
(1982) 07 GUJ CK 0024
In the Gujarat High Court

Dr. Rameshchandra Shambhubhai Yadav	APPELLANT
Vs	
Dhirajgavri Yadav and Another	RESPONDENT

Date of Decision : 21-07-1982

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 125, 397, 397, 401, 401
Hindu Marriage Act, 1955 — Section 24, 9

Citation : (1982) GLH 899 : (1982) 2 GLR 359

Hon'ble Judges : S.B. Majmudar, J

Bench : Single Bench

Judgement

S.B. Majmudar, J.—The petitioner husband has filed this application under Sections 397 and 401 of the Code of Criminal Procedure, (hereinafter called "the Code") requesting this Court to stay further proceedings in criminal Misc. application no. 106 of 1982 filed by the respondent No. 1. wife in the court of the Chief J.M.F.C., Rajkot u/s 125 of the Code.

2. It must be pointed out at the outset that this revision application as such is not maintainable as it is directed against an interlocutory order passed by the learned trial Magistrate refusing to stay further proceedings in an application u/s 125 of the Code which is pending in his court. When this hurdle was realised by Mr. Patel, learned Advocate for the petitioner, he made an oral request to permit him to convert this revision application into a special criminal application. I have granted him the said permission and accordingly this application is ordered to be treated as a special criminal application under Article 227 of the Constitution of India and it is being disposed of as such.

3. In order to appreciate the grievance of the petitioner, it is necessary to note a few relevant facts. The petitioner is a medical officer aged about 32 years and is serving in 1. P.C.L. at Baroda. Respondent No. 1 wife is also a graduate in Arts and is aged about 26 years. The marriage between the parties took place on 23-2-1978 and it appears that unfortunately, the married life of this young

couple got disrupted only after passage of 12 days of matrimonial life. The petitioner-husband filed a petition before the Baroda court u/s 9 of the Hindu Marriage Act (hereinafter called "the said Act") for restitution of conjugal rights on 29-1-1982. In the said proceedings, the respondent - wife appeared and filed an application u/s 24 of the said Act for getting suitable alimony from the petitioner. Her application is dated 9-3-1982. It is, therefore, obvious that respondent No. 1-wife sought interim maintenance from the petitioner by filing the aforesaid application u/s 24 of the said Act before the Baroda court. Within a short time thereafter, she pursued an alternative remedy on 26-3-1982 by filing criminal proceedings under sec-. 125 of the Code in the court of the learned Chief J.M.F.C., Rajkot. The petitioner submits that respondent No. 1 could not ride two horses at a time and could not be permitted to continue the maintenance proceedings u/s 125 of the Code when she had already chosen the alternative remedy of getting interim maintenance u/s 24 of the said Act and which remedy was pursued by her earlier.

On this ground, the petitioner husband applied to the learned trial Magistrate by application ex. 9 to stay the proceedings u/s 125 of the Code till final decision of the Hindu marriage petition No. 26 of 1982 pending between the parties at Baroda. This application has been rejected by the learned trial Magistrate on 8-6-1982. As stated above, the said order has been brought in challenge before this Court in the present proceedings by the petitioner-husband.

4. Mr. J.M. Patel, learned Advocate for the petitioner submitted that the proceedings u/s 125 of the Code are vexatious in nature and are taken out by the wife only with a view to tiring out the petitioner and hence, they are required to be stayed in the interest of justice.

5. It is not possible to accept the aforesaid contention of Mr. Patel. A party may have various alternative remedies if they are pursued simultaneously, it cannot be said that by itself, the said action would amount to abuse of the process of the court. It is necessary to note at this-stage that the scope of proceedings u/s 24 of the Hindu Marriage Act is entirely different from the scope of proceedings u/s 125 of the Code. In the proceedings under the said Act, either spouse has a right to apply to the matrimonial court; while u/s 125 of the Code, only wife or concerned destitute parents or legitimate or illegitimate minor child whether married or not and unable to maintain itself, through his or her guardian can apply for maintenance. The nature of the respective cases which are required to be pleaded and proved in both these proceedings would also differ. u/s 24 of the Hindu Marriage Act, the concerned spouse has only to show that he or she has no independent source of income sufficient for his or her maintenance. Once this is established, interim alimony amount has to follow, keeping in mind the economic condition of respective spouses. While in Section 125 proceedings under the Code, only because the wife alleges that she has no independent source of income, her application cannot be automatically granted. She has to further prove that her husband having sufficient means has neglected or refused

