

(1991) 07 BOM CK 0047

In the Bombay High Court

Case No : Criminal Revision Application No. 104/91

Ravindra Haribhau Karmarkar

APPELLANT

Vs

Mrs. Shaila Ravindra Karmarkar and another

RESPONDENT

Date of Decision : 17-07-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Marriage Act, 1955 — Section 25

Citation : (1992) CriLJ 1845 : (1992) 3 RCR(Criminal) 517

Hon'ble Judges : B.U. Wahane, J

Bench : Single Bench

Advocate : Vidwanash, for the Appellant; R.L. Khapre, for the Respondent

Judgement

1. In the instant application, the substantial question of law, in the public interest, has been raised and requires decision from this Court. The substantial question of law raised is as under :

"Whether a Judicial Magistrate First Class trying an application u/s 125 of Cr.P.C., is obliged under law, to stay the proceedings, on the ground that a Civil Court of competent jurisdiction has seized the matter in a suit, in which identical pleadings are made, and same reliefs are claimed by one and the same applicant/plaintiff, in whose favour the Magistrate has already awarded interim maintenance ?"

2. The facts giving rise to the above question of law, in nutshell, are as under :

The applicant and the non-applicant are the legally married spouses. Their marriage was solemnised as per the customs and rites of Hindu Religion, some times in the year 1969 at Buldana. Out of the wed-lock, they have two issues viz. first issue is a son - Sagar who is living with the applicant while the second issue a daughter Miss Anjali is living with the non-applicant No. 1 Mrs. Shaila Karmarkar. The couple had been to Canada and U.S.A. where they stayed for 12

to 13 years along with their children. Both returned some time in the year 1984 to India and stayed at Buldana till 1986. During this period, their relations became strained and ultimately on 19/5/86, the non-applicant filed an application u/S. 125 of Cr.P.C. against the applicant for maintenance for her and the daughter. Along with the application for maintenance, the wife had also filed an application for interim maintenance " Rs. 500/- p.m. for both the non-applicants, on the very day. The learned trial Court, after hearing the parties and considering the facts, awarded Rs. 250.0 p.m. to the wife and Rs. 150/- p.m. to the daughter, as interim relief. Since the day of the order, the applicant has paid Rs. 24,000/- to the non-applicants as maintenance allowance and that too in advance. Mr. Vidwanash, the learned counsel for the applicant submitted that the applicant has made the payment in advance till October 1991.

3. On 15th or 16th of October 1986, the non-applicant No. 1 wife filed a regular Civil Suit No. 227/86 for permanent alimony and also for arrears of maintenance. Along with the plaint, an application for the attachment of the property before judgment was also filed. On 28-4-1989, the Joint Civil Judge, Jr. Dn., Buldana passed the following order on the said application :

"Perused the application and say at Exh. 64. The prayer of the applicant is that Order of attachment before Judgment be passed or direct the defendants to furnish solvent surety of Rs. one lakh. By way of Exh. 64, the defendants showed their willingness to furnish surety of one lakh. Hence, the defendants are directed to furnish solvent surety of Rs. one lakh".

In compliance with the above order, on behalf of the defendants, Shri W. Y. Godbole, resident of Nagpur has furnished the solvent surety before the Joint Civil Judge, Jr. Dn., Buldana. On 20/3/1991, the applicant has filed his written statement in the said Civil Suit, denying the claim of the non-applicants. The case is now posted for filing the documents.

4. The applicant filed an application to stay the proceedings of Misc. Criminal Case No. 114/86 before the Judicial Magistrate, First Class, Buldana, till the decision of the Regular Civil Suit No. 227/86. The application was opposed. After hearing the parties, the learned J.M.F.C., Buldana, rejected the application filed by the applicant for stay of the Misc. Criminal Case No. 114/86 vide his order dated 24-1-1991.

5. Being aggrieved by the order passed by the learned J.M.F.C. Buldana in Misc. Criminal Case No. 114/86 dated 24-1-1991, the applicant approached this Court.

6. Mr. Vidwans, the learned counsel for the applicant submitted that though the non-applicant wife instituted two proceedings, one in the Criminal Court and another in the Civil Court, but the reliefs are one and the same. The relief sought in the application u/s. 125 of Cr.P.C. is to the following effect "to direct the opponent to pay the subsistence allowance of Rs. 500/- p.m. each to both the applicants Nos. 1 and 2".

