

Gauhati High Court

Bijoy Seal vs Smti Sefali Seal on 30 September, 2020

GAHC010009712012

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.Pet. 769/2012

1:BIJOY SEAL

S/O LT. NARESH CHANDRA SEAL, R/O DIKOM, P.O. DIKON POLICE
STATION, CHABUA DIST. DIBRUGARH, ASSAM.

VERSUS

1:SMTI SEFALI SEAL

D/O LT. JONAKINATH SEAL, R/O T.S. LANE, SANTIPARA, P.O., P.S. and DIST.
DIBRUGARH, ASSAM.

Advocate for the Petitioner : MR.P J SAIKIA

Advocate for the Respondent : MSK KALITA

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

JUDGMENT

Date : 30-09-2020

1. The Court proceedings have been conducted by means of creating a Virtual Court with the help of technology.

2. This criminal petition has been preferred by the petitioner, namely, Sri Bijoy Seal, under Section 482 of the Criminal Procedure Code, 1973, seeking quashment of the Judgment and Order dated 12.07.2012, passed by the learned Sessions Judge, Dibrugarh in Criminal Revision No. 03(1)/2012. The petitioner and the opposite party, namely, Smt. Sefali Seal were husband and wife were married on 02.05.1995.

3. Because of differences which arose between them, the petitioner and the opposite Page No.# 2/16 party started to stay separately since the year 2004. The wife/opposite party filed an application under Section 125 Cr.P.C., claiming maintenance from the petitioner/husband @ Rs.5,000/- per

month. The case was registered as Case No. 01 M/2004 before the Court of learned Additional Chief Judicial Magistrate, Dibrugarh. The learned Court of learned Additional CJM, Dibrugarh by order dated 06.07.2006 on contest allowed the petition and directed the petitioner/husband to pay maintenance allowance @ Rs.1,200/- from the date of filing of the maintenance petition i.e. 19.01.2004 according to the English Calendar month. The husband was directed to pay the same by the 7 th of the following month. Thereafter, in the year 2008 the husband under Section 127 Cr.P.C filed a petition under Section 127 before the Court of learned Additional CJM, Dibrugarh. By the said petition under Section 127, the husband, namely, the petitioner herein prayed for variation of the earlier Order dated 06.07.2006 passed by the learned Court and to reduce the maintenance allowance from 1,200/- to Rs.500/- per month. The grounds urged in the petition filed under Section 127 by the husband (petitioner herein) were the substantial loss of income and financially hardship. The petitioner further referred to a divorce case being Title Suit(D) Case No. 3/2004 filed, in the meantime, between the parties which was pending before the learned District Court, Dibrugarh at the relevant point of time when the petition under Section 127 was filed. It was further urged by the husband that by order dated 20.07.2005, passed in Misc.(J) Case No. 49/2004 under Section 24 of the Hindu Marriage Act, an amount of Rs.1,200/- was also directed to be paid to the wife by the learned District Judge, Dibrugarh as maintenance pendent lite. Under such circumstances by the petition under Section 127, the husband sought for reduction of the maintenance from Rs.1,200/- to Rs.500/- per month.

4. The wife (opposite party herein) contested the case by filing the written objections.

5. In the meanwhile, the divorce case being Title Suit(D) No. 3/2004 was decreed in favour of the husband by the Judgment and Order dated 12.11.2009, passed by the District Judge, Dibrugarh, for dissolution of the marriage between the wife and the husband. By the said judgment, the marriage was dissolved by decree of divorce under Section 13(1)(i-a) and (i)(b) of the Hindu Marriage Act, 1955. In the said suit decreed one of the issues framed by the learned District Judge, Dibrugarh was "whether the allegations brought by the petitioner are true? If any, whether these allegations amount to cruelty and desertion?"

