

## **Sudeep Chaudhary vs Radha Chaudhary on 31 January, 1997**

**Equivalent citations: AIR1999SC536, 1999CRILJ466, JT1998(9)SC473, (1997)11SCC286, AIR 1999 SUPREME COURT 536, 1997 (11) SCC 286, 1998 AIR SCW 3845, (1998) 9 JT 473 (SC), (1999) 1 KER LJ 38, 1998 SCC(CRI) 160, 2000 ALL MR(CRI) 372, (1999) 2 MARRILJ 9, (2000) ALLCRIC 260, 1998 CRILR(SC MAH GUJ) 262, (1999) 5 BOM CR 813**

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**Bench: S.P. Bharucha**

### **JUDGMENT**

S.P. Bharucha, J.

1. Special leave granted.
2. The respondent-wife has been served by substituted service but does not appear.
3. The appellant-husband and the respondent-wife are estranged. The wife filed an application under Section 125 of the Criminal Procedure Code for maintenance which was awarded at the rate of Rs. 350/- p.m. with effect from 3rd July, 1990, and was subsequently enhanced to Rs. 500/- p.m.
4. In proceedings under the Hindu Marriage Act the wife sought alimony. It was granted at the rate of Rs. 600/- p.m. on 11th August, 1987, and the amount, thereof was subsequently enhanced to Rs. 800/- p.m.
5. Since the husband failed to pay the amount of maintenance as aforesaid, the wife started recovery proceedings. The husband contended that the maintenance amounts should be adjusted against the interim alimony and the Magistrate before whom the recovery proceedings were pending upheld the contention. The High Court, in the order which is under appeal, held that the Magistrate was in error in directing adjustment of the maintenance amount awarded under Section 125 of the Cr.P.C. against the amount awarded under Section 24 of the Hindu Marriage Act.
6. We are of the view that the High Court was in error. The amount awarded under Section 125 of the Cr.P.C. for maintenance was adjustable against the amount awarded in the matrimonial proceedings and was not to be given over and above the same. In the absence of the wife, we are, however not inclined to go into any detailed discussion of the law.

7. At the same time, we feel that the claims of the husband and the wife are to be balanced. We, therefore, direct that the husband shall pay to the wife towards maintenance (which now comprehends both the amount awarded under Section 125 of the Cr.P.C. and the amount awarded in the matrimonial proceedings) the sum of Rs. 1,000/- p.m. commencing from 3rd July, 1990. The arrears, if any, shall be paid within 8 weeks.

8. This order will be subject to such orders as may be passed at the stage of final disposal of the matrimonial proceedings.

9. The appeal is disposed of accordingly.

10. No order as to costs.