In the Reg. C.S. No. 227/86, the relief claimed as per prayer clause (i) is that "It is, therefore, prayed that this Hon"ble Court be pleased to decree the claim of the plaintiffs by passing necessary orders of maintenance against the defendant, directing him to pay arrears of Rs. 7000/- to the plaintiffs and further be ordered him to provide maintenance allowance " Rs. 500/0 p.m. each to plaintiffs i.e. total Rs. 1000/- p.m. from the date of filing of this suit and onwards permanently".

The prayers made in the application u/s. 125 of Cr.P.C. and in the Reg. C.S. No. 227/86 are one and the same.

7. Mr. Vidwans, the learned counsel for the applicant submitted that practically pleadings are identical and verbatim in both the cases. He took me through the pleadings of both cases and demonstrated that practically the paras are identical as much as they are in verbatim. Following paras of the application u/S. 125 of Cr.P.C. are identical to the paras of the plaintiff in Reg. Civil Suit.

Application u/S. 125 Reg. C.S. No. 227/86 of Cr.P.C.

4 6 5 7 6 8 7 9 8 10 9 11 10 12 11 13 12 14 13 15 14 16 Therefore, according to Mr. Vidwans, in both the litigations, the fate would be based on the same evidence.

8. The findings given by the Civil Court are binding on the Criminal Court. Therefore, as the matter is seized with the Civil Court i.e. in respect of the maintenance allowance and that too the similar amount which she alleged to be entitled in the application u/s. 125 of Cr.P.C., instead multiplying the litigations and to harass the applicant to lead the evidence in different two courts, in the interest of justice, the application pending in the court of J.M.F.C., Buldana be stayed till the decision in the Reg. C.S. No. 227/86. It is further submitted that any verdict given by the Criminal Court is not binding on the Civil Court but it is vice versa. The reliefs being the one and the same, the evidence will be common, so also the documents, it is the interest of both the parties to get the verdict from the Civil Court.

9. Mr. Vidwans, the learned counsel for the applicant relied upon the case of M/s. Bush India Ltd. v. Lekharaj Pohoomal Kewalramani reported in 1984 Criminal Law Journal 346 (Bombay). Their Lordships observed in para 7 as follows (at page 348) :

"I fail to understand what is the qualitative difference between the two stands. The parties are merely formulating the same propositions in the two proceedings in different words. The distinction made by the learned Judge is without any difference, as observed by the learned Magistrate and as is also apparent from the record, the dispute in the criminal complaint also revolves on the pivot whether or not respondents are the sole agents of the petitioners for sale and export of the petitioner's goods to the countries concerned. The learned Addl. Sessions Judge's interpretation is clearly wrong so far as this aspect is

concerned".

In para 8, Their Lordships observed that :

"The other two reasons given by the learned Magistrate and indicated in para 6 supra, are also sound and the learned Addl. Judge has not bothered himself to consider them. The learned Magistrate's order staying the prosecution was eminently just and the learned Addl. Sessions Judge should not have interfered with it in revision".

The reliance also been placed on the case of William J. W. Ross v. Eleanor Agnes Ross reported in AIR 1932 Sind 210 : 1933 Cri LJ 548. In that case before their Lordships, the wife instituted the proceedings u/Ss. 488 and 489 of Cr.P.C. and the husband had already instituted the proceedings for divorce in the Divorce Court. Their Lordships observed that -

"I am of opinion that the learned Magistrate would have exercised a better discretion on receiving an application u/s. 488 against a husband who had already instituted proceedings in the divorce Court, if he had referred the applicant for her remedy to the Civil Court. I do not think that it was the intention of the legislature in S. 489 to encourage applicants to resort to criminal Courts up to the very time when an order was passed by a competent Civil Court. As the Civil Court was seized of the matter, it seems to me clear, it is better that the Civil Court should dispose of it, and in the circumstances which have arisen in the present case, I am of opinion that a High Court would stay proceedings in a criminal Court until the conclusion of the divorce petition. We accordingly direct the learned Magistrate to stay the hearing of the application u/s. 488, Cr.P.C., by adjournment from time to time until the conclusion of the divorce petition".

10. On behalf of the non-applicants, Mr. Khapre, the learned counsel, opposed the application and submitted that the remedies in the criminal Court and Civil Court are altogether different. According to him, the proceedings instituted in the Criminal Court u/s. 125 of Cr.P.C. are the summary proceedings for the immediate relief to the wife and other dependents. In the proceedings u/s 125 Cr.P.C. the Court has jurisdiction to grant maintenance allowance to extent of Rs. 500/0 to each claimant. If this amount is inadequate according to claiming spouse or other claimants, the only remedy available is Civil Suit or petition u/s. 25 of the Hindu Marriage Act, 1955.