6. The learned District Judge by the said judgment decreed the title suit granting divorce by holding as under:-

"From the materials on record and the attending circumstances and the Page No.# 3/16 laws laid down by different High Courts, it is found that the acts and conducts of the respondent amounts to both cruelty and desertion. As such the issue No. 2 is decided in positive and in view of this, the suit is maintainable. No meaningful purpose will be served by directing the parties to re-unite and lead conjugal life."

7. The petition under Section 127 filed by the husband seeking variation of the order dated 06.07.2006 and reduction of the maintenance awarded came to be heard finally in the year 2012. The learned Judicial Magistrate, First Class, Dibrugarh, Assam, by Order dated 17.01.2012 passed in Case No. 53 M/2008 under Section 127 of the Code of Criminal Procedure, 1973, allowed the petition and cancelled the order of maintenance of Rs.1,200/- per month which was granted in

favour of the wife- Sefali Seal in Case No. 1 M/2004 under Section 125 Cr.P.C. The order was made effective from the date of the said order being passed permitting the wife- Smt. Sefali Seal to withdrawn the amount of maintenance, if any, which remained to be withdrew by her.

8. Being aggrieved, the respondent wife preferred a revision petition being Criminal Revision No. 3(1)/2012 before the learned Sessions Judge, Dibrugarh, Assam. The learned Sessions Judge, Dibrugarh by order dated 12.07.2012 allowed the revision petition and held that decree of divorce rendered by the District Judge, Dibrugarh would not automatically disentitle the wife from getting the maintenance. The revision petition was allowed by setting aside the order dated 17.01.2012 passed by the Judicial Magistrate, First Class, Dibrugarh, Assam and remanding the matter back to the Court of Judicial Magistrate, First Class, Dibrugarh, Assam, for a fresh disposal of the petition under Section 125 Cr.P.C., filed by the parties for alteration of the maintenance allowance.

9. Being aggrieved by the order dated 12.07.2012 passed by the Sessions Judge, Dibrugarh, the present criminal petition has been filed by the husband/petitioner seeking relief from this Court under Section 482 of the Code of Criminal Procedure Act, 1973.

10. Mr. P. J. Saikia, learned counsel appearing for the petitioner submitted that the learned Sessions Judge, Dibrugarh committed an error on law and on facts and exceeded his jurisdiction in interfering with the order passed by the Judicial Magistrate, First Class, Dibrugarh by setting aside and remanding back the matter for a fresh decision. He submits that a bare perusal of the Section 127 Cr.P.C. reveals that there is a power provided under the Criminal Procedure Code, 1973, to the Magistrate concerned for cancelling the order granting maintenance to the wife, if it appears to the learned Magistrate that such order for cancellation is required to be made in the facts and circumstance of the case. It is the further submission of Mr. Saikia, learned counsel for the petitioner Page No.# 4/16 that under Provisions of Section 125 (4) itself, it is provided that no wife shall be entitled to receive any allowance for maintenance 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. Mr. Saikia, learned counsel strongly urged that in view of the decree passed by the learned District Judge in Title Suit(D) Case No. 03/2004 allowing the decree of divorce sought for by the husband/petitioner on the grounds of both cruelty and desertion, it is evident that there is a finding by a competent Civil Court that there was desertion by the wife. Therefore the Bar under Section 125(4) is squarely applicable in the facts of the case. Consequently, the learned Judicial Magistrate, First Class, Dibrugarh, Assam had correctly passed the order dated 17.01.2012 recalling the earlier order grant of maintenance of Rs.1,200/- per month to the wife.

