

**Rina Kumari @ Rina Devi @ Reena**  
**v.**  
**Dinesh Kumar Mahto @ Dinesh Kumar Mahato and another**  
(Criminal Appeal No. 161 of 2025)  
10 January 2025  
**[Sanjiv Khanna, CJI and Sanjay Kumar,\* JJ.]**

**Issue for Consideration**

Will a husband, who secures a decree for restitution of conjugal rights, stand absolved of paying maintenance to his wife by virtue of Section 125(4), Code of Criminal Procedure, 1973, if his wife refuses to abide by the said decree and return to the matrimonial home.

**Headnotes<sup>†</sup>**

**Code of Criminal Procedure, 1973 – s.125(4) – Disqualification under, when not attracted – Wife’s right to maintenance u/s.125, CrPC – Hindu Marriage Act, 1955 – s.9 – Decree for restitution of conjugal rights obtained by respondent No.1-husband – Non-compliance therewith by the appellant-wife – If would be sufficient to attract the disqualification u/s.125(4):**

**Held:** No – Mere passing of a decree for restitution of conjugal rights at the husband’s behest and non-compliance therewith by the wife would not, by itself, be sufficient to attract the disqualification u/s.125(4) or be determinative straightaway of her right to maintenance – It would depend on the facts of each case to be decided, on the evidence available, whether the wife still had valid and sufficient reason to refuse to live with her husband, despite such a decree – Restitution decree was passed on 23.04.2022 – Admittedly, there was no attempt made at reconciliation after 2017 – However, having secured the restitution decree, respondent No.1 did nothing – He neither sought execution of the decree or a decree of divorce – The stalemate created by Respondent No.1 reflects his lack of bonafides and demonstrates his attempt to disown all responsibility towards his wife – His conduct in completely ignoring the appellant after she suffered the miscarriage of their child added to her suffering due to the ill-treatment in her matrimonial home – Respondent No.1’s admission that he did not bear the expenditure

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for her treatment and her un rebutted assertion that he did not take her to the hospital or even come from Ranchi to see her were clear indicia of the pain and mental cruelty meted out to her – Therefore, she had just cause to not return to her matrimonial home, despite the restitution decree – Appellant had more than sufficient reason to stay away from the society of Respondent No.1 – Hence, her refusal to live with him, notwithstanding the passing of a decree for restitution of conjugal rights cannot be held against her – The disqualification u/s.125(4), CrPC was thus, not attracted – High Court erred in applying the same holding that the appellant was not entitled to the maintenance granted to her by the Family Court – Impugned judgment set aside – Order of the Family Court restored. [Paras 29, 35, 37-39]

**Code of Criminal Procedure, 1973 – Maintenance proceedings – Nature:**

**Held:** Even if non-compliance with an order for payment of maintenance entails penal consequences, like other decrees of a Civil Court, such proceedings would not qualify as or become criminal proceedings – Nomenclature of maintenance proceedings initiated under the Code of Criminal Procedure, as those provisions find place therein, cannot be held to be conclusive as to the nature of such proceedings. [Para 30]

**Code of Criminal Procedure, 1973 – Maintenance – Statutory scheme – Discussed.** [Paras 8, 9]

**Words and Phrases – Mental cruelty; “Judgments in rem”; “Judgments in personam” – Evidence Act, 1872 – ss.40-43 – Bharatiya Sakshya Adhinyam, 2023 – ss.34-37 – Discussed.** [Paras 32, 33, 36]

**Case Law Cited**

*Chaturbhuj v. Sita Bai*, [2007 INSC 1190](#) : [\[2007\] 12 SCR 577](#) : (2008) 2 SCC 316; *Bhuwan Mohan Singh v. Meena and Others*, [2014 INSC 490](#) : [\[2014\] 8 SCR 858](#) : (2015) 6 SCC 353; *Badshah v. Urmila Badshah Godse and Another*, [2013 INSC 703](#) : [\[2013\] 10 SCR 259](#) : (2014) 1 SCC 188; *Rajnish v. Neha and Another* [2020 INSC 631](#) : [\[2020\] 13 SCR 1093](#) : (2021) 2 SCC 324; *Shamima Farooqui v. Shahid Khan*, [2015 INSC 283](#) : [\[2015\] 4 SCR 137](#) : (2015) 5 SCC 705; *Kirtikant D. Vadodaria v. State of Gujarat and Another* [\[1996\] Supp. 2 SCR 45](#) : (1996) 4 SCC 479; *Amrita*

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*Singh v. Ratan Singh and Another* (2018) 17 SCC 737; *Shanti Kumar Panda v. Shakuntala Devi*, [2003 INSC 596](#) : [\[2003\] Supp. 5 SCR 98](#) : (2004) 1 SCC 438; *Mst. Jagir Kaur and Another v. Jaswant Singh* [\[1964\] 2 SCR 73](#) : AIR 1963 SC 1521; *Iqbal Singh Marwah and Another v. Meenakshi Marwah and Another* [\[2005\] 2 SCR 708](#) : (2005) 4 SCC 370; *K.G. Premshankar v. Inspector of Police and Another* [\[2002\] Supp. 2 SCR 350](#) : (2002) 8 SCC 87; *Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Others* [\[1978\] 3 SCR 782](#) : (1978) 4 SCC 70; *Parveen Mehta v. Inderjit Mehta* (2002) 5 SCC 706; *Rohtash Singh v. Ramendri (Smt.) and Others*, [2000 INSC 115](#) : [\[2000\] 2 SCR 58](#) : (2000) 3 SCC 180 – referred to.