to maintain her. Order of interim alimony u/s 24 of the Hindu Marriage Act is an interim order during the pendency of main proceedings while order u/s 125 of the Code is a final order. Under these circumstances, it is not possible to agree with the broad submission of Mr. Patel for the petitioner that once the wife had applied in the Baroda court for interim alimony u/s 24 of the said Act, she could not have filed proceedings u/s 125 of the Code at Rajkot. It is also necessary to note at this stage that the Code does not contain parallel provision like Section 10 of the CPC wherein subsequently instituted proceedings involving similar issues between the same parties are required to be stayed.

6. However, one apprehension voiced by Mr. Patel for the petitioner is required to be seriously considered. He submitted that if these two parallel proceedings for maintenance are allowed to go on simultaneously, a situation might arise in future where the petitioner might be faced with two independent maintenance orders which would in their turn impose crushing burden on the petitioner and the respondent-wife would get the advantage of double amounts of maintenance which might be fixed in these two independent proceedings. It is obvious that such a situation can never be countenanced. Even Mr. Budhbhati, learned advocate for the respondent-wife fairly stated that the respondent-wife would not be entitled to double amounts of maintenance against the petitioner. Under the circumstances, while rejecting the request of the petitioner to stay further proceedings in the application u/s 125 of the Code which are pending against him in the court of the learned Chief J.M.F.C. at Rajkot, it is necessary to provide for the following safeguards:

(i) If interim alimony proceedings u/s 24 of the said Act which are pending in the Baroda court get decided earlier and if any interim alimony is ordered to be paid by the petitioner to the respondent-wife in these proceedings, the said fact will have to be brought to the notice of the learned trial Magistrate by the petitioner and once this fact is brought to the notice of the learned trial Magistrate; and if he is inclined to grant maintenance application of respondent No. 1-wife u/s 125 of the Code, then while fixing the quantum of maintenance payable to the wife, the learned Magistrate shall take into consideration the amount of alimony fixed by the matrimonial court at Baroda in favour of the respondent-wife and against the petitioner and due adjustment will have to be made keeping in view the said amount of interim alimony, while fixing the maintenance amount u/s 125 of the Code;

(ii) If on the other hand, the proceedings u/s 125 of the Code get decided earlier and if maintenance amount is fixed in the said proceedings by the learned trial Magistrate, the said fact will have to be brought to the notice of the matrimonial court at Baroda whether interim alimony application u/s 24 of the said act is pending between the parties. It is trite to say that the amount of maintenance, if any, fixed by the learned trial Magistrate in favour of the respondent-wife u/s 125 of the Code, will naturally be considered by the learned trial Judge deciding the interim alimony application u/s 24 of the said Act and the fixation of interim

alimony will have to be made by that court in the light of the maintenance granted by the learned trial Magistrate to the respondent-wife u/s 125 of the Code and due adjustment will have to be made in the amount of interim alimony that may be fixed by the Baroda court keeping in view the amount of maintenance fixed by the learned trial Magistrate in favour of the respondent-wife.

(iii) The amounts of maintenance fixed in the respective proceedings will be liable to future adjustments and modification in the light of revisional or other orders, if any, that may be obtained in hierarchy of courts in these respective proceedings.

7. Subject to the aforesaid directions and clarification, the present petition deserves to be ejected, Rule issued is ordered to be discharged. The record and proceedings which are called for from the trial court shall be sent back forthwith. Mr. Budhbhati, learned Advocate for the respondent-wife submitted that the respondent-wife may be provided with costs of the present proceedings. In view of the facts and circumstances of the case, however, I direct that there will be no order as to costs.