

## **Santosh (Smt) vs Naresh Pal on 2 March, 1998**

**Equivalent citations: 1999(1)MPLJ643, 1999(I)OLR(SC)387, (1998)8SCC447**

**Bench: S.B. Majmudar, S.P. Kurdukar**

### **ORDER**

1. Leave granted.

2. We have heard learned counsel for the parties finally by their consent. The short question is whether the appellant is the married wife of the respondent who had failed and neglected to maintain her and therefore, she is entitled to maintenance under Section 125 of the CrPC. Learned counsel for the respondent was right when he contended that unless there is a legal marriage between the parties, order under Section 125 CrPC cannot be passed. However, learned Judicial Magistrate after considering this question came to the conclusion that the respondent was already divorced from his first wife and thereafter he had entered into a second marriage with the appellant who was also a divorcee. The High Court took the contrary view and observed that the appellant had not proved that she was the married wife of the respondent and that she had her first husband, Satendra and there was no dissolution of her marriage with him. These are the questions which are required to be thrashed out finally in civil proceedings. In a proceeding for maintenance under Section 125 CrPC the learned Magistrate was expected to pass appropriate orders after being prima facie satisfied about the marital status of parties. It is obvious that the said decision will be a tentative decision subject to final order in any civil proceedings, if the parties are so advised to adopt. Consequently, in our view the High Court was not justified in interfering with the pure finding of fact reached by learned Judicial Magistrate in a proceeding under Section 125 CrPC and therefore only on this short ground and without expressing any opinion on the marital rights of the parties which may have to be adjudicated in civil proceedings, the order of the learned Magistrate passed under Section 125 CrPC will have to be affirmed and the judgment and order of the High Court is set aside. The appeal is allowed. No costs.