



2025:DHC:2938



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 21.04.2025*+ **CRL.REV.P. 411/2017**

SURAJ NARAYAN SINHA .....Petitioner

Through: Mr. K. Sunil, Advocate

versus

MS ANURADHA SINHA .....Respondent

Through: Mr. Ashok Kumar Sherawat,  
Advocate, ASI Sachin Singh,  
IO.+ **CRL.REV.P. 929/2017**

SURAJ NARAYAN SINHA .....Petitioner

Through: Mr. K. Sunil, Advocate

versus

ANURADHA SINHA .....Respondent

Through: Mr. Ashok Kumar Sherawat,  
Advocate+ **CRL.REV.P. 930/2017**

SURAJ NARAYAN SINHA .....Petitioner

Through: Mr. K. Sunil, Advocate

versus

ANURADHA SINHA .....Respondent

Through: Mr. Ashok Kumar Sherawat,  
Advocate



**CORAM:**

**HON'BLE DR. JUSTICE SWARANA KANTA SHARMA**

**JUDGMENT**

**DR. SWARANA KANTA SHARMA, J**

1. By way of these revision petitions, the petitioner assails three orders passed by the learned Principal Judge, Family Court, Central District, Tis Hazari Court, Delhi [hereafter '*Family Court*'] – details of which have been set out in the succeeding paragraphs – essentially in connection with the proceedings pertaining to the grant of maintenance by the petitioner-husband to the respondent-wife under Section 125 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'].

2. Firstly, it shall be apposite to take note of the factual context in which the present petitions were filed before this Court. The marriage of the petitioner and respondent was solemnized on 08.05.1987, according to Hindu rites and ceremonies at village Rahui, District Nalanda, Bihar. No child was born out of the said wedlock. The respondent had alleged that after the marriage, she had been subjected to cruelty and repeated demands of dowry and that she had been fed bacteria-infested food which had led to loss of her fallopian tubes making it impossible for her to conceive. Further, in January, 2002, she had been thrown out of her matrimonial home and she had thereafter started residing at her paternal house in Delhi. Essentially on these grounds, she had filed a maintenance petition under Section



125 of Cr.P.C. i.e. CC No. 340/1/2003 (titled ‘*Anuradha Sinha v. Suraj Narayan Sinha*’), on 20.09.2003, against the present petitioner. After about eight years, the learned Metropolitan Magistrate, South District, Saket Courts, Delhi, disposed of the said petition *vide* judgment dated 30.04.2011, and granted maintenance to the respondent to the tune of Rs.4,000/- per month, with effect from 20.09.2003 i.e. date of filing of petition.

3. In the meantime, a few months after the maintenance petition had been filed by the respondent, i.e. on 21.02.2004, the petitioner herein had also filed a petition seeking divorce from the respondent, before the concerned Court in Bihar, on the ground that she had deserted him and left the matrimonial home in January, 2002, without any cause and also subjected him to cruelty. The said petition was eventually transferred to Delhi, by the Hon’ble Supreme Court, and was decided *vide* judgment dated 12.05.2014 by the learned Judge, Family Court, West, Tis Hazari, Delhi, in favour of the petitioner, and the marriage between the petitioner and respondent was dissolved on the ground of desertion under Section 13(1)(ib) of Hindu Marriage Act, 1955.

4. However, prior to grant of decree of divorce in 2014, and after the grant of maintenance to the respondent in 2011, the respondent had preferred an execution petition i.e. Ex. No. 284/2011 before the learned Family Court, for recovery of Rs.3,50,000/-. It was averred that the said amount was due towards the maintenance payable to her



for a period of 84 months i.e. from 20.09.2003 to July, 2011, excluding the amount of Rs.30,000/- already paid by the petitioner herein.

5. The petitioner submits that he was facing severe hardships in pursuing legal proceedings before different courts and had no capacity to clear the arrears of maintenance, and was only able to make some part-payments towards the maintenance. He also submits that due to the same, he had also been sent to jail by the learned Family Court on two occasions i.e. in 2013 and 2014.

6. However, once the petitioner had been granted divorce in the year 2014, on the grounds of desertion by the respondent, he had filed two applications (in pending execution petition i.e. Ex. No. 284/2011) before the learned Family Court on 07.06.2014 – one seeking cancellation/revocation of orders passed in the execution petition, and the other seeking cancellation/revocation of judgment dated 30.04.2011 passed by the learned Magistrate *vide* which the respondent was granted maintenance. These applications were filed in view of Section 125(4)(5) of Cr.P.C., on the premise that once the marriage between the parties had been dissolved on the ground of desertion by the respondent, she would be dis-entitled for grant of any maintenance.