11. In a case u/S. 125 of Cr.P.C. the non-applicant Smt. Shaila Karmarkar, entered in the witness box and now the case is posed for her cross-examination. He further submitted that the principles of res judicata are not applicable in the instant case because though the reliefs claimed in both the proceedings are one and the same, the effect is not one. He further submitted that this Court has no power under any statute to stay the proceedings. To substantiate his submissions, he placed reliance on the case of Mohanlal v. Sau. Kamlabai reported in 1985 II DMC 322 (Bom) (Nagpur Bench, S.B.). In the case before his

Lordship, the wife instituted the proceedings u/s. 125 of Cr.P.C. and also husband filed an application for Judicial Separation and alimony in the Civil Court against the applicant under the provisions of the Hindu Marriage Act. An ex parte order was passed against the husband and she was awarded maintenance of Rs. 300/- p.m. The Civil Court granted Rs. 100/- p.m. as permanent alimony to the wife. In that case, the issue was raised to the effect that the principle of res judicate is applicable. His Lordship held that the Section 11 of the C.P.C. as such, is not, in terms, applicable to the proceedings u/s. 125 of Cr.P.C.

12. In the instant case before me, the question of res judicata is not involved. Shri Vidwans, the learned counsel for the applicant also has not raised this issue. Therefore, the observations made in the case supra are not of any assistance to the non-applicants.

13. Reliance also been placed on the case of *In re Taralakshmi Manuprasad* reported in AIR 1958 Bom 499 : 1939 Cri LJ 91. In that case their Lordships observed that :

"The mere existence of a decree of a Civil Court directing a certain sum to be paid for maintenance does not oust the jurisdiction of a Magistrate in a proper case to make an order u/s. 488. Of course the existence of such a decree is relevant when the Magistrate is considering what form of order he should make u/s. 488 and the Magistrate should make it clear in his order that anything paid under the decree of the Civil Court will be taken into account against anything which he may order to be paid".

In the instant case before me, there is no decree passed by the Civil Court. For the same relief, the non-applicant wife knocked the doors of the Civil Court as well as of Criminal Court. So, the facts of the case which was before their Lordships of the Bombay High Court are altogether different having no relation with the facts and circumstances before me and, therefore, it is also not of any assistance.

14. Reliance has also been placed on the case of *A. Joseph Fernando v. Maria Navis* reported in (1987) II DMC 342 (Madras, S.B.). It is held that :

"The maintenance proceeding u/s. 125, Cr.P.C. was initiated earlier though the order in the civil suit was passed earlier. In such circumstances it is manifest that a petition u/s. 125 of Cr.P.C. is perfectly maintainable notwithstanding a Civil Court's order for maintenance. The criminal proceedings can not be quashed".

In the instant application, the applicant has not prayed for quashing the criminal proceedings i.e. application presented u/s. 125 of Cr.P.C. The only limited prayer is that the matter being seized with the Civil Court, till the disposal of the Reg. C.S. No. 227/86, the proceedings instituted u/s. 125 of Cr.P.C. be stayed. Therefore, the facts of the case decided by the learned Court in the case supra and the facts before me, being altogether different, this case is also not of any assistance to the non-applicants.

15. In a case of Challapalli Sugars Ltd. Vs. Swadeshi Sugar Supply Pvt. Ltd., , in respect of the same subject matter, there were two suits instituted though the relief was based on different cause of action. The subject-matter in controversy in both the suits being the same, arises out of the same contract and from the same transaction, the later suit was stayed till the decision of the earlier suit.

16. Considering the facts and circumstances and the submissions made by the learned counsel for the parties, the relief in both the cases, being one and the same, and the Civil Court being seized with the matter, in the interest of justice, the proceeding pending in the court of J.M.F.C. Buldana, be stayed till the decision of the Reg. C.S. No. 277/86.

17. The non-applicants could not be allowed to ride two horses at a time (two simultaneous proceedings in two different Courts) and could not be permitted to continue the maintenance proceedings u/s. 125 of Cr.P.C. when they had already chosen the alternative remedy in Reg. C.S. No. 227/86. It is well settled law that the judgment of Civil Court shall prevail over the judgment of Criminal Court. The natural justice demands that parallel proceedings cannot be allowed to continue in different Courts.

18. The Civil Judge, Sr. Dn. Buldana, is directed to expedite the matter. Staying the proceedings pending in the Court of J.M.F.C., Buldana, will not cause any prejudice to the non-applicants because they are already receiving the maintenance allowance " Rs. 250/- p.m. for wife and Rs. 150/- p.m. for the daughter.

19. In these terms the application is allowed. Rule made absolute.

20. Ordered accordingly.