

**Raj Virendra Singh Vs. Virendra Singh**

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**Court :** Delhi

**Decided On :** Aug-13-1985

**Reported in :** 1985(9)DRJ288

**Judge :** S.B. Wad, J.

**Acts :** [Hindu Marriage Act, 1955](#) - Sections 24; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125

**Appeal No. :** Criminal Appeal No. 820 of 1984

**Appellant :** Raj Virendra Singh

**Respondent :** Virendra Singh

**Advocate for Pet/Ap. :** C.L. Joseph and; G.N. Aggarwal, Advs

**Judgement :**

**S.B. Wad, J.**

(1) This revision was disposed of by me by an oral order on March 26, 1985, in absence of the counsel for the respondent. On an application moved by the respondent it was seen that the name of the counsel for the respondent was wrongly shown in the cause list. I, therefore, reheard the civil revision,

(2) The parties were married in November 1963. In September, 1980 the husband moved a petition for divorce under Section 13 of the Act. The wife moved an application for pendente lite maintenance under Section 24 of the Act. Originally the proceedings were filed in Dehradun but with the order of the Supreme Court they were transferred to this Court.

(3) The wife had claimed that husband's salary was Rs. 3,447.50. She alleged that he has income from the fixed deposit receipts of about Rs. 60,000.00 . She also alleged that the husband receives income by way of rent and from the agricultural produce. The husband has denied the quantum of the income as alleged by wife. He in his own way has stated what his income is. According to him his salary after usual cuts was Rs. 1.200/ and that he had hardly any income from other sources. Of course he has admitted the F.D.R.s. Not being satisfied with the husband's disclosures of income, the wife moved an application for permission to lead evidence. That application was rejected by the Additional District Judge. During the pendency of the present proceeding the wife has moved an application .for maintenance under Section 125 Cr. P.C. as she was not being maintained by the husband nor any provision was made for her maintenance. The said proceedings were instituted on 29-3-1982. The learned Judicial Magistrate first class referred to the statements of the parties and passed an order fixing a maintenance of

'Statement of L. Col. Virender Singh : I agree to pay Rs. 500.00 as maintenance to Smt. Raj Rani petitioner who is living separately. The payment will start w.e.f. 19-11-1983. I have no objection in deciding the case according to the above mentioned terms.' 'Statement of Raj Rani : I concede the above recorded statement of the respondent and have no objection in deciding the case in accordance with the above mentioned terms.'

(4) The learned Additional District Judge without recording any finding as to what was the income of the husband and without giving an opportunity to the wife to lead evidence in that regard, fixed the maintenance as if the order passed by the Magistrate on the application under Section 125 Cr. P.C. was a compromise/consent order and as if the wife was not entitled to higher maintenance. The learned Judge has totally mis-directed himself in law.

(5) The object of Section 125 Cr. P.C. and Section 24 of the Hindu Marriage Act and the scope of the orders under the two provisions has not been appreciated by the Additional District Judge. Section 125 Cr. P.C. is a summary remedy (although the experience is that even these proceedings are delayed for considerable period) for providing immediate financial help to a party who is neglected. These provisions of criminal law are meant for protecting social interest in the well being of the institution of family. Considerations in granting maintenance under Section 24 on the other hand are quite different. During the pendency of the litigation the parties are entitled to the maintenance and also litigation expenses in the appropriate cases. The object is not merely that the proceeding should be effectively contested, but the party deserving maintenance must also get help from the Court even during the period of the legal proceedings. It emphasizes the fact that maintenance is not a consequential order of a decree for divorce, but is a continuing obligation on the party which is better off to provide for the maintenance of the other party who is weaker amongst the two. There is no limit or ceiling fixed by Section 24. The wife is entitled to receive maintenance according to the status of the husband. It is a necessary concomitant of equality of sexes. Therefore, when the maintenance is fixed under Section 125 Cr. P.C. the wife is still entitled to claim maintenance according to the status and monetary capacity of the husband.