11. Mr. P. J. Saikia, learned counsel for the petitioner submits that in view of such facts situation, the learned Sessions Judge has exceeded his jurisdiction by passing the impugned order dated 12.07.2012. Consequently, this is a fit case for interference by this Court under Section 482 of the Cr.P.C., whereby the impugned order dated 12.07.2012 be suitably interfered with, set aside and quashed and consequently upheld the order dated 17.01.2012 passed by the Judicial Magistrate, First Class, Dibrugarh, Assam. It is the further case of the petitioner as urged by Mr. P. J. Saikia, learned counsel that the decree of divorce by Judgment and Order dated 12.11.2009 in Title Suit (D)

No. 3/2004 was granted on the grounds of cruelty and desertion was correctly relied upon by the learned Judicial Magistrate First Class, Dibrugarh by holding that Section 127(2) read with Section 125(5) Cr.P.C., would become operative and that it can be said that the wife refused to live with the husband the petitioner without sufficient reason and therefore the order of maintenance of Rs.1,200/- per month which was granted in favour of the wife was correctly cancelled. Therefore, it is submitted that there is no infirmity with the Order dated 17.01.2012 passed by the learned Judicial Magistrate, First Class, Dibrugarh, Assam. Accordingly, the impugned order dated 12.07.2012 passed by the Sessions Judge, Dibrugarh be set aside and the order dated 17.01.2012 passed by the learned CJM, Dibrugarh be restored.

12. The case of the petitioner was strongly contested by Mr. P. Bora and Mr. P. Deka, learned counsels appearing for the opposite party/wife. According to the learned counsels for the opposite party the order impugned in the present proceeding, namely, the Judgment dated 12.07.2012 passed by the Sessions Judge, Dibrugarh, Assam, in Criminal Revision No. 3(1)/2012 has been rightly passed and there is no infirmity requiring interference of this Court as prayed for by the petitioner. According to the learned counsels for the respondent, the Order dated 17.01.2012 passed Page No.# 5/16 by the Judicial Magistrate First Class, Dibrugarh, Assam, was rendered in petition No. 53 M/2008. The said case was filed by the petitioner/husband seeking reduction of the maintenance amount to Rs.1200/- to Rs.500/-. The grounds urged by the petitioner in its petition under Section 127 were only of financial hardship and loss of income. The case of the petitioner under Section 127 was strongly contested by the present opposite party by filing its written objections. There was no evidence led by either of the parties on the issue of desertion as sought to be projected by the petitioner, before the Judicial Magistrate, First Class, Dibrugarh, Assam. Although, the divorce has been granted by the decree of divorce between the parties passed on 12.11.2009 in Title Suit (D) No. 3/2004, the same cannot be relied upon for the purposes of evidence in a proceedings under the Cr.P.C., as had been done by the learned Judicial Magistrate, First Class, Dibrugarh to come to a finding that the opposite party/wife without sufficient reason refused to live with her husband, for the purposes of Section 127 and 125(5) Cr.P.C. The learned counsels for the opposite party/wife urged that to satisfy the requirement of Section 125(4) read with Section 125(5) no evidence has been led by the husband. The learned Judicial Magistrate, First Class, Dibrugarh, Assam went beyond the prayers made in the petition under Section 127 filed by the husband. The husband in his petition under Section 127 merely prayed for reduction of maintenance amount to Rs.1200/- to Rs.500/- in view of financial hardship as well as the maintenance granted by the learned District Judge during the proceeding under Title Suit(D) No. 03/2004 pendente lite. The learned counsels for the opposite party submit that divorce based on the desertion cannot be a ground to deny maintenance. The learned counsel for the respondent/opposite party also submits that the findings of facts recorded by a Civil Court do not have any bearing so far as the criminal case is concerned and vice-versa and accordingly, submits that the instant criminal petition is devoid of any merit and the same should be dismissed. In support of their contentions the counsels for the respondent relied upon in the case of Rohtash Singh -Vs- Ramendri (Smt) and Ors., reported in (2000) 3 SCC 180. The counsels have also relied upon the case of Kishan Singh (Dead) Through LRS. -Vs- Gopal Singh and Ors., report in (2010) 8 SCC 775.

13. Before proceeding further, it is necessary to refer to the provisions of Section 125 and Section 127 which extracted as under:-

"Section 125- Order for maintenance of wives, children and parents.- (1) if any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or Page No.# 6/16

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate 61[* * *], as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:-

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

62[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub- section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.] Explanation.-For the purposes of this Chapter,-

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875), is deemed not to have attained his majority;

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

Page No.# 7/16 (2).....

