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**(2008) 07 AHC CK 0058**  
**In the Allahabad High Court**

Maresh Chandra Dwivedi

APPELLANT

Vs

State of U.P. and Smt. Manorma

RESPONDENT

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**Date of Decision :** 16-07-2008

**Acts Referred:**

Contract Act, 1872 — Section 23

Criminal Procedure Code, 1973 (CrPC) — Section 125, 127, 25

**Citation :** (2009) CriLJ 139 : (2009) 2 DMC 782 : (2009) 5 RCR(Civil) 389 :  
(2009) 5 RCR(Criminal) 57

**Hon'ble Judges :** M.K. Mittal, J

**Bench :** Single Bench

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## Judgement

M.K. Mittal, J.—Criminal Revision No. 1145 of 2005 has been filed by Smt Manorama for setting aside the order dated 18.1.2005 passed by Principal Judge, Family Court, Kanpur Nagar, in Misc Case No. 33 of 2002 whereby he rejected the application filed by Smt Manorama u/s 127 Cr.P.C. for enhancement of the maintenance amount awarded u/s 125 Cr.P.C. by order dated 12.4.1994 @ Rs. 200/- per month and earlier enhanced to Rs. 300/- by order dated 26.7.1996 u/s 127 Cr.P.C. Criminal Revision No. 3228 of 2007 has been filed by Mahesh Chandra Dwivedi for setting aside the order dated 19.7.2007 passed by Principal Judge, Family Court, Kanpur in Misc Case No. 35 of 2006 whereby he rejected the application filed by husband Mahesh Chandra Dwivedi against Smt Manorama u/s 127 Cr.P.C. for cancelling the order dated 26.7.1996 whereby the maintenance amount was enhanced from Rs. 200/- to Rs. 300/- per month u/s 127 Cr.P.C. Since these two revisions arise between the same parties and the facts are common they have been heard together and are being decided by one order.

2. I have heard Sri Bal Mukund, learned Counsel for Smt Manorama, Sri K.M. Asthana, learned Counsel for Mahesh Chandra Dwivedi, learned A.G.A. and perused the material on record.

3. Brief facts of the case are that Smt Manorama filed an application u/s 125

Cr.P.C. for maintenance and the same was allowed by order dated 12.4.1994 and maintenance was awarded @ Rs. 200/- per month. Later on Smt Manorma filed an application for enhancement of the maintenance amount u/s 127 Cr.P.C. and by order dated 26.7.1996 same was enhanced to Rs. 300 per month. Again Smt Manorama filed an application for enhancement u/s 127 Cr.P.C. as cost of living had increased and it had become difficult for her to maintain herself.

4. According to Smt Manorama her husband Mahesh Chandra Dwivedi a Class IV employee in a college, was getting Rs. 6000/- per month as salary and was also earning from private tuition and had agricultural income and she prayed that amount be enhanced to Rs. 1000/- per month. In reply Mahesh Chandra Dwivedi pleaded that it was wrong to say that Smt Manorama was not able to maintain herself because of poverty. She is living with her father and he has no son and also has agricultural land as well as works in a private job. Smt Manorama was also working in a private company and had good financial condition. Mahesh Chandra Dwivedi also pleaded that he was hardly getting Rs. 4600/- per month and had to maintain his wife, children and aged mother. He also pleaded that in original suit No. 97 of 1989, Mahesh Chandra Dwivedi v. Smt Manoram, parties had entered into a compromise in the Court of Civil Judge, which was accepted and the suit for divorce was decreed. It was also agreed that they would have no concern with each other and at that time he had also paid Rs. 10,000/- as maintenance allowance in lumpsum and Smt Manorama had agreed that she would never file any claim in future regarding maintenance. In that matter learned Judge, Family Court held that there was a compromise between the parties and the application for enhancement was filed against the terms and conditions of the compromise and therefore he rejected the application u/s 127 Cr.P.C.

5. Mahesh Chandra Dwivedi filed an application u/s 127 Cr.P.C. on 6.3.2006 and prayed that on the basis of the compromise decree passed in the Original Suit No. 97 of 1989 recovery warrant issued against him as well as the enhancement order dated 26.7.1996 passed in Case No. 64 of 1996 be cancelled. He contended that the parties had agreed in the divorce case and that was decided on the basis of mutual consent and Smt Manorama had taken Rs. 10,000/- as final payment for maintenance and was not entitled to claim any thing in future. He has also contended that in petition u/s 125 Cr.P.C. an order was passed on 12.4.1994 and an amount of Rs. 200 was fixed for maintenance and due to his ignorance he started making payment of that amount and also paid the enhanced amount till 2005 whereas Smt Manorama has good financial condition. Smt Manorama filed objection in this case and contended that the application u/s 125 Cr.P.C. was decided on merits and the order enhancing the amount was also justified. There was no ground to cancel the earlier order and also there was no ground to cancel the recovery warrant. It had also been contended that the compromise entered in the divorce proceedings did not effect the proceedings u/s 125 Cr.P.C.