*K. Narayana Rao v. Bhagyalakshmi*, 1983 SCC OnLine Kar 190 : (1984) 1 Kant LJ 451 : 1984 Cri LJ 276 (Kant); *Fakruddin Shamsuddin Saiyed v. Bai Jenab*, AIR 1944 Bom 11; *Sampuran Singh v. Gurdev Kaur and Another*, 1985 Cri LJ 1072 (P&H); *Amina Mohammedali Khoja v. Mohammedali Ramjanali Khoja and Another*, 1985 SCC OnLine Bom 99 : 1985 Cri LJ 1909; *Kavungal Kooppakkattu Zeenath v. Mundakkattu Sulfiker Ali*, 2008 SCC OnLine Ker 78 : (2008) 3 KLJ 331; *Subal Das v. Mousumi Saha (Das) and Another*, 2017 SCC OnLine Tri 175; *Babita v. Munna Lal*, 2022 SCC OnLine Del 4933; *Shri Mudassir v. Shirin and Others Criminal Revision Application No. 268 of 2022*, decided on 09.02.2023; *Smt. S.R. Ashwini v. G. Harish*, NC: 2024: KHC: 14466 : RPFC No.104 of 2018; *Girishbhai Babubhai Raja v. Smt. Hansaben Girishchandra and Another*, 1985 SCC OnLine Guj 161 : (1986) GLH 778; *Hem Raj v. Urmila Devi and Others*, 1996 SCC OnLine HP 116 : (1997) 1 HLR 702; *Ravi Kumar v. Santosh Kumari*, 1997 SCC OnLine P&H 529 : (1997) 3 RCR (Cri) 3 (DB) – referred to.

### List of Acts

Code of Criminal Procedure, 1973; Hindu Marriage Act, 1955; Evidence Act, 1872; Civil Procedure Code, 1908; Bharatiya Sakshya Adhiniyam, 2023.

### List of Keywords

Decree for restitution of conjugal rights; Non-compliance; Maintenance; Absolved; Section 125 of the Code of Criminal Procedure, 1973; Wife's right to maintenance; Disqualification

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under Section 125(4) of the Code of Criminal Procedure, 1973; Family Court; Suit for restitution; Refusal to live with husband; Refusal/desertion; Reconciliation; Lack of bonafides; Matrimonial home; Mental cruelty; Responsibility towards his wife; Miscarriage; Ill-treatment; Just cause; More than sufficient reason; Stay away from the society of husband; Maintenance proceedings; Nomenclature; Criminal proceedings; Mental cruelty; “Judgments in rem”; “Judgments in personam”.

**Case Arising From**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 161 of 2025

From the Judgment and Order dated 04.08.2023 of the High Court of Jharkhand at Ranchi in CRR No. 440 of 2022

**Appearances for Parties**

Ms. Mohini Priya, Ms. Sayesha Gambhir, Advs. for the Appellant.

Anup Kumar, Ms. Pragya Choudhary, Mrs. Neha Jaiswal, Shivam Kumar, Ms. Shruti Singh, Vaibhav Prasad Deo, Vishnu Sharma, Ms. Madhusmita Bora, Shiv Ram Sharma, Pawan Kishore Singh, Dipankar Singh, Mrs. Anupama Sharma, Advs. for the Respondents.

**Judgment / Order of the Supreme Court**

**Judgment**

**Sanjay Kumar, J.**

1. Leave granted.
2. *Will a husband, who secures a decree for restitution of conjugal rights, stand absolved of paying maintenance to his wife by virtue of Section 125(4) of the Code of Criminal Procedure, 1973, if his wife refuses to abide by the said decree and return to the matrimonial home?*
3. This intriguing question was answered in the affirmative by a learned Judge of the Jharkhand High Court, *vide* order dated 04.08.2023 in Criminal Revision No. 440 of 2022. Aggrieved, Rina Kumari @ Rina Devi @ Reena, the wife, is in appeal.