(3).....

(4) No wife shall be entitled to receive an 65[allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] 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.

(5) 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.

"Section 127- Alteration in allowance.- (1) On proof of a change in the circumstances of any person, receiving, under Section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.] (2) Where it appears to the Magistrate that, in consequence of any decision of a competent civil court, any order made under Section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under Section 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-

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,-

(i) in the case where such sum was paid before such order, from the date on which such order was made, Page No.# 8/16

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to 67[maintenance or interim maintenance, as the case may be,] after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a 68[monthly allowance for the maintenance and interim maintenance or any of them has been ordered] to be paid under Section 125, the civil court shall take into account the sum which has been paid to, or recovered by, such person 69[as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of] the said order."

14. A perusal of the provisions of Section 125 and 127 reveal that legislature has engrafted these provisions for the benefit of wife, a child and the parent(s) of any person in order to prevent them from becoming destitutes. The purport of this legislation is to benefit those parents and/or a child and/or a wife who were the responsibility of a person, but who neglects to provide for adequate maintenance in order for them to maintain a dignified life. In the present proceedings we are concerned with the maintenance in respect of a divorced wife. The true purport of the provisions of Section 125 is to ensure that in the event the husband fails to provide for adequate sustenance on an application made before the learned Magistrate, the sections empower the Magistrate to order the husband to provide for adequate maintenance for the benefit of the wife so as to prevent the wife from being reduced to a destitute or be compelled to live a life of beggary.

15. From the narration of the orders passed, it is evident that the wife had initially filed an application under Section 125 seeking maintenance and pursuant to which an amount of Rs.1,200/- was directed to be paid by the husband as maintenance to the wife in terms of the order dated 06.07.2006 passed by the learned Judicial Magistrate, First Class, Dibrugarh, Assam. Thereafter in the year 2008 by an application filed under Section 127 Cr.P.C., the husband sought for reduction of the amount from Rs. 1200/- to Rs.500/- per month on the ground of financial hardship and also on the ground that during the proceedings for divorce which were pending before the learned District Judge, Dibrugarh at the relevant point in time, an amount of Rs.1,200/- as maintenance pendente lite was directed to be paid by the learned District Judge, Dibrugarh by order dated 12.07.2012 passed in Misc. (J) case No. 49/04 in Title Suit(D) Case No. 03/2004. Under those circumstances, the husband Page No.# 9/16 preferred an application under Section 125 Cr.P.C., on the ground of financial hardship seeking reduction of the maintenance amount. By the time when the matter was finally heard by the learned Judicial Magistrate, First Class, Dibrugarh, the divorce sought for by the husband by Title Suit(D) No. 3/2004 was granted by the decree of divorce passed by the judgment and decree dated 12.07.2012 by the District Judge, Dibrugarh in Title Suit(D) No. 03/2004. The divorce was allowed on the ground of cruelty and desertion. However the learned Judicial Magistrate, First Class, Dibrugarh by relying on the decree of divorce dated 17.01.2020, not only allowed the petition under Section 127 Cr.P.C., but also cancelled the order of maintenance granted under Section 125 Cr.P.C., by the learned Additional Chief Judicial Magistrate, Dibrugarh by order dated 06.07.2006 in Case no. 1 M/2004 filed the wife.

16. The Apex Court has consistently held that a divorced wife would also be included in the definition of a wife as it defined under Section 125 Cr.P.C. The Apex Court has held that the responsibility of the husband towards a wife will not cease merely because a decree of divorce has been passed severing the marriage between the husband the wife.

17. In the case of Rohtash Singh -Vs- Ramendri (Smt) and Ors., reported in (2000) 3 SCC

180., which is relief upon by the opposite party/respondents, the Apex Court held as under:-

"9. On account of the explanation quoted above, a woman who has been divorced by her husband on account of a decree passed by the Family Court under the Hindu Marriage Act, continues to enjoy the status of a wife for the limited purpose of

claiming maintenance allowance from her ex-husband. This Court in Capt. Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70 : 1978 SCC (Cri) 508 : AIR 1978 SC 1807] observed as under: (SCC p. 74, para 9) "9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advance the cause -- the cause of the derelicts."

