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MAJOR ASHOK KUMAR SINGH

v.

VITH ADDL. SESSIONS JUDGE, VARANASI AND ORS.

SEPTEMBER 6, 1995

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[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Code of Criminal Procedure, 1973 :

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S.125—Maintenance—Wife's petition for—Husband impotent and neglecting the wife—Wife unable to maintain herself—Held, husband's failure to perform sexual obligation would be perpetual agony for wife to continue to live in peace in conjugal home—Cruely being a ground for divorce or judicial separation, wife would be justified to live separately and entitled to maintenance.

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The appellant and respondent No. 2 were husband and wife. The marriage was solemnised in 1981. In 1987, the respondent filed a petition under s.125 of the Code of Criminal procedure 1973 claiming maintenance and separate residence from the appellant on the ground that he was impotent and neglected her. The Magistrate awarded a sum of Rs. 500 per month from the date of filing of the petition. The appellant unsuccessfully

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challenged the order in a revision before the Sessions Judge and thereafter in a writ petition before the High Court. Aggrieved, the appellant filed the appeal by special leave.

Dismissing the appeal, this Court

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HELD : 1.1. When the husband is unable to perform sexual obligation, which is one of the important factors to cement bondage of affection and cordial relationship in marital home, it would be perpetual agony for the wife to continue to live in peace in the conjugal home. Cruelty is a ground for divorce or judicial separation in civil law. Under these circumstances, the wife would be well justified to live separately from the husband and at the same time keep maintaining married status. [368-A-B]

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Sirajmohamedkhan Janmohanadkhan v. Hafizunnisa Vasinkhan and Anr., [1982] 1 SCR 695, relied on.

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1.2. Apart from other problems, the main problem is the failure on

appellant's part of sexual life. The respondent had not immediately rushed to sever her marital relations with the appellant. She had sufficiently waited for long time to see whether there would be any improvement in the potency of the appellant. Having found no hope, she chose to live separately from the appellant. Therefore, it could safely be concluded that the respondent having tried all means to sustain the marital relations but having found that it was impossible for the appellant to gain potency, she had chosen to live apart from the appellant. Therefore, there was sufficient ground for the wife to live separately. [368-D-E]

1.3. The courts below found as a fact that the appellant was impotent and he was not capable of giving sexual satisfaction to the respondent; in consequence it amounted to cruelty and that, therefore, the respondent was entitled to live separately from the appellant. Since she was unable to maintain herself, she was entitled to seek maintenance from the appellant. The view taken by the High Court is well justified. [366-G-H; 367-A]

1.4. The appellant is an Army Officer and has sufficient means to maintain his wife. The amount of Rs. 500 per month being the maximum provided under the Code, the Magistrate is well justified, under the circumstances, to award this meagre sum to the respondent towards her maintenance. [368-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8310 of 1995.

From the Judgment and Order dated 17.12.90 of the Allahabad High Court in C.M.W. No. 706 of 1990.

S.C. Birla for the Appellant

Yogesh Prasad, Ms. Rachna Gupta and P.K. Bajaj for the Respondents.

The following Order of the Court was delivered :

Leave granted.

This appeal by special leave arises from the order of the Single Judge dated December 17, 1990 of the High Court of Allahabad made in Civil Misc. W.P. No. 706 of 199. The undisputed facts are that the appellant and

A Mrs. Geeta, the respondent, are legally married couple. Their marriage was solemnized on November 22, 1981. The respondent laid the proceedings under Section 125 of the Code of Criminal Procedure, 1973 (for short, 'the Code') on July 14, 1987 for maintenance on the ground that the appellant is impotent and he neglected her and that, therefore, she claimed maintenance for separate residence from the appellant. The learned magistrate awarded a sum of Rs. 500 per month w.e.f. the date of filing of the petition. On revision the Sessions Judge confirmed the same. The High Court dismissed the writ filed under Article 226 of the Constitution of India by the impugned order. Thus, this appeal by special leave.