7. The aforesaid objections raised by the petitioner herein, were held to be meritless and were dismissed by the learned Family Court *vide* order dated 15.04.2017. The said order (*impugned in*



**CRL.REV.P. 411/2017**) is set out below:

“ Sh.Suman prays for an adjournment, on the ground that neither the JD nor main counsel is available.

Adjournment is declined, as this court, vide order dated 10.01.2017 had made it clear that the objections shall be disposed of on 15.04.2017 i.e. today.

Matter is listed for the arguments on the objection petition.

JD has filed objections u/sec.-125(4& 5)Cr.P.C. Execution is sought to be avoided on the ground that parties have been divorced, vide order dated 12.05.2014, passed by Ms. Reena Singh Nag, I.d. Principal Judge (West), Family Courts, New Delhi.

Sh.Sherawat has drawn the attention of this court to explanation (b) to sec.-125(1) Cr.P.C.

It is pointed out that for the purposes of maintenance, wife has been defined to include a woman, who has been divorced and has not re-married.

Sh.Sherawat has supported the arguments with law laid down in **Ramesh Chander Kaushal Vs. Veena Kaushal** reported as **1978 AIR 1807**.

I find merits in the submission of Sh.Sherawat. The objections are meritless and are therefore dismissed.

Let the JD be present in the court on the adjourned date.

Now, to come up for presence of JD and for making payment of arrears of maintenance on 03.06.2017.

It is made clear that in case the arrears are not cleared by the adjourned date, a penalty to the extent of 25% may be imposed upon the petitioner in terms of law laid down in **Gaurav Sondhi Vs. Diya Sondhi** reported as **120 2005 DLT 436...**”

8. On 03.06.2017, the learned counsel appearing for the petitioner (judgment debtor) had again contended before the learned Family Court that the respondent was not entitled to maintenance as per



Section 125(4) of Cr.P.C. However, the learned Family Court observed that the said argument cannot be taken in the execution petition, but only while challenging the judgment dated 30.04.2011, or by filing an appropriate application in the main case, i.e. the disposed of maintenance petition under Section 125 of Cr.P.C. On the same date, the learned Family Court was pleased to impose a penalty of 25% upon the petitioner in view of his failure to clear the arrears of maintenance.

9. Thereafter, the petitioner had moved an application under Sections 125(4)(5) and 127(1)(2)(3) of Cr.P.C., i.e. Misc. No. 25/2017 in the disposed-of maintenance petition CC No. 340/1/2003, seeking modification/cancellation of judgment dated 30.04.2011 *vide* which the respondent had been granted maintenance, from the date of filing of petition.

10. On 14.10.2017, two orders were passed by the learned Family Court, which have been impugned before this Court.

11. In the order dated 14.10.2017 passed in the execution petition (*impugned in CRL.REV.P. 929/2017*), the learned Family Court observed that the learned counsel for the petitioner herein (judgment debtor) was again raising a similar argument regarding respondent being not entitled to maintenance, which had already been dealt with and rejected earlier by the Court and thus the behaviour of the learned counsel was contemptuous in nature. Secondly, the learned Family Court observed that the petitioner was not clearing the arrears of



maintenance, and was also not present before the Court, and thus, the amount of penalty imposed upon the petitioner was increased to 50% and Non-Bailable Warrants were also issued against him. The said order reads as under:

“Sh.Suman submits that DH is not entitled to maintenance for the period between filing of petition and the grant of decree. Divorce has been granted to the JD, on the basis of desertion by the DH. Sh.Suman submits that Sh. Shashi Bhushan - main counsel is not available and he has been instructed by the main counsel to raise this argument.

Heard.

It is noticed that the same argument raised by Sh.Bhushan, Adv. was rejected by this court, vide order dated 03.06.2017 and on a date prior thereto, i.e. on 15.04.2017, objections were dismissed by the court in the presence of Sh.Kunal C.Suman, Adv, who is present today. Vide both the previous orders, the court had further directed the JD to clear the maintenance and penalty had been imposed in terms of law laid down in Gaurav Sondhi Vs. Diya Sondhi reported as 120 2005 DLT 436.

Despite objections having been rejected, neither the JD is present nor the arrears are cleared.

Sh.Suman is raising the same argument, which had been rejected, in his presence and specifically to his knowledge. This conduct of Sh.Suman, Adv. is contemptuous.

A show cause notice is, hereby, issued to the counsel as to why contempt of court proceedings be not initiated against him, for raising the same arguments, which have been rejected in the presence of present counsel and counsel, who has instructed him.

It is also noticed that JD has repeatedly committed defaults in payments of arrears and is not present despite specific directions. The court is constrained to commence coercive steps against him. NBWs be issued against the JD, to be executed through SHO, PS-Saket, New Delhi for 19.12.2017.

In case of failure of execution of NBWs, SHO shall appear in person and explain the reasons for failure of execution of Warrants.



The penalty is further enhanced to 50% on the amount due, in terms of law laid down in **Gaurav Sondhi's** case.

