
(2016) 04 BOM CK 0038

In the Bombay High Court

Case No : Criminal Writ Petition No. 162 of 2015

Shri Kashinath Naik

APPELLANT

Vs

State of Goa, through Public Prosecutor and another

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2016) 2 AIRBomRCri 190

Hon'ble Judges : C.V. Bhadang, J.

Bench : Single Bench

Advocate : Mr. Ryan Da Piedade Menezes, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Bhadang, J. (Oral) - Rule. Rule made returnable forthwith. Mr. Menezes, learned Counsel waives service on behalf of respondent no. 2. The State-Respondent no. 1 is a formal party. Heard finally, by consent of the parties.

2. By this petition, the petitioner is challenging the order of grant of interim maintenance to respondent no. 2 in proceedings under Section 125 of Cr.P.C.

3. The respondent no. 2 filed an application being Maintenance Application No. 2/2013/A under Section 125 Cr.P.C. before the learned Judicial Magistrate First Class, Ponda, in which she also claimed interim maintenance. By an order dated 17.01.2014, the learned Magistrate has granted interim maintenance of Rs. 5000/- per month. The petitioner unsuccessfully tried to get the order cancelled by filing an application under Section 127 of Cr.P.C., which was rejected on 25.06.2014. The petitioner challenged the original order of grant of interim maintenance before the learned Sessions Judge in Criminal Revision Application No. 25/2015. The main ground was that on 26.02.2013 in Matrimonial Petition No. 9/2009/A, the marriage between the parties was declared as null and void directing cancellation of the Entry No. 62/2007 dated 22.01.2007. It was contended that in such circumstances, maintenance could not have been granted

under Section 125 of Cr.P.C., which permits grant of maintenance to a wife, whose marriage is either subsisting or who is a divorce.

4. The learned Sessions Judge by a judgment and order dated 28.10.2015 has dismissed the revision application. That is how the petitioner is before this Court.

5. It is submitted by the learned Counsel for the petitioner that a wife whose marriage has been declared null and void would not be entitled to claim maintenance under Section 125 Cr.P.C. The learned Counsel has relied upon the judgment dated 26.04.2012 of this Court in Criminal Writ Petition No. 16/2012 in the case of Kamal Durganand Pagi v. Durganand alias Guru Pagi, in order to submit that in the face of the marriage being declared null and void by the competent Civil Court, no maintenance could have been granted.

6. The learned Counsel for the respondent no. 2 has placed reliance on Article 69 of Decree No. 1 dated 25.12.1910, which reads thus:-

"The annulment of marriage, as well as the divorce, produces between the spouses themselves the same effects which are produced by its dissolution by death, regarding their property and persons and whatever has not been specifically regulated."

7. It is contended that even in respect of marriage, which has been annulled, the effect which it produces would be similar to the case of dissolution of marriage/divorce. The learned Counsel does not dispute that the contentions based on Article-69 of Decree No. 1, were not urged before the learned Magistrate or before the Sessions Judge, as a result of which, obviously there is no consideration or finding recorded on this aspect by the Courts below.

8. I have considered the rival circumstances and submissions made. Undisputedly, the marriage between the parties has been annulled by the competent Court on 26.02.2013, which has attained finality as respondent no. 2 has not carried the matter any further. Be that as it may, the record shows that respondent no. 2 claimed maintenance under Section 125 Cr.P.C., which application was filed on 02.03.2013, which was subsequent to the date of annulment of marriage. This aspect as also the rival contentions based on Article-69 has not been considered by the Courts below.

9. Considering the fact that the matter arises out of an interim order and the main application is still pending before the learned Magistrate, it would be appropriate that the impugned order is set aside, directing the learned Magistrate to decide the main application and/or the interim application, in accordance with law. It is made clear that it would be open for respondent no. 2 to press for consideration of the application for interim maintenance afresh and if, that is done, the learned Magistrate shall decide the same after hearing the parties, in accordance with law.

10. In such circumstances, the following order is passed:

- (a) The petition is allowed.
- (b) The impugned order dated 17.01.2014, is hereby set aside.
- (c) The learned Magistrate shall decide the application for maintenance/interim maintenance afresh, in accordance with law after hearing the parties.
- (d) The amount of Rs. 1,15,000/- deposited before this Court on 23.12.2015 shall be transferred to the Court of Judicial Magistrate First Class at Ponda. The same shall be invested in a Nationalised Bank for a period of one year. It is made clear that it would be open for the learned Magistrate to pass appropriate orders in respect of the amount depending upon the outcome of the case.
- (e) Rule is made absolute in the aforesaid terms, with no order as to costs.