10. Claim for maintenance under the first part of Section 125 CrPC is based on the subsistence of marriage while claim for maintenance of a Page No.# 10/16 divorced wife is based on the foundation provided by Explanation (b) to sub-section (1) of Section 125 CrPC. 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 the wife but she was held entitled to maintenance allowance as a divorced wife under Section 125 CrPC 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. Anjali Dasi [1983 Cri LJ 36 (Cal)] .) 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.

11. Learned counsel for the petitioner then submitted that once a decree for divorce was passed against the respondent and marital relations between the petitioner and the respondent came to an end, the mutual rights, duties and obligations should also come to an end. He pleaded that in this situation, the obligation of the petitioner to maintain a woman with whom all relations came to an end should also be treated to have come to an end. This plea, as we have already indicated above, cannot be accepted as a woman has two distinct rights for maintenance. As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125(4). In another capacity, namely, as a divorced woman, she is again entitled to claim maintenance from the person of whom she was once the wife. A woman after divorce becomes a destitute. If she cannot maintain herself or remains unmarried, the man who was once her husband continues to be under a statutory duty and obligation to provide maintenance to her.

18. This view has been reiterated by the Apex Court in (2018) 12 SCC 748 is as follows:-

"1. We have heard the learned counsel for the rival parties at some length.

2. Having perused the impugned order [Manoj Kumar v. Champa Devi, 2015 SCC OnLine HP 809] , we are satisfied, that the same is based on the two decisions rendered by this Court, firstly, Vanamala v. H.M. Ranganatha Bhatta [Vanamala v. H.M. Ranganatha Bhatta, (1995) 5 SCC 299 : 1995 SCC (Cri) 899] and secondly, Rohtash Singh v. Ramendri [Rohtash Singh v. Ramendri, (2000) 3 SCC 180 : 2000 SCC (Cri) 597] . Section 125 of the Criminal Procedure Code, 1973 Page No.# 11/16 including the Explanation under sub-section (1) thereof, has been consistently interpreted by this Court, for the last two decades. The aforesaid consistent view has been followed by the High Court while passing the impugned order."

19. Also in the case of Swapan Kumar Banerjee -Vs- State of West Bengal and Another reported in (2019) SCC OnLine SC 1263 is as follows;-

"4. In Vanamala v. H.M. Ranganatha Bhatta¹, this Court dealt with a similar issue and held as follows:

"3. Section 125 of the Code makes provision for the grant of maintenance to wives, children and parents. Sub-section (1) of Section 125 inter alia says that if any person having sufficient means neglects or refuses to maintain his wife unable to maintain herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife not exceeding Rs. 500 in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct. Clause (i) of the Explanation to the sub-section defines the expression 'wife' to include a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. In the instant case it is not contended by the respondent that the appellant has remarried after the decree of divorce was obtained under Section 13-B of the Hindu Marriage Act. It is also not in dispute that the appellant was the legally wedded wife of the respondent prior to the passing of the decree of divorce. By virtue of the definition referred to above she would, therefore, be entitled to maintenance if she could show that the respondent had neglected or refused to maintain her. Counsel for the respondent, however, invited our attention to sub-section (4) of Section 125, which reads as under:

125.(4) No wife shall be entitled to receive an allowance 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.

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 Page No.# 12/16 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 woman 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, subsection (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."