(6) The learned Judge has further erred in interpreting the order under Section 125 as the compromise/consent order. Whether the order is a consent order or not the selling of Rs. 500.00 cannot be exceeded. It cannot, therefore, be said that she had voluntarily agreed for the lesser amount. If there was a real compromise between the parties on the amount of maintenance, the fair and appropriate way for doing so was to record the compromise in the present proceedings. The husband has not preferred to do that and is trying to avail of statements made before the Magistrate under Section 125 Cr. P.C. Bare reading of the statement recorded by the learned Magistrate shows that the wife has not been given up her claim for higher maintenance in these proceedings.

(7) There is yet another error committed by the Additional District Judge. Normally these matters are decided only on the affidavits. But where one party wants to

lead evidence such party must be given an opportunity to examine the other side and to lead the evidence. This is necessary for the correct assessment of the financial position of the parties. Unfortunately, no such opportunity was given and no finding is made by the trial court.

(8) The counsel for the respondent has submitted that the order of the learned Magistrate under Section 125 Cr. P.C. was a consent order. The wife's application was not maintainable on the principles of rest judicata, 'estoppel and the equitable principle that the party cannot probate and reprobate. He has relied on 'H' v. 'H', Air 1928 Bom 279 which was a proceeding under the Indian Divorce Act. The first petition of the wife under the said Act was dismissed by consent. The wife filed a second petition. The first petition was filed on the ground of impotency of the husband. By agreement the parties decided to live together. The second petition was filed on the same ground. The Court held that the second petition was not competent because in the earlier proceedings the parties deliberately affirmed the marriage. Hence, no party can be permitted to file a fresh petition for declaring the marriage a nullity. He has also referred to a decision of the Supreme Court in *Sailendra Narain v. The State of Orissa* : [1956]1SCR72 . In that case the plaintiff in the earlier suit had claimed the estate as a proprietary right conferred by a grant by the East India Company. In the second suit he claimed that the land was not an estate within the meaning of the Abolition Act. The Court held that the compromise decree in the previous suit precluded the plaintiff from reasserting the title which had been negated by the compromise decree. The Supreme Court examined the position of consent decree in the light of Section 11 Civil Procedure Code . and the Doctrine of Estoppel. The said decisions are not applicable in the present case. In both cases the proceedings were civil proceedings by way of suit. The dispute in the present case does not relate to two civil proceedings. The remedy under Section 125 Cr. P.C. and the remedy under Section 24 of the Hindu Marriage Act are two separate and independent remedies. Hindu Marriage Act was enacted in 1956 when the provisions of Section 125 Cr. P.C. were already on the statute book for a very long time. The object in enacting Section 24 of the Hindu Marriage Act would be completely frustrated if the submission of the respondent is to be accepted.

(9) The wife is entitled to maintenance according to the status of the husband. Section 125 Cr. P.C, provides for maximum maintenance up to Rs. 500.00 per month. But, if the financial resources and status of the husband is such that the wife can claim more than Rs. 500.00 per month towards maintenance Section 24 of the Hindu Marriage Act comes in aid. Counsel for the appellant has pointed out that for two years the husband did not present himself in the proceedings under Section 125 of the Cr. P.C. He appeared only on one day, i e. on 4th July, 1984 and offered to make payment of Rs. 500.00 by way of maintenance. The wife agreed to accept the said amount as under the said provision she could not have asked for anything more. But, that does not mean that she consented or agreed to accept only Rs. 500.00 per month as maintenance under Section 24 of the Hindu Marriage Act.

(10) For the reasons stated above the civil revision is allowed. The wife is entitled to maintenance from 25-11-1980, the date of her application. The parties shall appear before the Additional District Judge, who, after giving full opportunity to both the parties to lead their evidence shall re-fix the maintenance amount consistent with the income and financial resources of the husband. The civil revision is allowed with costs. Counsel fee is Rs. 750.00 .