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4. The appellant, Reena, and respondent No. 1, Dinesh Kumar Mahto @ Dinesh Kumar Mahato, were married on 01.05.2014. They parted ways in August, 2015, and Reena started living at her parental home. Original (MTS) Suit No. 495 of 2018 was instituted by Dinesh on 20.07.2018 before the Family Court, Ranchi, under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights. Reena contested the suit by filing her written statement on 25.04.2019. Dinesh claimed that Reena left the matrimonial home on 21.08.2015 and did not return thereafter. According to him, attempts were made during August and October, 2017, to bring her back but she refused to come. He stated that his parents were very old and needed to be taken care of but Reena was not there to do so. On the contrary, Reena asserted that she was subjected to torture and mental agony by Dinesh, who demanded ₹5 lakh to purchase a four-wheeler. She alleged that he had extramarital relations. Further, she stated that she suffered a miscarriage on 28.01.2015 but Dinesh did not even come to see her from his workplace at Ranchi and it was her brother who took her to Dhanbad for medical care. She claimed that it was Dinesh who persuaded her to go to her parental home in August, 2015, on the occasion of Raksha Bandhan and he never truly tried to bring her back thereafter. She claimed that it was she who had gone to her matrimonial home in the year 2017 along with her relations but they were forced to return as Dinesh and his family members treated them badly. She stated that she was ready to return to her matrimonial home if Dinesh did not demand money to purchase a car and if she was not ill-treated by him and his family members. Her further conditions were that she should be allowed to use the washroom/toilet in the house, as she was not allowed to do so earlier, and she should also be allowed to use an LPG stove to prepare food, as she had to do so by using wood and coal hitherto. She concluded her written statement by asserting that the suit for restitution filed by Dinesh was nothing but a tool to save himself from the effect of laws which were put in place for women's safety and prayed that the suit be dismissed with costs. Reena, despite filing the above written statement, failed to appear thereafter before the Family Court.
5. By judgment dated 23.04.2022, the learned Additional Principal Judge-II, Additional Family Court, Ranchi, decreed Dinesh's suit for restitution of conjugal rights. Therein, it was noted that Dinesh

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had attempted to bring his wife back only once but, relying on the evidence of his witnesses, the Family Court concluded that he wanted to live with her as husband and wife. As no evidence was adduced by Reena, the Family Court held against her as regards her allegation that Dinesh demanded ₹5 lakh to purchase a car and her allegation of ill treatment and torture by him and his family members. As to her two conditions, the Family Court noted that Dinesh was a Junior Lineman in Jharkhand State Electricity Board and observed that he would be expected to provide an LPG stove to his wife to prepare food. Opining that there must be something more serious than the ordinary wear and tear of married life for a wife to withdraw from the society of her husband, the Family Court held in Dinesh's favour. He was, however, directed to ensure the respect and dignity of his wife and to see that her conditions with regard to cooking and toilet facilities were complied with. Reena was directed to resume conjugal life with Dinesh within two months. Admittedly, Reena did not abide by this decree.

6. Significantly, in the meanwhile, on 10.08.2018, Reena lodged a complaint under Section 498A IPC against Dinesh, in C.P. Case No. 3270 of 2018. As a result of this, he was sent to prison and was consequently suspended from service for some time. The case is stated to be pending. Thereafter, on 03.08.2019, Reena instituted Original Maintenance Case No. 454 of 2019 against Dinesh seeking maintenance under Section 125 of the Code of Criminal Procedure, 1973 (for brevity, 'the Cr.P.C.'). This case was allowed by the learned Principal Judge, Family Court, Dhanbad, *vide* order dated 15.02.2022, i.e., before the decretal of Dinesh's suit for restitution. Therein, the Family Court noted Dinesh's stand that he was ready and willing to keep Reena with full dignity but held, on the evidence adduced, that she was entitled to maintenance. Dinesh's pay-slip (Ex-3) revealed that he was working as a Junior Engineer in the Electricity Board and his net salary, after deductions from the gross salary of ₹62,000/-, was ₹43,211/-. The Family Court held that Dinesh, despite having sufficient means, had neglected to maintain his wife, who was unable make ends meet on her own. The petition was accordingly allowed and Dinesh was directed to pay ₹10,000/- per month to Reena towards maintenance. Such maintenance was held payable from the date of the application, i.e., 03.08.2019, and the arrears were directed to be paid within two months.

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7. Challenging this order, Dinesh filed Criminal Revision No. 440 of 2022 before the Jharkhand High Court. A learned Judge allowed the revision by the impugned judgment dated 04.08.2023. Therein, the learned Judge noted that Reena, who deposed as PW-1, was not even cross-examined by Dinesh. Similarly, the other two witnesses who appeared on her behalf were also not subjected to cross-examination. In her deposition, Reena asserted that she was not working and this was confirmed by her brother, Dilip Kumar Mahato (PW-3), who stated that she was completely dependent upon him. Dinesh, in his own cross-examination, denied that it was due to his assault that his wife suffered a miscarriage. He also denied that he had demanded ₹5 lakh in dowry. He, however, admitted that Reena suffered an abortion and that he did not bear any expense in that regard. It was submitted on behalf of Dinesh, that he was ready to pay ₹5,000/- per month to Reena, but not from the date of filing of the maintenance petition, as he was suspended from service during that period owing to his being in judicial custody in relation to the Section 498A IPC case instituted by her. The learned Judge, however, noted that there was a specific finding in the judgment dated 23.04.2022 in Original (MTS) Suit No. 495 of 2018 that Reena had withdrawn from her husband's society without reasonable excuse and that she had not returned to the matrimonial home despite the said decree for restitution of conjugal rights, which she had not even chosen to challenge by way of appeal. The learned Judge, therefore, reasoned that Section 125(4) Cr.P.C. would come to Dinesh's aid and, in consequence, Reena would not be entitled to maintenance. Hence, the learned Judge allowed the revision.
8. Before proceeding to consider the matter on merits, it would be apposite to take note of the statutory scheme. Chapter IX of the Code of Criminal Procedure, 1973, is titled 'Order for Maintenance of Wives, Children and Parents' and comprises Sections 125 to 128. Section 125(1) Cr.P.C. provides to the effect that, if any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate children, falling in the prescribed categories, or his parents, who are all unable to maintain themselves, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to pay a monthly allowance, as thought fit, for their maintenance. Notably, Section 125 Cr.P.C. is not of recent origin. It

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is analogous to and in continuance of Section 488 of the erstwhile Code of Criminal Procedure, 1898.

