

(2012) 04 GUJ CK 0034

In the Gujarat High Court

Case No : Special Criminal Application No.47 of 2012

Hansaben Ramjibhai Pithwa

APPELLANT

Vs

State Of Gujarat and Another

RESPONDENT

Date of Decision : 09-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 125, 126, 127, 127
Hindu Marriage Act, 1955 — Section 24, 25

Citation : (2012) 2 DMC 45

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : J.A. Adeshra, for the Appellant; B.P. Gupta, Advocate For the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Brahmbhatt J.

Heard learned Advocates for the parties. The petitioner by way of this petition approached this Court for following reliefs:

(A) The Hon''ble Court be pleased to issue appropriate writ, order or direction by quashing and setting aside the impugned order dated 30.8.2011 passed by the learned Judge, Family Court No. 4, Ahmedabad below application Exh. 40 in Criminal Misc. Application No. 3016 of 2005 at Annexure-A and further be pleased to order/direct the Family Court, Ahmedabad to hear and decide Criminal Misc. Application No. 3016 of 2005, on merits as expeditiously as possible and further be pleased to order/direct the respondent No. 2 to regularly pay to the petitioner interim maintenance @ Rs. 10,000 per month.

(B) Pending admission hearing and final disposal of this petition the Hon''ble Court be pleased to order/direct the respondent No. 2 to regularly pay to the petitioner interim maintenance @ Rs. 10,000 per month.

In short the order dated 30.8.2011 is under challenge in this proceeding, where

under the application filed by the present respondent No. 2 under Exhibit-40 in Criminal Misc. Application No. 3016 of 2005 is accepted and application filed by the petitioner u/s 127, Cr. P.C. is rejected.

2. The facts in brief leading to filing this petition deserve to be set out as under.

3. The petitioner, an ex-wife of respondent No. 2 had filed proceedings u/s 125 of Criminal Procedure Code for seeking maintenance from respondent No. 2, wherein the competent Court passed an order on 22.2.1990, ordering interim maintenance of Rs. 250 per month which had culminated into final order of Rs. 400 per month vide order dated 26.4.1991. The said order was subject matter of challenge before this Court in Criminal Revision Application No. 1017 of 1991, which was turned down by this Court in its order dated 13.7.1994. Thereafter the wife applied for enhancement u/s 127, Cr. P.C. and that application was allowed and maintenance was enhanced from Rs. 400 to Rs. 500 vide order dated 18.3.1997. Thereafter the wife had filed Hindu Marriage Petition No. 315 of 1995, wherein on 31.3.1998 an interim order was passed taking into consideration that wife is ordered to be paid Rs. 500 by way of maintenance u/s 125, Cr. P.C. and Rs. 1,200 was ordered and ultimately application made being Hindu Marriage Petition No. 315 of 1995 seeking divorce from husband came to be disposed by decree of divorce dated 8.12.1998 on the basis of the Purshish filed by the husband and endorsed by the wife through her Advocate. The decree was thus passed and the marriage got dissolved vide order and decree dated 8.12.1998. The wife filed another application u/s 127, Cr. P.C. being Criminal Misc. Application No. 3016 of 2005 seeking enhancement of maintenance for receiving Rs. 10,000, in which Exhibit-40 came to be filed inter alia contending that said application was not maintainable in view of the fact that it was agreed for paying Rs. 1,200 in civil proceedings and therefore this application u/s 127, Cr. P.C. is not competent and was required to be disposed of. Said application below Exhibit-40 is accepted by the Family Court and an order was passed on 30.8.2011 which is Subject matter of challenge in this petition as stated herein above.

4. Learned Advocate for the petitioner has relied upon decision of this Court in case of Hansaben w/o Rameshkumar Ratilal Patani v. Rameshkumar Ratilal Patani and Another, reported in 1993 (1) G.L.H. pg. 886, and contended that the two proceedings namely civil proceedings under Hindu Marriage Act, 1955 and under Criminal Procedure Code are distinct and separate and that the Court was not justified in accepting the submission of husband in rejecting application u/s 127, Cr. P.C. made by the wife/petitioner herein. Learned Advocate for the petitioner relied upon another decision of the Apex Court in case of Ramesh Chandra v. Beena Saxena, reported in 1982 (0) GLHEL-SC 41633, and contended with special emphasis in respect to observation made in para No. 5, and contended that in view of those observations it was not open to the Court to reject the petition filed by the wife for enhancement u/s 127, Cr. P.C.

