

(2014) 01 BOM CK 0118

In the Bombay High Court

Case No : Criminal Application No. 3832 of 2013

Raju

APPELLANT

Vs

Rekha and The State of Maharashtra

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125 482

Citation : (2016) ALLMR(Cri) 301 : (2014) 2 BomCR(Cri) 187

Hon'ble Judges : Abhay M. Thipsay, J

Bench : Single Bench

Advocate : Milind M. Joshi, for the Appellant; R.V. Gore, Advocate for Respondent No. 1 and Mr. S.B. Pulkundwar, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Abhay M. Thipsay, J.—Heard Mr. M.M. Joshi, the learned Counsel for the applicant. Heard Mr. R.V. Gore, the learned Counsel for the respondent no. 1. Heard Mr. S.B. Pulkundwar, the learned Additional Public Prosecutor, for the respondent no. 2. Rule. By consent, Rule made returnable forthwith. By consent, heard finally.

2. The applicant is the husband of the respondent no. 1. The respondent no. 1 has filed an application for maintenance under the provisions of Section 125 of the Code of Criminal Procedure, 1973 [For short, "the Code"], in the court of Judicial Magistrate (First Class), Kannad, wherein the present applicant is the respondent. The applicant has approached this Court, invoking its inherent powers, and praying that the proceedings instituted by the respondent no. 1, which are pending before the Magistrate, be quashed.

3. According to the learned Counsel for the applicant, the proceedings instituted by the respondent no. 1 are nothing but an abuse of the process of the court. According to him, there have been several proceedings between the applicant

and the respondent no. 1, and that the respondent no. 1 has failed everywhere. In the course of arguments, he has given details of the various proceedings together with the dates thereon, and this aspect of the matter has not been disputed on behalf of the respondent no. 1.

4. It would be appropriate to record the facts on which there is no dispute.

(i) The marriage between the applicant and the respondent no. 1 took place on 24-4-2003.

(ii) After about 1 1/2 years from the time of marriage, the applicant and the respondent no. 1 have not been staying together (There has been dispute as to whether the respondent no. 1 voluntarily left the matrimonial house or whether she was driven away by the applicant, but that they were separated at about the said time, is not in dispute.)

(iii) That, on 13-12-2005, the applicant issued a notice to the respondent no. 1, requiring her to come for cohabitation.

(iv) As the respondent no. 1 did not respond to the said notice, the applicant filed a petition in the Family Court on 3-1-2006.

(v) On 19-1-2006, the respondent no. 1 filed an application for maintenance u/s 125 of the Code, in the court of Judicial Magistrate (F.C.), Kannad.

(vi) On 5-7-2006, a decree for restitution of conjugal rights was passed by the Family Court, and the respondent no. 1 was directed to go for cohabitation within a period of 15 days from the said order.

(vii) On 14-7-2006, the applicant sent a copy of the judgment delivered by the Family Court, and invited the respondent no. 1 for cohabitation.

(viii) As this requisition was not complied with, the applicant filed execution proceedings on 1-8-2006.

(ix) While the execution proceedings were pending, the respondent no. 1 filed an appeal against the decree of restitution of conjugal rights, but the appeal was admittedly, dismissed, on 27-7-2007.

(x) After the appeal was dismissed, the applicant withdrew the execution proceedings on 16-8-2007.

(xi) The applicant filed a petition for dissolution of marriage on 1-9-2007.

(xii) The applicant filed a petition for dissolution of marriage on 1-9-2007, on the ground of desertion.

(xiii) A decree for dissolution of marriage between the applicant and the respondent no. 1 was passed by the Civil Court on 16-3-2009 (No appeal from the said decree has been preferred by the respondent no. 1, till date).

(xiv) The maintenance application filed by the respondent no. 1 came to be

dismissed, by the Judicial Magistrate (F.C.), Kannad, on 5-3-2007.

(xv) The respondent no. 1 had challenged the order of dismissal of maintenance application by filing an application for revision in the Court of Sessions. But the revision application, which was filed on 11-4-2007, came to be dismissed on 8-10-2009.

As aforesaid, these happenings and the dates thereof are not in dispute at all.

5. It is in this background, that, on 7-2-2013, the maintenance application, which is subject matter of the challenge in the present Application, came to be filed by the respondent no. 1.