9. In its 41<sup>st</sup> Report submitted on 24<sup>th</sup> September, 1969, the Law Commission of India, while advertng to Section 488 of the Code of Criminal Procedure, 1898, observed that the primary justification for placing provisions relating to maintenance of wives and children, which is a civil matter, in the Criminal Procedure Code was that a remedy, speedier and more economical than that available in the Civil Courts, is provided to them. The Law Commission noted that the provision was aimed at preventing starvation and vagrancy, leading to commission of crime.
10. On the same lines, in [\*Chaturbhuj vs. Sita Bai\*](#),<sup>1</sup> this Court observed that the object of maintenance proceedings is not to punish a person for his neglect but to prevent the vagrancy and destitution of a deserted wife, by providing her food, clothing and shelter by a speedy remedy. It was held that Section 125 Cr.P.C. is a measure of social justice, especially enacted to protect women and children, falling within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution. Thus, the objective of the provision, then and now, is to alleviate the financial plight of destitute wives, children and now, parents, who are left to fend for themselves.
11. In [\*Bhuwan Mohan Singh vs. Meena and others\*](#),<sup>2</sup> this Court observed that Section 125 Cr.P.C. was conceived to ameliorate the agony, anguish and financial suffering of a woman, who left her matrimonial home for the reasons provided in the provision, so that some suitable arrangement can be made by the Court and she can sustain herself and also her children, if they are with her. It was held that the concept of sustenance did not necessarily mean 'to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else' and the wife would be entitled in law to lead a life in a similar manner as she would have lived in the house of her husband. This Court further cautioned that, in a proceeding of this nature, the husband cannot be permitted to take subterfuge to deprive the wife of the

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1 [\[2007\] 12 SCR 577](#) : (2008) 2 SCC 316

2 [\[2014\] 8 SCR 858](#) : (2015) 6 SCC 353



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benefits of living with dignity and there could be no escape route, unless there is an order from the Court that the wife is not entitled to get maintenance from the husband on legally permissible grounds.

12. Earlier, in [Badshah vs. Urmila Badshah Godse and another](#),<sup>3</sup> this Court held that the provision of maintenance aims at empowering the destitute and achieving social justice or equality and dignity of the individual and while dealing with cases thereunder, the drift in the approach from adversarial litigation to social context adjudication is the need of the hour. More recently, in [Rajnish vs. Neha and another](#),<sup>4</sup> this Court emphasized that maintenance laws were enacted as a measure of social justice to provide recourse to dependent wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy.
13. In [Shamima Farooqui vs. Shahid Khan](#),<sup>5</sup> this Court noted that the inherent and fundamental principle behind Section 125 Cr.P.C. is the amelioration of the financial state of affairs as well as the mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home. It was further observed that, as per law, she is entitled to lead life in a similar manner as she would have lived in the house of her husband and as long as she is held entitled to grant of maintenance within the parameters of Section 125 Cr.P.C., it has to be adequate so that she can live with dignity. Lastly, it was noted that, a plea is sometimes advanced by the husband that he does not have the means to pay as he does not have a job or his business is not doing well, but these are only bald excuses and, in fact, they have no acceptability in law as a husband, who is healthy, able-bodied and in a position to support himself is under a legal obligation to support his wife and her right to receive maintenance under Section 125 Cr.P.C., unless disqualified, is an absolute right.
14. Such disqualification, by way of an exception, was envisaged under Section 488(4) of the old Code, which is replicated, almost verbatim, in Section 125(4) Cr.P.C. It reads thus:

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3 [\[2013\] 10 SCR 259](#) : (2014) 1 SCC 188

4 [\[2020\] 13 SCR 1093](#) : (2021) 2 SCC 324

5 [\[2015\] 4 SCR 137](#) : (2015) 5 SCC 705

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(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] [Substituted by Act 50 of 2001, Section 2 for “allowance” (w.e.f. 24-9-2001)] 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.”

15. The issue, presently, turns upon the applicability of Section 125(4) Cr.P.C. to the case on hand. The question as to whether non-compliance with a decree for restitution of conjugal rights by a wife would be sufficient in itself to deny her maintenance, owing to Section 125(4) Cr.P.C, has been addressed by several High Courts but no consistent view is forthcoming, as their opinions were varied and conflicting.
16. In ***K. Narayana Rao vs. Bhagyalakshmi***,<sup>6</sup> the Karnataka High Court observed that the Court dealing with a maintenance claim under Section 125 Cr.P.C. has to carefully examine and take into consideration the decree for restitution of conjugal rights which has not been complied with by the wife but it would not be bound by all the findings therein, including findings on questions, such as, whether the wife withdrew from the society of the husband; desertion on her part; or her leading an adulterous life. Reference was made to ***Fakruddin Shamsuddin Saiyed vs. Bai Jenab***,<sup>7</sup> wherein the Bombay High Court had held that the Magistrate should not ‘surrender his own discretion’ simply because the husband was armed with a decree for restitution of conjugal rights.
17. In ***Sampuran Singh vs. Gurdev Kaur and another***,<sup>8</sup> the Punjab & Haryana High Court observed that a wife can still claim maintenance in the presence of a decree for restitution of conjugal rights if the conduct of the husband is such that it obstructs her from obeying the decree.