5. Learned Advocate for the petitioner further relying upon observations of this

Court in case of *Ranjanaben Bachubhai v. Dilip Ramniklal Katarmal*, reported in 2011 (0) GJHEL-HC 225589, contended that the order passed u/s 24 of Hindu Marriage Act cannot be looked into while deciding application filed u/s 125, Cr. P.C. Therefore this petition is required to be allowed.

6. Learned Advocate for the petitioner contended that the Purshish submitted by husband, whereof endorsement made by Advocate for the wife is eloquently clear that the wife has agreed for Rs. 1,200 for the present (in vernacular "Halpurto"), and therefore the order made u/s 125, Cr. P.C. is not set aside or cancelled by any competent Court. Therefore it is absolutely justified in seeking relief u/s 127, Cr. P.C.

7. Learned Advocate Mr. Gupta for respondent/husband contended that Section 127 does not envisage repeated applications for enhancement. The entire purport of Sections 125 to 128, Cr. P.C. indicate that wife be a divorcee, deserted or turned out, such wife is entitled for maintenance so that she may not have to live the life of vagaries. This section cannot be turned out to be an instrument of persistent harassment to husband, whose subject matter is set at rest by competent Civil Court, wherein the Civil Court after taking into consideration the wife's plea with regard to maintenance passed an order and decree of divorce wherein maintenance is accepted at Rs. 1,200 per month.

8. Learned Advocate for respondent husband further submitted that Section 127, Cr. P.C. presupposes existence of payment of maintenance. In the instant case u/s 125, Cr. P.C. maintenance was ordered to be paid. Thereafter maintenance application made u/s 127 was allowed and that order did not remain in force in view of the fact that competent Civil Court had adjudicated upon this aspect of maintenance and the litigation came to an end wherein the wife had agreed for Rs. 1,200 per month. Now, if the wife was aggrieved on account of any misconception of operation of the order it is open to the wife to approach for appropriate remedy including invoking Section 25 of Hindu Marriage Act.

9. This Court is of the considered view that the petitioner wife had no right to maintain the original application in view of the following facts:

(1) The petitioner wife in fact filed petition for divorce being Hindu Marriage Petition No. 315 of 1995 in which proceedings of interim maintenance was fixed by the Court on 31.3.1998 and in that order maintenance of Rs. 500 was considered and thereafter when the wife, i.e. present petitioner had agreed for maintenance of Rs. 1,200 per month in the subsequent civil proceeding, it can well be said that she had accepted the order of divorce and maintenance both. The husband's economic progress alone cannot be subject matter of filing any application u/s 127, Cr. P.C. for enhancement. Assuming that there exists some right or semblance of right, then also, unless and until it is established beyond doubt that the wife is unable to carry out her regular life out of maintenance amount agreed upon in a Civil Court and in case if the maintenance fixed by Civil Court is also not found to be adequate in light of the galloping inflation, then only

u/s 25 of the Hindu Marriage Act the Court has adequate remedy to enhance the maintenance and/or adjudicate upon wife's seeking appropriate relief thereof.

10. The plain language of Section 127(1) is required to be set out as under.

Section 127. Alteration in allowance--(1) On proof of a change in the circumstances of any person, receiving, u/s 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be."

On plain reading of the language one would come to clear conclusion that for invoking Section 127, Cr. P.C. it is a prerequisite that wife should have been receiving maintenance under order of the Court u/s 125, Cr. P.C. only. In the instant case as could be seen from developments, of instances and orders it cannot be said that wife was receiving Rs. 1,200 u/s 125, Cr. P.C. and therefore the Court before which the Misc. Criminal Application was filed u/s 127, Cr. P.C. being Criminal Misc. Application No. 3016 of 2005 has no jurisdiction to entertain the application as if it had been an inherent lack of jurisdiction on account of there existing an order of Civil Court under which maintenance was fixed. Now that maintenance was rightly fixed or wrongly fixed or not adequately fixed is not a question which can be gone into on an application made u/s 127, Cr. P.C. In light of the aforesaid reasoning the decisions cited at the bar would have no applicability to the peculiar facts and circumstance of the present case, wherein it is said that wife could not have invoked Section 127, Cr. P.C. repeatedly when the wife was not receiving maintenance under order made u/s 125, Cr. P.C. The order in the field was the order passed by the Civil Court which governs the relationship of two parties, namely husband and wife and therefore Civil Court order could not have been subject matter of any further scrutiny and / or examination in the criminal proceedings in exercise of power u/s 127, Cr. P.C. The judgments cited therefore in my view have no application on present case and therefore the application deserves to be dismissed being bereft of merits. Hence the application is rejected. Notice discharged. There shall be no order as to costs.

However the Court has not opined on merits of wife's claim for receiving enhanced maintenance if permissible u/s 25 of Hindu Marriage Act.