Maintenance under CrPC

Meaning of Wife:

In Savitaben v. State of Gujarat 2008 SC it was held by the SC that the intention of the legislature is clear from the explanation added to Sec 125(1) that only a legally wedded wife who has obtained divorce can claim maintenance.

So according to the explanation a concubine is not a legally wedded wife so she cannot claim maintenance under sec 125 of CrPC. So it means that the intention of the legislature is clear i.e. not to include concubine or unlawful wife u/s 125 of CrPC.

Issue: Whether strict proof of marriage is necessary for claiming maintenance under Sec 125 CrPC?

In Kamala v. M.R. Mohan Kumar (2019) 11 SCC 491 SC observed that for fulfilling true spirit of beneficial legislation of Sec 125 strict proof of marriage is not required. Long cohabitation between man and woman may lead to presumption of marriage entitling maintenance. This presumption is rebuttable presumption.

In Badshah v. Urmila Badshah (2014) 1 SCC 188 the court held that even a second wife can claim maintenance if she was unaware of her husband's first marriage.

In D.Velluswamy v. D. Patchiammal, 2010 SC, it was held that a person who is living in live-in-relationship cannot claim maintenance u/s 125 of CrPC but she can claim maintenance under Domestic Violence Act.

In Chanmuniya v. Virender Kumar Singh Kushwaha 2010 SC The court while considering broad and expansive definition of the expression

“Domestic Relationship” as used in Sec 2(f) of Protection of Women from Domestic Violence Act, 2005 held that women in live-in-relationship are also entitled to all the reliefs given in the said act because the expression “Domestic Relationship” even includes live-in-relationship.

In D Velusamy’s case introduced a new approach and held that a woman who is in marriage like relationships though not legally married can claim maintenance. The court held that not all live-in-relationships will amount to relationship in nature of marriage. “Relationships in nature of marriage” must fulfill following conditions:

(a)The couple must hold themselves out to society as akin to spouses.

(b)They must be of legal age to marry.

(c)They must be otherwise qualified to enter into a legal marriage.

(d)They must have voluntarily cohabited for a significant period of time.

Maintenance under Muslim Law

Under Muslim law in India, maintenance is known as ‘Nafqah’. ‘Nafqah’ is the amount that a man spends on his family.

Prior to the SC decision in Md. Ahmed Khan v. Shah Bano Begum (AIR 1985 SC)

There was a view muslim woman is entitled to maintenance under muslim law during iddat period and not after that.

However, a Muslim woman cannot claim maintenance from her husband in the following cases:

- She has not attained puberty.
- She has abandoned her husband and marital duties with sufficient reason.
- Where she elopes with some other man.
- In a case where she disobeys the reasonable commands of her husband

Duration of Maintenance:

The wife’s right to maintenance ceases on the death of her husband for her right of inheritance supervenes. The widow is therefore not entitled to maintenance during the iddat of death but under muslim law, a divorced wife is entitled to be maintained by her former husband during the period of iddat.

According to Muslim Law, a divorced wife is entitled to be maintained by her former husband during the period of iddat.

In Shah Bano Begum v. Mohd. Ahmed Khan AIR 1985 SC 945, Shah Bano filed a case against her husband for maintenance u/s 125 of CrPC. Husband alleged that under Muslim Law a women is entitled to maintenance only during

Iddat period so there is no provision under muslim law which provides maintenance to muslim women after iddat period and moreover substantive law prevails over procedural law and muslim law being substantive law should prevail over CrPC.

But SC rejected this contention and held that CrPC is applicable to all the citizens of the country irrespective of their caste, creed, religion etc.

Cr.PC is also applicable to muslim women and this provision is based on public policy to prevent the women from living life of a destitute so muslim women is entitled to claim maintenance u/s 125.

There is no conflict between Sec 125 and Muslim personal law. The court observed that muslim personal law limits the liability of husband to maintain the divorced wife till the period of iddat. If the divorced wife is able to maintain herself the husband's liability expires after the period of iddat.

However if the divorced wife is unable to maintain herself she is entitled to take recourse to Sec 125 of CrPC. Sec 125 applies to Muslim woman until she remarries.

This decision of SC led to great hue and cry in the parliament due to which parliament passed Muslim women Protection of rights of divorce Act, 1986.

Sec 3(1) (a) of the Act, required husband to make fair and just provisions to maintain his wife within period of iddat.

Under Sec 4 of the act a muslim wife being unable to maintain herself after the iddat can claim maintenance from relatives, failing which from the State Wakf Board.

After the commencement of this act, the liability of the Husband is limited to the period of Iddat. But sec 5 of this act says that provision of sec 125 of CrPC would apply only if both parties exercise their option to be governed by this section at the first hearing under sec 3(2) and not in any other case.

(Sec 3(2) Where a reasonable and fair provision and maintenance or the amount of mahr or dower due has not been made or paid or the properties referred to in clause (d) of sub-section (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, mahr or dower or the delivery of properties, as the case may be)

- **Section 5 in The Muslim Women (Protection of Rights on Divorce) Act, 1986**

5. Option to be governed by the provisions of section 125 to 128 of Act 2 of 1974.—If, on the date of the first hearing of the application under sub-section (2) of section 3, a divorced woman and her former husband declare, by affidavit or any other declaration in writing in such form as may be prescribed, either jointly or separately, that they would prefer to be governed by the provisions of sections 125 to 128 of the Code of Criminal Procedure, 1973 (2 of 1974); and file such affidavit or declaration in the court hearing the application, the Magistrate shall dispose of such application accordingly. Explanation.—For the purposes of this section, “date of the first hearing of the application” means the date fixed in the summons for the attendance of the respondent to the application.