6 1983 SCC OnLine Kar 190 = (1984) 1 Kant LJ 451 : 1984 Cri LJ 276 (Kant)

7 AIR 1944 Bom 11

8 Criminal Revision No. 1562 of 1983, decided on 17.01.1985 : 1985 Cri LJ 1072 (P&H)

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18. In ***Amina Mohammedali Khoja vs. Mohammedali Ramjanali Khoja and another***,<sup>9</sup> the Bombay High Court noted that an order of maintenance can always be passed in favour of a wife even if her husband obtained a decree for restitution of conjugal rights, unless it is established that she willfully deserted her husband and was not willing to stay with him without reasonable cause or sufficient reason. On facts, it was found that the record did not show that the wife had deserted the husband and was unwilling to stay with him without reasonable cause or sufficient reasons. It was further noted that, after obtaining the decree, the husband had not taken any effective steps to get the decree satisfied as he had made no genuine, honest and sincere efforts to see that his wife comes back to him. It was, therefore, held that he was only interested in a paper decree for restitution of conjugal rights, which he had gotten *ex parte*.
19. In ***Kavungal Kooppakkattu Zeenath vs. Mundakkattu Sulfiker Ali***,<sup>10</sup> the Kerala High Court noted that the expression used in Section 125(4) Cr.P.C. is 'refusal' and not 'failure' to live with the husband and that there is evidently some difference between the two. It was held that 'failure' would mean not doing something that one is expected to do but 'refusal' would mean saying or showing that one would not do or accept something which is offered. In effect, if a husband says he is willing to do something for the wife but she states or shows that she does not want or accept that something which is offered to her, then only there is refusal.
20. In ***Subal Das vs. Mousumi Saha (Das) and another***,<sup>11</sup> the Tripura High Court held that a wife who refuses to comply with a decree for restitution of conjugal rights cannot be deprived of maintenance under Section 125(4) Cr.P.C. It was observed that it would be incongruent to assume that a wife against whom a decree for restitution has been passed is disentitled to maintenance while a wife who has been divorced can still claim the same. It was further observed that the Civil Court's judgment for restitution can only be treated as relevant evidentiary material but the conduct of the wife, i.e., whether she had sufficient reason to refuse to live with the husband,

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9 985 SCC OnLine Bom 99 : 1985 Cri LJ 1909

10 2008 SCC OnLine Ker 78 : (2008) 3 KLJ 331

11 2017 SCC OnLine Tri 175 : Criminal Revision Petition No. 89 of 2016, decided on 25.07.2017

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has to be assessed by the Magistrate and only thereafter, it could be decided whether she would be entitled to maintenance or not. It was concluded that the restriction imposed by Section 125(4) Cr.P.C. had been substantially diluted, if not virtually negated.

21. In ***Babita vs. Munna Lal***,<sup>12</sup> the Delhi High Court opined that an *ex parte* decree for restitution of conjugal rights would not automatically put an end to the wife's right to maintenance under Section 125 Cr.P.C. It was held that, even if such a case is contested by the wife and is decided in the husband's favour, non-compliance therewith could be taken to be a ground to deny maintenance, provided the Court is satisfied on the strength of evidence that the wife had no justifiable grounds to stay away from the husband. The mere presence of a decree for restitution of conjugal rights was, therefore, held insufficient to disentitle a wife from claiming maintenance, if the conduct of the husband is such that she is unable to obey such a decree or if the husband creates such circumstances that she cannot stay with him. It was noted that even a divorced wife is entitled to maintenance under Section 125 Cr.P.C. and it would be improper and unfair to deny maintenance to a wife merely because she refused to cohabit with the husband, despite having sufficient grounds therefor.
22. In ***Shri Mudassir vs. Shirin and others***,<sup>13</sup> the Bombay High Court noted that mere readiness and willingness on the part of the husband to cohabit with the wife would not be sufficient to absolve him of the liability to pay maintenance, by projecting that the wife left his company without sufficient reason. It was held that if the grounds justified the wife and children staying away from the husband, Section 125(4) Cr.P.C. would have no application.
23. In its recent judgment in ***Smt. S.R. Ashwini vs. G. Harish***,<sup>14</sup> the Karnataka High Court held that there is nothing in law to bar the grant of maintenance under Section 125 Cr.P.C. even if a decree for restitution of conjugal rights is secured by the husband. It was noted that, at the most, such a decree would enable the husband to take that defence in the maintenance proceedings initiated by the wife but, for the Court, it would not be the sole factor to refuse maintenance

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12 2022 SCC OnLine Del 4933 : Criminal Revision Petition No. 1001 of 2018, decided on 22.08.2022

13 Criminal Revision Application No. 268 of 2022, decided on 09.02.2023

14 NC: 2024: KHC: 14466 : RPFC No.104 of 2018, decided on 23.02.2024

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to her. In the result, it was held that a petition under Section 125 Cr.P.C. could be considered on its own merits independently, without being influenced by the decree for restitution of conjugal rights. It was further held that, even if there is a decree for restitution of conjugal rights, and the wife still does not choose to join the matrimonial home that would not amount to voluntary refusal/desertion which would bar her claim to maintenance under Section 125 Cr.P.C.

