

(2015) 01 BOM CK 0208

In the Bombay High Court

Case No : Criminal Revision Application No. 247 of 2001

Dattatray

APPELLANT

Vs

Manisha and Others

RESPONDENT

Date of Decision : 07-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2015) ALLMR(Cri) 1690 : (2015) 3 DMC 732

Hon'ble Judges : V.M. Deshpande, J

Bench : Single Bench

Advocate : O.K. Dagadkhair, for the Appellant; P.F. Patni, Advocates for the Respondent

Final Decision : Disposed off

Judgement

V.M. Deshpande, J.

1. Challenge in the present Revision is the Judgment and order dated 09/07/2001 passed by the Principal Judge. Family Court, Aurangabad in Petition No. E-598/2000, by which the learned Principal Judge of the Family Court partly allowed the application filed on behalf of respondent Nos. 1 and 2 herein u/s. 125 of the Code of Criminal Procedure and thereby directed that the present petitioner is liable to pay maintenance amount @ Rs. 1,000/- (Rupees One Thousand only) per month to the respondent No. 1 and Rs. 500/- (Rupees Five Hundred only) per month to the respondent No. 2. The parties in the present Revision will be referred to as husband, wife and daughter for the sake of convenience.

2. The application u/s. 125 of the Code of Criminal Procedure was filed on 14/09/2000 by the wife and the daughter against the husband in the Family Court at Aurangabad. The same was registered as Petition No. E598/2000. The averment made in the application broadly speaks about the ill-treatment caused to the wife and neglect to maintain her and her daughter on the part of the

husband. The prayer was made in the said application for their maintenance on the count that the husband is working as a Teacher and besides that he is having adequate agricultural property, through which he fetched handsome amount. It is further allegation in the application that the wife and the daughter are solely dependent on the parents of the wife.

3. The application was contested. The wife and the husband entered into the witness box. After appreciation, the learned Principal Judge, Family Court passed the impugned order which is referred in the opening paragraph of this Judgment.

4. It is pointed out by the learned counsel for the husband that during the pendency of the present Revision Application, the competent Civil Court has passed decree of divorce in favour of the husband on the ground that the wife is leading adulterous life. A statement is made on behalf of the counsel for the husband that the wife has questioned the legality of the said decree and the Appeal is pending. The statement is accepted.

5. The record shows that on 11/11/1999, the husband issued a notice to the wife through his Advocate. The said notice is at Exh. 19 on the record of the Family Court, Aurangabad. The notice reveals that the wife is having relations with one person, resultantly she left the company of the husband in the month of July, 1999 and she is residing along with her parents. The said allegations were refuted by the wife by reply dated 11/12/1999, which is at Exh. 20.

6. Sub-section (4) of Section 125 of the Code of Criminal Procedure reads as under:

"No wife shall be entitled to receive an [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."

7. Thus, it is clear that when the wife is leading adulterous life, that itself disentitles her to claim maintenance from her husband.

8. It is an admitted position that the decree of divorce on the ground of adultery is granted in favour of the husband after the impugned order. It is to be noted that the petition for divorce on the ground of adultery was filed by the husband before the competent Civil Court on 29/12/1999, whereas the petition for maintenance u/s. 125 of the Code of Criminal Procedure was filed by the wife and the daughter on 14/09/2000. Thus, it is clear that the maintenance proceedings were filed after the divorce proceedings were initiated.

9. In the interest of justice, it will be necessary to remand this matter qua only wife. Both the husband and the wife will be entitled to agitate this point afresh before the Family Court. However, it is made clear in so far as the order of maintenance in favour of the daughter is concerned, the Revision to that extent is dismissed.

10. The Judgment and order dated 09/07/2001 passed by the Principal Judge, Family Court, Aurangabad in Petition No. E-598/2000 is hereby set aside only to the extent of the wife. The order granting maintenance of Rs. 500/- (Rupees Five Hundred only) per month in favour of the daughter is hereby confirmed.

11. Both the learned counsel appearing for the husband and the wife agreed that their respective clients will appear before the Principal Judge, Family Court, Aurangabad on 09/02/2015. The learned Principal Judge, Family Court, Aurangabad is directed to decide the application for maintenance of wife only afresh. Both the husband and the wife will be entitled to file additional pleadings on record and the learned Principal Judge, Family Court, Aurangabad to decide the case afresh in accordance with law.

12. It is to be noted here that in pursuance to the order passed by this Court on 05/07/2002, the husband has already deposited 2/3rd amount of maintenance granted and the said amount is already withdrawn by the wife. It is made clear that till the decision of the maintenance proceedings afresh, the husband will not be entitled to file any execution proceedings to recover the said amount.

13. With these observations, the present Revision Application is partly allowed. Since the present Revision Application is decided finally, no orders are necessary in Criminal Application No. 5246 of 2014 and the said application is disposed of.