12. On the other hand, *vide* order dated 14.10.2017 (**impugned in CRL.REV.P. 930/2017**) passed in Misc. No. 25/2017, which was filed by the petitioner in the disposed-of maintenance petition CC No. 340/1/2003 seeking modification/ cancellation of the judgment dated 30.04.2011, the learned Family Court was pleased to observe that since the conduct of learned counsel was found contemptuous in the connected execution petition and also because the petitioner herein had not appeared before the Court despite repeated directions passed in the connected execution petition, this application was dismissed in default. The said order is extracted hereunder:

“This court in a separately passed order in connected execution

petition bearing Ex. No.-284/2011 had noticed the contemptuous conduct of the counsel and the applicant. Despite repeated directions of the court in the connected execution petition, the respondent/ applicant has not appeared/ instead he has moved the present application.

In terms of order 9 Rule 12 CPC, petition is dismissed in default, as the applicant/ respondent has not appeared despite specific directions in Execution no.-284/2011.

File be consigned to record room.”

13. The petitioner, being aggrieved by the aforementioned three orders, had preferred these revision petitions. It is the petitioner's case that the learned Family Court has failed to consider the objections filed by him, wherein he had contended that the respondent was not entitled to



maintenance as per Section 125(4)(5) of Cr.P.C. It is submitted that since the divorce was granted to the parties on 12.05.2014, on the ground of desertion by the respondent, the respondent cannot claim any maintenance prior to passing of the decree of divorce. In this regard, the learned counsel for petitioner has placed reliance on certain case laws. Therefore, it is submitted that the impugned orders imposing penalty upon the petitioner for non-payment of maintenance, pertaining to the period prior to 12.05.2014, are liable to be set aside.

14. On the other hand, the learned counsel appearing for the respondent contends that by way of the impugned orders, the learned Family Court was pleased to first impose penalty upon the petitioner and thereafter enhance the same, for non-payment of the arrears accumulated *qua* the maintenance amount since the year 2003. It is submitted that divorced wife is also a wife, for the purpose of maintenance under Section 125 of Cr.P.C.. It is stated that the respondent is exposed to destitution and misery as the petitioner is not maintaining her and not complying with the orders of learned Family Court. It is also stated that the total arrears of maintenance since 2003 are more than Rs.9,72,000/-, out of which Rs.2,31,700/- (approximately) has been paid and Rs.7,40,300/- is still outstanding.

15. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material available on record.

16. In the present case, it is the petitioner's contention that post the



grant of decree of divorce, on the ground of desertion – in favour of the petitioner herein – there is no cavil that the wife would be entitled to maintenance, only for the period after the grant of decree of divorce, i.e. when she would fall under the category of ‘divorced wife’, and that she would not be entitled to maintenance for the earlier period as there was a finding recorded against her that she had withdrawn from the society of her husband without reasonable cause which disentitles her for grant of any maintenance under Section 125(4) of the Cr.P.C.

17. Having considered the arguments advanced by the parties and material available on record, this Court notes, at the outset, that it is a matter of record that the petitioner-husband had obtained a decree of divorce on the ground of desertion by the respondent wife. Further, it is also noted that there was *animus deserendi* on the part of the respondent in addition to *de facto* separation, as held and recorded by the Judge, Family Court, West, Tis Hazari, Delhi, in its judgment dated 12.05.2014.

18. The exception carved out under Section 125(4) of Cr.P.C. precludes a wife from claiming maintenance, in case it is proved that she is living in adultery or has, without sufficient reasons, refused to live with her husband. This exception, however, does not apply in the case of a divorced wife. Once the marriage is dissolved by a decree of divorce, the relationship of husband and wife ceases to exist, and therefore, there is no question of a divorced woman living in adultery



or refusing to live with her husband. The Hon'ble Supreme Court in the case of *Vanamala v. H.M. Ranganatha Bhatta*: (1995) 5 SCC 299 has laid down that a divorced wife is entitled to maintenance, even though the divorce was granted to the parties on the grounds of desertion by the wife. The relevant extract of the aforesaid judgment is set out below:

“...On a plain reading of this Section it seems fairly clear that the expression ‘wife’ in the said sub-section does not have the extended meaning of including a woman who has been divorced. This is for the obvious reason that unless there is a relationship of husband and wife there can be no question of a divorcee woman living in adultery or without sufficient reason refusing to live with her husband. After divorce where is the occasion for the women to live with her husband? Similarly there would be no question of the husband and wife living separately by mutual consent because after divorce there is no need for consent to live separately. In the context, therefore, sub-section (4) of Section 125 does not apply to the case of a woman who has been divorced or who has obtained a decree for divorce. In our view, therefore, this contention is not well founded.”