24. On the other hand, the Gujarat High Court, in ***Girishbhai Babubhai Raja vs. Smt. Hansaben Girishchandra and another***,<sup>15</sup> observed that when the Civil Court orders the wife to go and stay with her husband and fulfil her marital obligations, it presupposes that she has no justification to be away from the husband and refuse to perform her corresponding marital obligations.
25. A similar view was taken by the Himachal Pradesh High Court in ***Hem Raj vs. Urmila Devi and others***,<sup>16</sup> wherein it was held that, once a Civil Court found in a contested proceeding that the wife had no just or reasonable cause to withdraw her society from the husband, she cannot claim maintenance under Section 125 Cr.P.C. It was observed, on facts, that the wife had not pleaded any subsequent event or circumstance which justified her staying away from her husband in spite of the decree for restitution of conjugal rights passed against her.
26. On the same lines, in ***Ravi Kumar vs. Santosh Kumari***,<sup>17</sup> a Division Bench of the Punjab & Haryana High Court held that a wife against whom a decree for restitution of conjugal rights has been passed by the Civil Court would not be entitled to claim maintenance under Section 125 Cr.P.C. if, in the proceedings of restitution, a specific issue was framed as to whether the wife refused to live with her husband without sufficient reason and the parties were given an opportunity to lead evidence, whereupon specific findings were recorded by the Civil Court against the wife on the issue. It was, however, added that in the event the husband got an *ex parte* decree for restitution, such a decree would not be binding on the Criminal Court exercising jurisdiction under Section 125 Cr.P.C. It was also clarified that if the

15 1985 SCC OnLine Guj 161 : (1986) GLH 778

16 1996 SCC OnLine HP 116 : (1997) 1 HLR 702

17 1997 SCC OnLine P&H 529 : (1997) 3 RCR (Cri) 3 (DB)

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decree for restitution of conjugal rights was obtained by the husband subsequent to the order for maintenance passed by the Magistrate under Section 125 Cr.P.C., then the decree would not *ipso facto* disentitle the wife to her right to maintenance and the husband would have to approach the Magistrate to get the order granting maintenance cancelled.

27. Now, turning to the decisions of this Court on the point, in [\*Kirtikant D. Vadodaria vs. State of Gujarat and another\*](#),<sup>18</sup> it was held that Section 125 Cr.P.C. has to be given a liberal construction to fulfil and achieve the intention of the legislature and, therefore, the passing of a decree for restitution of conjugal rights against the wife would not, by itself, defeat her right to maintenance under Section 125(1) Cr.P.C. It was further observed that the mere 'failure' of the wife to live with her husband would not be sufficient to disentitle her from receiving maintenance from him, especially as the crucial word carefully chosen in the relevant provision is 'refusal'.
28. In *Amrita Singh vs. Ratan Singh and another*,<sup>19</sup> this Court held, on facts, that the plea of the husband that his wife had deserted him without reasonable cause and that he was ready to take her back was falsified by the fact that the wife was treated with cruelty and subjected to persistent demands for dowry, resulting in her being ousted from the matrimonial house, whereupon she was compelled to file a criminal complaint under Section 498A IPC ending in the conviction of the husband and his father. The wife was held to have reasonable grounds not to join the husband, thereby entitling her to maintenance.
29. Thus, the preponderance of judicial thought weighs in favour of upholding the wife's right to maintenance under Section 125 Cr.P.C. and the mere passing of a decree for restitution of conjugal rights at the husband's behest and non-compliance therewith by the wife would not, by itself, be sufficient to attract the disqualification under Section 125(4) Cr.P.C. It would depend on the facts of the individual case and it would have to be decided, on the strength of the material and evidence available, whether the wife still had valid and sufficient reason to refuse to live with her husband, despite such a decree.

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18 [\[1996\] Supp. 2 SCR 45](#) : (1996) 4 SCC 479

19 (2018) 17 SCC 737

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There can be no hard and fast rule in this regard and it must invariably depend on the distinctive facts and circumstances obtaining in each particular case. In any event, a decree for restitution of conjugal rights secured by a husband coupled with non-compliance therewith by the wife would not be determinative straightaway either of her right to maintenance or the applicability of the disqualification under Section 125(4) Cr.P.C.