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C The only question raised by Shri S.C. Birla, the learned counsel for the appellant, is that the appellant had not neglected to maintain Mrs. Geeta. The very foundation for claiming maintenance under S.125 of the Code is that the appellant had neglected to maintain the respondent and that the respondent was not having sufficient means for her self maintenance. We are unable to agree with the appellant. Section 125(1) of the Code envisages that :

D "(1) If any person having sufficient means neglects or refuses to maintain-

E (a) his wife, unable to maintain herself, or

(b) x x x x x x x x x x x x x x x x x x x x x x x x x x x x

(c) x x x x x x x x x x x x x x x x x x x x x x x x x x x x

F (d) x x x x x x x x x x x x x x x x x x x x x x x x x x x x

G 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 not exceeding five hundred rupees 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."

H The courts below found as a fact that the appellant was impotent and he was not capable of giving sexual satisfaction to the respondent, in consequence, it amounts to cruelty and that, therefore, the respondent is entitled to live separately from the appellant. Since she was unable to

maintain herself, she is entitled to seek maintenance from the appellant. We find that the view taken by High Court is well justified. The controversy in no longer *res integra*. A

In *Sirajmohmedkhan Janmohanadkhan v. Hafizunnisa Yasinkhan and Anr.*, [1982] 1 SCR 695, this Court considered the question arising in the proceedings under s.125 itself. This court held that : B

"If this is so, can it be said by any stretch of imagination that where a wife refuses to live with her husband, if he is impotent and unable to discharge his marital obligation, this would not be a just ground for refusing to live with her husband when it seems to us that the ground of impotence which had been held by a number of authorities under the civil law to be a good ground not only for restitution of conjugal rights but also for divorce. Indeed, if this could be a ground for divorce or for an action for restitution of conjugal rights, could it be said with any show of force that it would not be a just ground for the wife to refuse to live with her husband. The matter deserves serious attention from the point of view of the wife. Here is a wife who is forced or compelled to live a life of celibacy while staying with her husband who is unable to have sexual relationship with her. Such a life is one of the perpetual torture, which is not only mentally or psychologically injurious but even from the medical point of view, is detrimental to the health of the woman. Surely, the concept of mental cruelty cannot be different in a civil case and in a criminal case when the attributes of such a cruelty are the same. C
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We hold that where it is proved to the satisfaction of the court that a husband is impotent and is unable to discharge his marital obligations, this would amount to both legal and mental cruelty which would undoubtedly be a just ground as contemplated by the aforesaid proviso for the wife's refusal to live with her husband and the wife would be entitled to maintenance from her husband according to his means." G

Accordingly it was held that the wife would be entitled to maintenance under s.125 (1) of the Code. The women would go to the marital H

A home of her husband, with a found hope and expectation that she would have not only a happy but also peaceful conjugal society with her husband. When she found that her husband is unable to perform sexual obligation, which is one of the important factors to cement bondage of affection and cordial relationship in marital home, it would be perpetual agony for the wife to continue to live in peace in the conjugal home. Cruelty is a ground for divorce or judicial separation in civil law. Under these circumstances, she would be well justified to live separately with the husband and at the same time keep maintaining married status.

C It is seen that in the letter addressed on June 27, 1985 by the appellant himself to his father-in-law, he had stated that "the root cause of their problem" with the respondent "is failure of sexual life". He admitted therein that his father-in-law advised him to read certain literature thereon. In his cross-examination he admitted that his wife had advised him medical treatment. It would mean that apart from other problems that had come in their way, the main problem is the failure on his part of sexual life. D It would be seen that the respondent had not immediately rushed to sever her marital relations with the appellant. She had sufficiently waited for long time to see whether there would be any improvement in the potency of the appellant. Having found no hope, she chose to live separately from the appellant. Therefore, it could safely be concluded that the respondent E having tried all means to sustain the marital relations but having found that it was impossible for the appellant to gain potency, she had chosen to live apart from the appellant. Therefore, there was sufficient ground for the wife to live separately.

F It is next contended for the appellant that the respondent had sufficient means and she can live herself comfortably and is thus not entitled to claim any maintenance from the appellant. We find no force in the contention. It is seen that the appellant is an Army Officer and is having sufficient means to maintain his wife. The amount of Rs. 500 per month being the maximum provided under the Code, the learned Magistrate is well justified, under the circumstances, to award this meagre sum to the G respondent towards her maintenance.

The appeal is accordingly dismissed.