19. Moreover, the issue regarding a wife, divorced on the ground of desertion, being not entitled to maintenance for any period prior to the passing of the decree, has also been settled by the Hon'ble Supreme Court in the decision of *Rohtash Singh v. Ramendri (Smt.) & Ors.*: (2000) 3 SCC 180, wherein it has been clearly held that the wife's entitlement to maintenance, who has been divorced on the ground of desertion, is limited to the period following the decree of divorce obtained on the ground of desertion. The relevant portion of the decision is set out below:



“10. Claim for maintenance under the first part of Section 125 Cr.P.C. is based on the subsistence of marriage while claim for maintenance of a divorced wife is based on the foundation provided by Explanation (b) to Sub-section (1) of Section 125 Cr. P.C. If the divorced wife is unable to maintain herself and if she has not remarried, she will be entitled to Maintenance Allowance. The Calcutta High Court had an occasion to consider an identical situation where the husband had obtained divorce on the ground of desertion by wife but she was held entitled to Maintenance Allowance as a divorced wife under Section 125 Cr.P.C. and the fact that she had deserted her husband and on that basis a decree for divorce was passed against her was not treated as a bar to her claim for maintenance as a divorced wife.” See : Sukumar Dhibar v. Smt. Anjali Dasi, (1983) Crl. L.J. 36. The Allahabad High Court also, in the instant case, has taken a similar view. We approve these decisions as they represent the correct legal position.

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12. Learned counsel for the petitioner then contended that the maintenance has been allowed to the respondent from the date of the application. The application under Section 125 Cr. P.C. was filed by the respondent during the pendency of the civil suit for divorce under Section 13 of the Hindu Marriage Act. It is contended that since the decree of divorce was passed on the ground of desertion by the respondent, she would not be entitled to maintenance for any period prior to the passing of the decree under Section 13 of the Hindu Marriage Act. To that extent, the learned counsel appears to be correct. But for that short period, we would not be inclined to interfere.”

20. Thus, the Hon’ble Supreme Court in the aforesaid judgment has clarified that a wife is entitled to maintenance even after grant of decree of divorce, regardless of the fact that the divorce was granted on the ground of desertion by the wife and the entitlement to maintenance under Section 125 of Cr.P.C. for a divorced wife is based on her inability to maintain herself and having not remarried, rather than the reasons due to which, the divorce was granted.



Therefore, a wife can still claim maintenance post-divorce, even if the divorce was granted on the ground of desertion.

21. To reiterate, since according to Section 125(4) of Cr.P.C., a wife who has been living separately from her husband “without reasonable cause” is not entitled to maintenance, and in this case, the divorce was granted in favour of the petitioner and against the respondent, on the grounds of desertion, the respondent shall not be entitled to maintenance – for any period prior to grant of decree of divorce.

22. It is also relevant to take note of the order dated 06.03.2018 passed by this Court in the present case, wherein it was recorded by the Predecessor Bench that the both the parties were *ad idem* that maintenance would be payable to the respondent only from the date of decree of divorce i.e. 12.05.2014.

23. Therefore, this Court holds that the petitioner-husband shall be liable to pay maintenance to the respondent-wife, with effect from 12.05.2014.

24. Insofar as the challenge to impugned orders is concerned, it is material to note that execution petition (Ex. No. 284/2011) was filed by the respondent seeking arrears of maintenance calculated from the date of filing of petition i.e. 20.09.2003. This Court notes that in the impugned orders dated 15.04.2017 and 14.10.2017, passed in Ex. No. 284/2011, the learned Family Court had imposed penalty upon the petitioner on two occasions, as he was not clearing the arrears of



maintenance. However, the petitioner had not been clearing the said arrears on the ground that the respondent would not be entitled to maintenance with effect from date of filing of petition but only after the grant of decree of divorce i.e. 12.05.2014, which argument was not appreciated but rejected by the learned Family Court. Similarly, the impugned order dated 14.10.2017 passed in Misc No. 25/2017, was on the application filed by the petitioner herein in the already disposed of maintenance petition, seeking modification of the judgment dated 30.04.2011; which was dismissed in default by the learned Family Court.

25. Since this Court has now held that the respondent would be entitled to grant of maintenance, only after the date of grant of decree of divorce, and not from the date of filing of maintenance petition, the impugned orders cannot be sustained. The same are accordingly set aside, in the interest of justice.

26. The quantum of maintenance has not been challenged by the petitioner.

27. The petitioner is accordingly directed to clear the arrears of maintenance, after calculating the same from 12.05.2014 onwards, within a period of six (06) weeks from date. In case of respondent having any grievance regarding non-payment of the arrears, she shall be at liberty to take appropriate recourse to law.

28. In view of the above, the present petitions stand disposed of.

29. The judgment be uploaded on the website forthwith.



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**APRIL 21, 2025/zp**

**DR. SWARANA KANTA SHARMA, J**