30. Another contention that was urged before us is that the findings in the judgment for restitution of conjugal rights by the Family Court, being a Civil Court, would be binding on the Court seized of the petition under Section 125 Cr.P.C., as they are to be treated as criminal proceedings. This specious argument needs mention only to be rejected outright. No doubt, in ***Shanti Kumar Panda vs. Shakuntala Devi***,<sup>20</sup> this Court held that a decision by a Criminal Court would not bind the Civil Court while a decision by the Civil Court would bind the Criminal Court. However, maintenance proceedings are essentially civil in nature and the reason for inclusion of the provisions dealing therewith in the Code of Criminal Procedure was clarified by the Law Commission of India in September, 1969. Significantly, as long back as in the year 1963, in ***Mst. Jagir Kaur and another vs. Jaswant Singh***,<sup>21</sup> a 3-Judge Bench of this Court held that proceedings under Section 488 of the Code of Criminal Procedure, 1898, the precursor to Section 125 Cr.P.C., are in the nature of civil proceedings; the remedy, being a summary one; and the person seeking that remedy, ordinarily being a helpless person. Therefore, even if non-compliance with an order for payment of maintenance entails penal consequences, as may other decrees of a Civil Court, such proceedings would not qualify as or become criminal proceedings. Nomenclature of maintenance proceedings initiated under the Code of Criminal Procedure, as those provisions find place therein, cannot be held to be conclusive as to the nature of such proceedings.
31. Further, in ***Iqbal Singh Marwah and another vs. Meenakshi Marwah and another***,<sup>22</sup> while dealing with the contention that an effort should be made to avoid conflict of findings between Civil and Criminal

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20 (2004) 1 SCC 438

21 [1964] 2 SCR 73 : AIR 1963 SC 1521

22 [2005] 2 SCR 708 : (2005) 4 SCC 370

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Courts, a Constitution Bench pointed out that there is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein.

32. The Indian Evidence Act, 1872, distinguishes between judgments in *rem* and judgments in *personam* and Sections 40 to 43 therein stipulates the relevance of existing judgments, orders or decrees in subsequent proceedings in different situations. The relevant provisions are extracted hereunder for ready reference:

**40. Previous judgments relevant to bar a second suit or trial: -**

The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial is a relevant fact when the question is whether such Court ought to take cognizance of a such suit, or to hold such trial.

**41. Relevancy of certain judgments in probate, etc., jurisdiction: -**

A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial admiralty or insolvency jurisdiction which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof—  
that any legal character, which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, [order or decree] declares it to have accrued to that person;



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that any legal character which it takes away from any such person ceased at the time from which such judgment, [order or decree] declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, [order or decree] declares that it had been or should be his property.

### **42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41: -**

Judgments, orders or decrees other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

#### Illustration:

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

### **43. Judgments, etc., other than those mentioned in sections 40 to 42, when relevant. -**

Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provisions of this Act.

#### Illustrations

(a) A and B separately sue C for a libel which reflects upon each of them. C in each case says, that the matter alleged to be libellous is true, and

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the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(c) A prosecutes B for stealing a cow from him, B, is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d) A had obtained a decree for the possession of land against B, C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

[(e) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(f) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.

33. Sections 34 to 37 of the Bharata Sakshya Adhiniyam, 2023, correspond to Sections 40 to 43 of the Indian Evidence Act, 1872, with some modifications. Section 41, as is clear from the extraction hereinabove, specifically deals with instances where an earlier judgment, order or decree constitutes conclusive proof whereas Section 42 provides that an earlier judgment is relevant if it relates to matters of public nature relevant to the inquiry, but such judgments,

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orders or decrees are not conclusive proof of that which they state. These provisions were considered in detail by a 3-Judge Bench of this Court in *K.G. Premshankar vs. Inspector of Police and another*,<sup>23</sup> in the context of when a judgment in a civil proceeding, on the same cause of action, would be relevant in a criminal case, and it was observed thus:

“30. What emerges from the aforesaid discussion is – (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2)..; (3)..; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.

31. Further, the judgment, order or decree passed in previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. ... Hence, in each and every case, the first question which would require consideration is – whether judgment, order or decree is relevant, if relevant – its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case.”

Decisions of this Court manifest that judgments passed on merits in civil proceedings have been accepted as sufficient cause to discharge or acquit a person facing prosecution on the same grounds. This dictum is applied especially in cases where civil adjudication proceedings, like in tax cases, lead to initiation of prosecution by the authorities. Such cases are, however, different as there is a direct connect between the civil proceedings and the prosecution which is launched. The facts and allegations leading to the prosecution directly arise as a result of the civil proceedings. Moreover, the standard

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23 [\[2002\] Supp. 2 SCR 350](#) : (2002) 8 SCC 87

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of proof in civil proceedings is a preponderance of probabilities whereas, in criminal prosecution, conviction requires proof beyond reasonable doubt. We do not think the said principle can be applied *per se* to proceedings for maintenance under Section 125 Cr.P.C. by relying upon a judgment passed by a Civil Court on an application for restitution of conjugal rights. Further, the two proceedings are altogether independent and are not directly or even indirectly connected, in the sense that proceedings under Section 125 Cr.P.C. do not arise from proceedings for restitution of conjugal rights.

