
(1983) 04 BOM CK 0030

In the Bombay High Court

Case No : Criminal Writ Petition No. 713 of 1982

Mandakini Shivaji Jondhale (Smt.)

APPELLANT

Vs

Shivaji Dattaraya Jondhale and Another

RESPONDENT

Date of Decision : 22-04-1983

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (1983) 2 BomCR 217

Hon'ble Judges : M.P. Kanade, J

Bench : Single Bench

Advocate : S.D. Kulkarni, for the Appellant; S.M. Agarwal, respondent No. 1 and J.A. Barday, Public Prosecutor for respondent No. 2-State, for the Respondent

Judgement

M.P. Kanade, J.—By this petition under Article 227 of the Constitution of India, the petitioner challenges the order passed by the Judicial Magistrate, First Class, Kopargaon, dated October 23, 1981 dismissing her application filed by her u/s 125 of the Code of Criminal Procedure, 1973, on the ground that she had not pleaded in the said petition that she is unable to maintain herself, which has been confirmed by the Extra Additional Sessions Judge, Ahmednagar, by his order dated September 23, 1982. It is true that the application filed by the petitioner did not disclose that she is unable to maintain herself. Shri S.D. Kulkarni, learned Counsel appearing in support of this petition, submitted that an application was made before the learned Extra Additional Sessions Judge, Ahmednagar, for an amendment of the petitioner's application requesting the Court to remand the matter to the learned Judicial Magistrate for fresh trial. The said application is dismissed without assigning proper reasons. Shri. Kulkarni relies upon an unreported judgement of Kurdukar, J., in Criminal Application No. 148 of 1980. Dattu Murlidhar Jagtap Vs. Babi Bai Dattu Jagtap and Another, . It is observed in the said judgement that while exercising the jurisdiction under Article 227 of the Constitution it must not be forgotten that the order would oppress either of the parties and may cause harm and injustice to the parties. It

is, therefore, found that in the interest of justice the petition should be remitted back to the learned trial Magistrate by giving an opportunity to the wife to amend her petition in accordance with the provisions of section 125 of the Code of Criminal Procedure, 1973. Shri R.M. Agarwal, learned Counsel appearing on behalf of respondent No. 1, submitted that a view has been taken by this Court in a reported judgment that in the absence of an averment in the petition as to the inability to maintain herself the petition deserves to be dismissed. It is further submitted by Shri Agarwal that the husband may settle with the wife on payment of a lump sum amount than prefer to proceed with the litigation in the Court. Parties are not present. Therefore, they may be allowed to settle the dispute.

2. I am in respectful agreement with the view taken by Kurdukar, J., in the aforesaid case. The petitioner in fact will be entitled to make a separate application because the earlier application is dismissed on the ground that necessary averments have not been made as provided by section 125 of the Code. Instead of driving the petitioner to file a fresh application, it would be in the interest of justice to allow her to amend the present petition and remit the matter to the trial Court for fresh trial and decision thereon. In my view, this is a fit case where the powers under Article 227 of the Constitution can be exercised, allowing the petitioner to amend her petition. In the interest of justice the petitioner should be allowed to amend the petition in accordance with the provisions of section 125. If the parties settle their dispute on or before April 28, 1983, they may file their consent terms in this Court. If the parties are not able to file the consent terms on or before that date, they may do so in the trial Court. With these observations the Rule is made absolute. The matter is remitted to the trial Court to enable the petitioner to amend her petition. On such amendment being made, the respondent No. 1 may be given an opportunity to file a reply thereto, and thereafter the learned Magistrate can hold a fresh inquiry and decide the case in accordance with law.