

(1987) 06 GAU CK 0003
In the Gauhati High Court
Case No : Criminal Revision No. 273/86

Srimati Sukta Rani Naug

APPELLANT

Vs

Sri Nani Gopal Naug

RESPONDENT

Date of Decision : 19-06-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 125(1), 125(3), 125(5)

Citation : (1988) 1 GLR 73

Hon'ble Judges : R.K. Manisana Singh, J

Bench : Single Bench

Advocate : G.K. Bhattacharyya and D. Das, for the Appellant; D.N. Choudhury and H.N. Sarma, for the Respondent

Final Decision : Allowed

Judgement

Manisana, J.—This is a revision petition from an order of 30 April, 1985 of the learned Sub-Divisional Judicial Magistrate Hailakandi passed in M.R. Case No. 2 of 1979 disallowing the prayer of the Petitioner to order the opposite party to pay the maintenance allowance granted under order dated 20 August 1986 passed in case referred to above.

2. The facts of the case may briefly be stated. The learned Sub-Divisional Judicial Magistrate. Hailakandi, in M.R. Case No. 2 of 1979, by order dated 20 August 1980 ordered the opposite party (whom I shall refer to as "the husband") to make a monthly allowances for the maintenance of the Petitioner (whom I shall refer to as "the wife") at monthly rate of Rs. 100/- (Rupees one hundred). Being aggrieved by the order of the learned Magistrate, the husband filed Criminal Revision No. 104 of 1980 in this Court. This Court, on 8 April 1982, dismissed the revision Petition. The husband brought T.S. No. 2 of 1984 for dissolution of marriage in the Court of the learned District Judge, Cachar. It appears that the divorce proceeding was pending when the revision was disposed of by this Court. The learned District Judge on II August 1985 passed a decree for divorce. The wife filed an application for realisation of the maintenance from her husband on

the basis of the order dated 20 August 1980 of the learned Magistrate above-mentioned. The learned Magistrate rejected the petition by holding that, by the decree for divorce, the relationship between the parties has been determined and as such, in view of the observation made in the order dated 20 August 1980 referred to above, the wife could not claim the realisation of the maintenance; hence this petition to this Court.

3. In order dated 20 August, 1980, it was observed:

Thus I find that the 2nd party is legally bound to maintain his legally married wife until their relationship is judicially determined and severed.

(Emphasis is mine)

4. During the argument there was much discussion about the meaning of the passage quoted above. The question then is, What is the meaning of the expression "until their relationship is judicially determined and severed"? Here, it may be noted that it is not a case that the wife has remarried; and that an appeal against the decree of divorce is now pending in this Court and there is no stay order. It may also be noted that the order of maintenance dated 20 August 1980 was passed by the then Magistrate Shri S.K. Kar and the impugned order was passed by the Magistrate Shri M.A. Khalique.

5. Sub-section (1), Explanation (b) of Section 125, Code of Criminal Procedure runs:

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

Under Section (1), Explanation (b), the wife continues to be a wife even though she has been divorced by her husband or otherwise obtained a divorce and has not remarried for the purpose of getting maintenance u/s 125.

6. Sub-section (5) of Section 125, Code of Criminal Procedure provides:

On proof that any wife, in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

Under Sub-Section (5), an order of maintenance made in favour of the wife can be cancelled if the wife is living in adultery. The definition of "wife" given under Sub-section (1) Explanation (b) implies that a divorced wife, if she has remarried is not "wife" within the meaning "wife" for the purpose of maintenance. A reading of Sub-section (1), Explanation (b) and Sub-section (5) of Section 125 shows that every divorced wife, otherwise eligible, is entitled to the benefit of the maintenance allowance and the dissolution of marriage makes no difference to her right.

7. Sub-section (3) of Section 125 provides that where any order has been made

u/s 125 in favour of a woman who has been divorced by, or has obtained a divorce from her husband, the Magistrate shall, if he is satisfied that the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage.

8. The above provision of Sub-section (3) shows that the right of a woman, who has been divorced by, or has obtained a divorce, from her husband, to get maintenance continues until she remarries.

9. This being the position, the meaning of the expression "until their relationship is judicially determined and severed", if taken as the determination of the relationship of husband and wife by a decree of divorce, it would be against the statute, in view of the discussion above. Therefore, in the context of the case, in my judgment, the expression connotes the determination of the relationship either by remarriage of the divorcee or her living in adultery. For the reasons stated above, the Petitioner is entitled to the maintenance as ordered on 20 Aug., 1980.

10. For the foregoing reasons, the petition is allowed.