5. Thereafter, in *Rohtash Singh v. Ramendri*² this Court took a similar view:

"11. Learned counsel for the petitioner then submitted that once a decree for divorce was passed against the respondent and marital relations between the petitioner and the respondent came to an end, the mutual rights, duties and obligations should also come to an end. He pleaded that in this situation, the obligation of the petitioner to maintain a woman with whom all relations came to an end should also be treated to have come to an end. This plea, as we have already indicated above, cannot be accepted as a woman has two distinct rights for maintenance. As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125(4). In another capacity, namely, as a divorced woman, she is again entitled to claim maintenance from the person of whom she was once the wife. A woman after divorce becomes a destitute. If she cannot maintain herself or remains unmarried, the man who was once her husband continues to be under a statutory duty and obligation to provide maintenance to her."

6. This view, which was taken by two-Judge Benches has been confirmed in *Manoj Kumar v. Champa Devi*³ by a three judge bench, though, no specific reasons have been recorded in the judgment. Mr. Debal Banerjee urged that the matter requires reconsideration. We are not in agreement with him for two reasons. Firstly, the view taken in the first two judgments has been confirmed by a three-judges Bench and, therefore, we cannot refer it to a larger Bench.

7. Even otherwise, this view has been consistently taken by this Court and the said view is in line with both the letter and spirit of the Cr.P.C.

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9. Coming to the merits of the case, the matrimonial dispute started with the husband filing a petition of judicial separation in 1992, though, it was alleged that since 1987 the wife had deserted him. In 1997 a petition for divorce was filed and the divorce was granted in 2000. During this period from 1987 to 2000 when the wife was living separately from her husband she did not file any petition for grant of maintenance. Even during the divorce proceedings though an application under Section 24 of the Hindu Marriage Act, 1955 was filed but it seems that the same was either dismissed for non-prosecution or was not pressed. It was not decided on merits in any event.

10. After the divorce was granted, according to the appellant he got remarried after a year and it was only thereafter that the wife filed a petition for grant of maintenance. That, according to us, will make no difference because it is for the wife to decide when she wants to file a petition for maintenance. She may have felt comfortable with whatever earnings she had upto that time or maybe she did not want to precipitate matters till she was contesting the divorce petition by filing a claim for maintenance. Whatever be the reason, the mere fact that the wife did not file a petition for

grant of maintenance during the pendency of the matrimonial proceedings, is no ground to hold that she is not entitled to file such a petition later on."

20. Upon perusal of the judgments rendered by the Apex Court extracted above, it is evident that Section 125 being a beneficial legislation to provide for protection to the wife, a mere divorce between the husband and wife will not preclude the "divorced wife" from claiming and/or availing of the benefits available to a wife under Section 125 Cr.P.C. Under the circumstances, the law demands, notwithstanding a wife being divorced that it will continue to be the duty of the husband to provide for adequate maintenance in order that the wife is afforded a dignified life. The husband cannot absolve his responsibility to maintain and to provide for the adequate maintenance to the wife unless there are evidences to support that the wife is no longer required to be maintained in view of certain changed circumstances. If such interpretation as laid down by the Apex Court is to be adopted, then a divorce granted by a competent Civil Court on the ground of "cruelty and desertion" will and cannot be understood to mean and include a wife to have refused to live with her husband without sufficient reason as provided for under Section 125(4) Cr.P.C.

21. Under such circumstance for any order of maintenance earlier granted under Section 125 Cr.P.C., to be cancelled under section 127(2) by the Magistrate, as had been done learned Judicial Page No.# 14/16 Magistrate, First Class, Dibrugarh by order dated 17.01.2012 passed in case No. 53M/2008, sufficient evidence will have to be brought out by the party (the husband herein) before the trial Court to support its contention of the wife having refused to live with her husband without sufficient reason as contemplated under Section 125(4) Cr.P.C. Explanation (b) to Sec 125 categorically provides that wife includes a 'divorced wife'. Therefore the fact that there is a valid decree of divorce by itself is no ground to deny the maintenance to a divorced wife. Therefore the two grounds- ' _ refusing to live with the husband without sufficient reason'_ and ' _living separately by mutual consent_' under Sec 125(4) cannot be said to be applicable to a divorced wife. A divorced wife cannot be expected to live with her former husband. In view of this clear position in law the claim for maintenance of a divorced wife can only be defeated either on the ground that she has remarried or that she is able to maintain herself. Similarly under Section 125(5) it is only upon proof that the wife is living in adultery or that without sufficient cause she refuses to live with her husband or that they are living separately by mutual consent, the magistrate shall cancel the order. After consideration of the law laid down by the Apex Court as described above, it is clear that a 'divorce' does not change the status of a wife in the context of Section 125 Cr.P.C.