6. Indeed, it is clear that all the courts have held that the respondent no. 1 had been staying separately from the applicant without any just or sufficient cause and that, therefore, she was held to be not entitled to get any maintenance under the provisions of Section 125 of the Code. The findings of the Civil Court in matrimonial matters have also gone against the respondent no. 1.

7. The learned Counsel for the respondent no. 1 made strenuous efforts to overcome this situation, and contended that inspite of these failures, the respondent no. 1 is entitled to claim maintenance from the applicant. He advanced the following contentions:

Firstly, he submitted that the present Application, which has been filed under the provisions of Section 482 of the Code, is not maintainable, as Section 482 will have no application to the proceedings under the provisions of Section 125 of the Code. He submitted that these proceedings are not of a penal nature and, therefore, jurisdiction of this Court, saved by Section 482 of the Code, cannot be brought into picture to quash the proceedings.

There is no substance in this contention. Section 482 of the Code does not speak that, the inherent powers saved thereby can be used or applied only in connection with the proceedings which are of a penal nature. It is true that, the Code of Criminal Procedure generally speaks of the provisions relating to trial of offences, but Chapter IX, which forms a part of the Code itself, speaks of maintenance to neglected wife, children and parents. The proceedings u/s 125 arise out of the provisions of the Code itself and, therefore, the argument that the inherent powers of this Court, saved by Section 482 cannot be exercised in relation to such proceedings, has no merit.

8. It is next contended by the learned Counsel for the respondent no. 1 that, previously maintenance was not granted to the respondent no. 1 on the ground that she had been residing separately from the applicant without sufficient or just reason. According to him, since now the marriage between the applicant and the respondent no. 1 has been dissolved, the respondent no. 1 is under no obligation to stay with the applicant. He then supported this contention by saying that the grounds on which maintenance was earlier denied to the respondent no. 1, does not exist now and, therefore, the respondent no. 1 is not precluded from

claiming maintenance now. Though this argument is rather ingenious, there is actually no merit in it. The marriage has been dissolved only on the ground that the respondent no. 1 has deserted the applicant. The Civil Court which decided the rights of the parties in that regard, has come to a finding that there was no just or lawful reason for the respondent no. 1 to have left the company of the applicant and to have resided separately. When this is the position, only because marriage has been dissolved, the respondent no. 1 does not automatically become entitled to receive maintenance.

9. It is true that, a divorced wife is also entitled to claim maintenance under the provisions of Section 125 of the Code and such application, if brought by a divorced wife, cannot be resisted by the husband on the ground that the wife refuses to stay with him. That does not mean that a wife who deserts the husband, and the husband who succeeds in action for dissolution of marriage on that ground, the wife who was earlier found disentitled to maintenance would suddenly be entitled to get maintenance because of the dissolution of marriage.

10. The learned Counsel for the respondent no. 1 lastly contended that these contentions can be raised by the applicant before the Magistrate himself. He submitted that except issuance of notice, no further steps in the matter have been taken by the Magistrate, and there would be no bar for the applicant to raise all the contentions before the Magistrate, that are raised in the present petition.

Though ordinarily, this court would leave a party to raise the dispute before the trial court itself, when the trial court would be in a position to decide the dispute, this seems to be a case where there is absolutely no justification for institution or continuation of the proceedings in question. The learned Counsel for the applicant has shown to me, a copy of the previous application for maintenance, as filed by the respondent no. 1, and the application that has been presently filed by her before the Magistrate. I am in agreement with the learned Counsel for the applicant that, the contentions raised are same and the only difference is that, the fact of dissolution of marriage has been mentioned in the subsequent application and it is claimed that the difficulty which was existing earlier in getting maintenance has now vanished. As aforesaid, that, the respondent no. 1 is placed in a better position because of the dissolution of the marriage and has become entitled to get what she was earlier not getting, cannot be accepted. It is worth mentioning that, the Civil Courts have not granted any maintenance to her and it is submitted that, the respondent no. 1, though was entitled to claim such maintenance in the proceedings before the Civil Court, she had not claimed any maintenance.

11. There is also a delay in instituting the present maintenance proceedings, inasmuch as, they have been instituted after about three years from the dismissal of the revision application filed by the respondent no. 1 herein, challenging the dismissal of her previous maintenance application.

12. Continuation of the proceedings, in question, would be nothing but an abuse of the process of the court. This is a fit case where the inherent powers of this Court must be exercised to quash such proceedings. In the result, the Criminal Application is allowed in terms of prayer clause "C". Rule is made absolute accordingly.