34. Long ago, in [\*Captain Ramesh Chander Kaushal vs. Mrs. Veena Kaushal and others\*](#),<sup>24</sup> this Court noted that it is valid to assert that a final determination of a civil right by a Civil Court would prevail against a like decision by a Criminal Court but held that this principle would be inapplicable when it comes to maintenance granted under Section 24 of the Hindu Marriage Act, 1955, as opposed to maintenance granted under Section 125 Cr.P.C. It was noted that the latter provision was a measure of social justice specially enacted to protect women and children falling within the constitutional sweep of Article 15(3) reinforced by Article 39.
35. Viewed thus, the findings in the proceedings for restitution of conjugal rights, which were partly uncontested as Reena did not appear before the Family Court to adduce evidence or advance her case after filing her written statement, did not clinch the issue and the High Court ought not to have given such undue weightage to the said judgment and the findings therein. In the process, certain crucial factors were overlooked. Particularly, the fact that the witnesses who appeared on behalf of Reena in the Section 125 Cr.P.C. proceedings were not even cross-examined. It was clear therefrom that Dinesh did not even contest or rebut what they had stated. The fact that Reena was fully dependent on her brother was thus admitted. Further, documents were placed on record in proof of Reena's abortion in January, 2015. In that regard, Dinesh's admission that he did not bear the expenditure for her treatment and her un rebutted assertion that he did not take her to the hospital or even come from Ranchi to see her were clear indicia of the pain and mental cruelty meted out to her. The fact that she was not allowed to use the toilet in the

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24 [\[1978\] 3 SCR 782](#) : (1978) 4 SCC 70

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house or avail proper facilities to cook food in the matrimonial home, facts which were accepted in the restitution proceedings, are further indications of her ill-treatment.

36. Pertinently, in ***Parveen Mehta vs. Inderjit Mehta***,<sup>25</sup> this Court held that mental cruelty is a state of mind and feeling of one of the spouses due to the behavioral pattern by the other and, unlike physical cruelty, mental cruelty is difficult to establish by direct evidence. It was observed that a feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on cumulatively assessing the attending facts and circumstances in which the two spouses have been living. In a case of mental cruelty, *per* this Court, it would not be the correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the spouse has been subjected to mental cruelty due to the conduct of the other.
37. Applying this standard, Dinesh's conduct in completely ignoring his wife, Reena, after she suffered the miscarriage of their child would have been the proverbial last straw adding to her suffering due to the ill-treatment in her matrimonial home. She, therefore, had just cause to not return to her matrimonial home, despite the restitution decree. Further, the events thereafter or rather, the lack thereof, is relevant. The restitution decree came to be passed on 23.04.2022. Admittedly, there was no attempt made at reconciliation after 2017. However, having secured the said restitution decree, Dinesh did nothing! He neither sought execution of the decree under Order XXI Rule 32 CPC nor did he seek a decree of divorce under Section 13(1A)(ii) of the Hindu Marriage Act, 1955.
38. The reason for this is not far to gather. In ***Rohtash Singh vs. Ramendri (Smt.) and others***,<sup>26</sup> this Court clarified that a wife, who suffered a decree of divorce on the ground of deserting her husband, would not be entitled to maintenance under Section 125 Cr.P.C. as long as the marriage subsisted, but she would be entitled to such

<sup>25</sup> (2002) 5 SCC 706

<sup>26</sup> [\[2000\] 2 SCR 58](#) : (2000) 3 SCC 180

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maintenance once she attained the status of a divorced wife, in the light of the definition of a 'wife' in Explanation (b) to Section 125(1) Cr.P.C. Dinesh, therefore, sought to protect himself from a claim by Reena for maintenance by projecting the disobeyed restitution decree as a defence and as long as she did not attain the status of a divorced wife, that protection would endure to his benefit. This stalemate of sorts created by Dinesh clearly reflects his lack of *bonafides* and demonstrates his attempt to disown all responsibility towards his wife, Reena. These factors, taken cumulatively, clearly manifest that Reena had more than sufficient reason to stay away from the society of her husband, Dinesh, and her refusal to live with him, notwithstanding the passing of a decree for restitution of conjugal rights, therefore, cannot be held against her. In consequence, the disqualification under Section 125(4) Cr.P.C. was not attracted and the High Court erred grievously in applying the same and holding that Reena was not entitled to the maintenance granted to her by the Family Court.

39. The appeal is accordingly allowed, setting aside the judgment dated 04.08.2023 passed by the High Court of Jharkhand at Ranchi in Criminal Revision No. 440 of 2022. In consequence, the order dated 15.02.2022 passed by the learned Principal Judge, Family Court, Dhanbad, in Original Maintenance Case No. 454 of 2019 shall stand restored. In furtherance thereof, Dinesh, respondent No. 1 herein, shall pay maintenance @ ₹10,000/- per month to Reena, the appellant, on or before the 10<sup>th</sup> day of each calendar month. Such maintenance would be payable from the date of filing of the maintenance application, i.e., 03.08.2019. Arrears of the maintenance shall be paid by Dinesh in three equal installments, i.e., the first instalment by 30.04.2025, the second instalment by 31.08.2025 and the third and final instalment by 31.12.2025.

In the circumstances, parties shall bear their own costs.

*Result of the case:* Appeal allowed.

*†Headnotes prepared by:* Divya Pandey