22. Consequently, even if, a woman is divorced from her husband by any order passed by a competent Civil Court, her status as a wife entitling her to maintenance under Section 125 does not change. Accordingly the power under Section 127(2) Cr.P.C., can only be invoked by a magistrate for cancellation of maintenance granted earlier only when there are changed circumstances after grant of such maintenance under Section 125. In the facts of the present case, the wife had been separately living away from the husband since the year 2004 and also at the time when the order granting maintenance was passed. The original order granting maintenance was not a conditional order that upon grant of a decree of divorce, the petitioner husband will be entitled to pray for cancellation under Section 127. In view of the Law laid down by the Apex court and also upon due consideration of the materials available on record, it is seen that there was no 'changed circumstances' which

required the learned Magistrate to invoke its powers under Section 127(2) for cancellation of the order directing payment of maintenance as had been done.

23. A perusal of the order dated 17.01.2012, passed by the learned Judicial Magistrate, First Class, Dibrugarh, Assam in 53 M/2008 reveals that the trial Court's attention was not drawn to this fact of the matter. It had merely relied on the order of the competent Civil Court granting the decree of divorce and thereby cancelled the order under Section 127 Cr.P.C., although the petition under Section 127 Cr.P.C., was filed by the husband seeking variation/reduction of the maintenance only.

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24. The inherent powers of the High Court under Section 482 Cr.P.C., are undoubtedly very wide and therefore it must be used very cautiously. The High Court while assuming its jurisdiction under Section 482 Cr.P.C., does not function as an appellate or a Revisional Court. Therefore, such power under its inherent jurisdiction shall not be allowed to stifle legislator jurisdiction the Apex Court in the case of Monica Kumar (Dr.) & Anr., -Vs- State of Uttar Pradesh & Ors ., reported in (2008) 8 SCC 781 held as under:-

"33. The parties have exchanged their counter-affidavits and rejoinders. Indisputably, there is no quarrel with the well-settled principles of law that while exercising powers under Section 482 CrPC, the High Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which courts exist. When the complaint is sought to be quashed it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

35. The scope of exercise of power under Section 482 CrPC and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court which has been dealt with by the High Court in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . In the said case, a note of caution to the effect was, however, added that the power should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The illustrative categories indicated by this Court are earlier extracted in the order of the High Court.

36. We may reiterate and emphasise that the powers possessed by the High Court under Section 482 CrPC are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful Page No.# 16/16 to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the

highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its jurisdiction of quashing the proceeding at any stage. [See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] ; Raghubir Saran (Dr.) v. State of Bihar [AIR 1964 SC 1 : (1964) 2 SCR 336] ; Kurukshetra University v. State of Haryana [(1977) 4 SCC 451 : 1977 SCC (Cri) 613] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283]."

25. In view of the discussions made above, I do not find any ground to interfere with the impugned order dated 12.07.2012 passed in criminal revision No. 31/2012 by learned Sessions judge, Dibrugarh interfering with the order dated 17.01.2012 passed by learned Judicial Magistrate, First Class, Dibrugarh in 53M/2008 directing the trial Court to decide afresh the petition under Section 127 Cr.P.C., filed by the parties for alteration of maintenance allowance. It is however made clear that the learned Magistrate while passing an order under Section 127(2) will take into account the law laid down by the Apex Court in this context and appropriate orders in the matter as directed.

26. The revision petition is accordingly, dismissed.

27. Send back the LCR.

28. Interim order, if any, shall stand vacated.

JUDGE Comparing Assistant