hindu Marriage Act. It is not as though that she is left with no remedy even after granting a decree of annulment of the marriage and thereby terminating her marriage. An efficacious remedy to claim maintenance under Section 25 of the Hindu Marriage Act either at the time of passing the decree or even subsequent thereto is made available to her. When such efficacious remedy is made available to her, in my considered view, the said wide interpretation to the word “wife” under clause (b) of explanation to Section 125 Cr.P.C. is not warranted in the given facts and circumstances of the case. When efficacious legal remedy is available under Section 25 of the Hindu Marriage Act, no effort need be made to widen the scope of the definition of “wife” under clause (b) of explanation to Section 125 Cr.P.C.

60. The Apex Court also in **Rameshchandra Rampratapji Daga v. Rameshwari Rameshchanra Daga**²¹ held that permanent alimony and maintenance can be

²¹ (2005) 2 SCC 33

granted to spouse whose marriage has been declared as null and void under Section 25 of the Hindu Marriage Act. The words “any decree” in sub-section (1) of Section 25 of the Hindu Marriage Act encompasses within the expression *all kinds of decrees* as contained under Sections 9, 10, 11, 12 and 13 of the Hindu Marriage Act. It is also held that Section 25 of the Hindu Marriage Act is an enabling provision whereunder the Court can grant relief to spouse having regard to the facts and circumstances of the case.

61. Therefore, in the light of the above discussion, this Court has correctly interpreted the explanation to Section 125 Cr.P.C. and laid down the correct proposition of law in **K. Sivarama Krishna Prasad**¹. It is rightly held that the explanation under Section 125 Cr.P.C. 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 Sections 11 or 12 of the Hindu Marriage Act. It is also rightly held in the said case that dissolution of marriage as a sequel to divorce should not be equated to decree of nullity. So, it does not require reconsideration as contended by the learned counsel for the petitioner.

62. Therefore, the petitioner herein whose marriage was annulled by a decree of nullity under Section 12 of the Hindu Marriage Act on her application can as well claim

maintenance either at the time of passing the said decree or even subsequent thereto under Section 25 of the Hindu Marriage Act. Without invoking the said specific provision which enables her to claim maintenance under Section 25 of the Hindu Marriage Act, for the reasons best known to her, she has erroneously invoked Section 125 Cr.P.C. to claim maintenance.

63. So, still it is open to the revision petitioner herein, who obtained a decree of annulment of marriage under Section 12 of the Hindu Marriage Act to approach the same Court under Section 25 of the Hindu Marriage Act to claim maintenance as the Court even subsequent to the grant of decree is empowered to grant maintenance under Section 25 of the Hindu Marriage Act. The point is answered accordingly.

64. In the light of the above discussion, the impugned order of the lower Court is perfectly sustainable under law and it warrants no interference in this Criminal Revision Case. Therefore, the Criminal Revision Case is liable to be dismissed.

65. Resultantly, the Criminal Revision Case is dismissed. However, the revision petitioner is at liberty to approach the Court which passed the decree of annulment of marriage under Section 12 of the Hindu Marriage Act and file

an application under Section 25 of the Hindu Marriage Act to claim maintenance against the 2nd respondent herein.

Consequently, miscellaneous applications, pending if any, shall also stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

Date:17-06-2020.

Note:
L.R. copy to be marked.
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