6. Learned Judge, Family Court by order dated 19.7.2007 held that earlier it was held in the case between the parties that the right u/s 125 Cr.P.C. would not be curtailed on the basis of the compromise entered into between the parties and that the order passed u/s 125 Cr.P.C. and the order dated 26.7.1996 u/s 127 Cr.P.C. had become final as the same were not challenged. Therefore learned Judge rejected the application filed by Mahesh Chandra Dwivedi, u/s 127 Cr.P.C.

7. Feeling aggrieved the revisions have been filed by both the parties. The main question involved in these revisions is whether the wife is entitled to claim maintenance u/s 125 Cr.P.C. even after the compromise decree has been passed between them wherein the wife accepts the lump sum amount for her maintenance and agrees not to file any claim for maintenance in future.

8. Learned counsel for Mahesh Chandra Dwivedi has contended that the compromise was based on mutual consent and therefore in view of Section 125(4) Cr.P.C. Smt Manorama is not entitled for any maintenance or enhanced maintenance u/s 125 Cr.P.C. or 127 Cr.P.C. As against it learned Counsel for Smt Manorama has contended that the provisions of Section 125 Cr.P.C. are independent of divorce proceedings and the words "living separately by mutual consent" do not cover divorce or settlement for maintenance in divorce case by mutual consent.

9. Section 125(4) Cr.P.C. reads as under:

No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceedings as the case may be 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.

10. In the case of Vanamala (Smt) Vs. H.M. Ranganatha Bhatta, , it has been held by Hon''ble Apex Court that a wife who obtains divorce by mutual consent cannot be denied maintenance by virtue of Section 125(4) of the Code. If the marriage between the parties is terminated by a decree of consent divorce, that would not amount to live separately by mutual consent.

11. In the case of Rohtash Singh Vs. Smt. Ramendri and Others, Hon''ble Apex Court has held that on account of explanation (b) to Sub Section 1 of Section 125 of the Code, a woman, who has been divorced by her husband on account of a decree passed by the Family Court under the Hindu Marriage Act, continues to enjoy the status of a wife for the limited purpose of claiming maintenance allowance from her ex-husband. The claim of maintenance u/s 125 of the Code by a divorced wife is based on the foundation provided under explanation (b) to Sub Section 1 of Section 25 of the Code. If the divorced wife is unable to maintain herself, and if she has not re-married, she will be entitled to claim maintenance allowance. A woman after divorce becomes a destitute. If she is not able to maintain herself and remains unmarried, the man who was once her husband continues to be under a statutory duty and obligation to provide

maintenance to her. Therefore I am of the view that even if compromise decree has been passed between the parties, it is not effected by Section 125(4) of the Code and Smt Manorama is entitled to claim maintenance from Mahesh Chandra Dwivedi till she re-marries and is unable to maintain herself.

11. Now it has to be seen whether Smt Manorama is debarred or stopped from claiming the said maintenance on the plea that at the time of granting of divorce decree by mutual consent she had agreed not to claim maintenance from the petitioner in future. Right to claim maintenance by the wife, children and the old parents who are not capable to maintain themselves has been provided u/s 125 of the Code as public policy by the State. Definition of wife has also been given extended meaning by the Statute in order to provide the security in life to a wife whose marriage has been dissolved by a decree of divorce and who being destitute is unable to maintain herself. This is matter of public policy and not of an individual. In such circumstances, the statutory right which has been conferred on a person under public policy cannot be waived by the said person by mutual agreement.

12. It is also well settled that any contract which is opposed to public policy is void u/s 23 of the Indian Contract Act 1872, and the same cannot be enforced in a Court of Law. If the object or consideration of an agreement would defeat the provisions of any law, and if it is against the public policy, the agreement will be treated as unlawful and void. In a similar situation in the case of Sushil Kumar Vs. Neelam, it has been held that inspite of any such agreement wife could not be debarred from claiming maintenance u/s 125 Cr.P.C.

13. In view of this position, I come to the conclusion that even if there was any divorce by mutual agreement and the husband Mahesh Chandra Dwivedi had made lumpsum payment to Smt Manorama, she was not debarred from claiming maintenance u/s 125 Cr.P.C. In the circumstances, the order passed u/s 125 Cr.P.C. on 12.4.1994 and the enhancement order passed on 26.7.1996 can not be said to be illegal or without jurisdiction.

14. Learned Judge, family court, who rejected the application filed by Smt Manorama for enhancement was not justified in rejecting that application on the ground that parties had compromised in Civil Suit and Smt Manorama had agreed not to claim any maintenance in future.

15. Therefore the impugned order dated 18.1.2005 is to be set aside and the Criminal Revision No. 1145 of 2005 is to be allowed. The Judge, family court has rightly rejected the application filed by Mahesh Chandra Dwivedi u/s 127 Cr.P.C. and the Criminal Revision No. 322S of 2007 being devoid of merits is liable to be dismissed.

16. Criminal Revision No. 1145 of 2005 is hereby allowed. Order dated 18.1.2005 is set aside and the case is remanded to learned Trial Judge. Family Court, Kanpur Nagar, who shall decide the application u/s 127 Cr.P.C. for enhancement of maintenance allowance on merits. Parties are directed to appear in the Trial

Court for further orders on 11.8.2008.

17. Criminal Revision No. 3228 of 2007 is hereby dismissed.