

ITEM NO.9

COURT NO.4

SECTION II-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s).4057/2015

(Arising out of impugned final judgment and order dated 17-12-2014 in CRR No. 716/2012 passed by the High Court of Judicature at Patna)

SANJU DEVI

Petitioner(s)

VERSUS

STATE OF BIHAR &amp; ANR.

Respondent(s)

(WITH APPLN. (S) FOR EXEMPTION FROM FILING O.T. ON IA 8403/2015)

Date : 06-12-2017 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MADAN B. LOKUR  
HON'BLE MR. JUSTICE DEEPAK GUPTA

For Petitioner(s) Mr. Smarhar Singh, AOR  
Mr. Binay Kumar, Adv.

For Respondent(s) Mr. Abhinav Mukerji, AOR  
Ms. Purnima Krishna, Adv.

Mr. Amit Pawan, AOR

UPON hearing the counsel the Court made the following  
O R D E R

We have heard learned counsel for the parties.

The petitioner had applied for maintenance under Section 125 of the Code of Criminal Procedure, 1973. The Trial Judge had awarded maintenance of Rs.4,000/- per month.

Feeling aggrieved, the respondent-husband preferred revision petition in the High Court. By the impugned judgment and order dated 17.12.2014, the High Court

observed that the Trial Court has not given the finding that the petitioner was unable to fend for herself, therefore, she is not entitled for maintenance.

It is submitted by learned counsel for the respondent - husband that there is already a decree of judicial separation and in view of Section 125(4) of the Code of Criminal Procedure, 1973, the petitioner is not entitled to any maintenance. We are noting this argument only to reject it since we find no substance in this argument. If a divorced wife is entitled for maintenance there is no reason why a wife who is judicially separated is not entitled for maintenance.

We are also unable to subscribe to the view of the High Court that merely because the Trial Court has not given a finding that the petitioner is not able to look after herself, therefore, she is not entitled for maintenance. The High Court is required to look into the question whether the petitioner is entitled to maintenance or not and, if so, the quantum of maintenance. Since the High Court has misdirected itself on the issues before us, we set aside the impugned judgment and order dated 17.12.2014 and remand the matter to the High Court for fresh consideration.

It is stated by learned counsel for the petitioner that no maintenance has been paid for the last nine years. We request the High Court to keep this in mind while deciding the petition.

The special leave petition stands disposed of.

(SANJAY KUMAR-I)  
AR-CUM-PS

(KAILASH CHANDER)  
COURT MASTER