

(2016) 07 KAR CK 0003

In the Karnataka High Court

Case No : Criminal Petition No. 101338 of 2014.

**Smt. Channamma alias Neelamma Kallahalli Suresh - Petitioner @HASH
Kallahalli Suresh Kallahalli Doddanagouda**

Date of Decision : 01-07-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2016) 4 AirKarR 422

Hon'ble Judges : A.N. Venugopala Gowda, J.

Bench : Single Bench

Advocate : B.V. Somapur, Advocate, for the Petitioner; J. Basavaraj, Respondent, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J. - This petition is by the wife against the husband, assailing an Order dated 13.06.2014 passed in CrI.R.P. No. 11 of 2013 by the Sessions Judge, Koppal. By the said Order, revision petition filed by the respondent was allowed and the maintenance awarded by the Magistrate was set aside and the petitioner was reserved with the right to seek maintenance, if any, in M.C. No.35 of 2006, on the file of the Sr. Civil Judge, Hospet.

2. In view of the controversy at hand, it is unnecessary to state the facts in details, except to note that the marriage of the petitioner and the respondent was solemnised on 03.03.2002 and M.C. No. 20 of 2002 filed by the respondent to pass decree of divorce was withdrawn and that M.C. No.35 of 2006 filed was allowed by the Sr. Civil Judge, Hospet, on 05.09.2007. Unaware of the filing of the said two petitions by the husband, the petitioner filed Criminal Miscellaneous No.20 of 2010 before the JMFC, Yelburga, under Section 125 of Cr. P.C. for award of maintenance. The respondent, despite service of notice did not appear and was placed ex parte. The petitioner got herself examined as PW-1 and marked 3 documents as Exs.P1 to P3. The Magistrate being satisfied that the respondent has neglected the petitioner and has sufficient income to provide maintenance to the petitioner, who was found to be not having any source of income for her

livelihood, allowed the petition in part and directed the respondent to pay maintenance at the rate of Rs. 2,000/- p.m. from the date of petition till her lifetime. Assailing the Order passed in Criminal Miscellaneous No.20 of 2010, granting maintenance as above, the respondent filed Criminal.R.P. No.11 of 2011. The Presiding Officer, Fast Track Court I, Koppal, set aside the Order dated 08.04.2010 passed in Criminal Miscellaneous No.20 of 2010 and remanded the matter for decision afresh by the JMFC, Yelburga. The case having been contested and both the parties having advanced evidence, upon consideration of rival contentions, by an Order dated 04.12.2012, the respondent was directed to pay maintenance to the petitioner, at the rate of Rs. 2,500/- p.m. from the date of petition till her lifetime. Said Order having been questioned in Criminal R.P. No. 11 of 2013 by the respondent, the petition was allowed, the order insofar as granting maintenance was set aside and the petitioner was granted liberty to seek maintenance in M.C. No.35/ of 2006, before the JMFC, Hospet, vide Order dated 13.06.2014. To set aside the Order dated 13.06.2014 passed in Criminal .R.P. No. 11 of 2013 and to restore the Order passed in Criminal Miscellaneous No.20 of 2010 dated 04.12.2012, this petition was filed.

3. Heard the learned advocates and perused the record.

4. On a perusal of the impugned order, it is manifest that the learned Sessions Judge has not kept in view the plight of the deserted wife, who approached the Magistrate for awarding of maintenance during the year 2010 and despite her success in the case, the matter was remanded in Criminal. R. P. No.1 1 of 2011 on 09.09.2011, to give opportunity to the respondent to file objections and for deciding of the case from that stage onwards. After enquiry, the case having been decided on merit by the learned Magistrate, the learned Sessions Judge having found that there is a decree of divorce passed in M.C. No.35 of 2006, which was not stated in the application filed u/Sec.125, Cr. P.C. has allowed Criminal. R. P. No. 11 of 2013 on 13.06.2014. It is to be stated at this stage itself, that the Judgment and Decree passed in M.C. No.35 of 2006 is an ex parte decree against the petitioner herein and hence, she could not be attributed with the knowledge of the proceedings of the matrimonial case.

5. The point for consideration is, whether the impugned order is arbitrary and capricious and liable to be interfered with?

6. While passing the impugned order, learned Sessions Judge has not kept in view the fact that the proceedings under Section 125, Cr. P.C. are of a summary nature and is intended to enable destitute wife and children to get maintenance in a speedy manner. It is the duty of the Court, before which a claim is made under Section 125, Cr. P.C. or proceeding arises out of such claim, to decide the case with utmost expedition. The delay in deciding of such cases would defeat the very object and intendment of the provision made as per Section 125, Cr. P.C., as the applicant can be presumed to have approached the Court, on account of immense difficulty to sustain for want of sufficient income.

7. In *Vanamala v. H. M. Ranganatha Bhatta*, (1995) 5 SCC 299, Apex Court has held, that when divorce is obtained by mutual consent and the divorced wife has not re-married, she cannot be held dis entitled to maintenance under Section 125(1) read with explanation (b), by invoking Section 125(4), Cr. P.C.

8. In *Gurmit Kaur v. Surjit Singh* (1996) 1 SCC 39, the appellant married the respondent in the year 1971. She filed an application under Section 125, Cr. P.C. for award of maintenance on 21.07.1988. The Magistrate, by an order dated 28.02.1990 granted maintenance to her and her minor son. On revision, the Sessions Judge held that the wife is not entitled to maintenance. The said order was confirmed by the High Court on the ground that the wife was residing separately by mutual consent and that, therefore, she is not entitled to maintenance. The wife having approached the Apex Court, it was held as follows:

"7. In view of the divorce agreement referred to here in above, the marital relations have come to a terminus. By virtue thereof, the respondent had contracted the second marriage. In other words, the first marriage has been put to an end. The appellant thereby became entitled to claim maintenance and will continue to do so, so long as she remains unmarried and she is unable to maintain herself."

(Emphasis supplied)

9. In *Rohtash Singh v. Ramendri (Smt) and others* (2000) 3 SCC 180), application by wife, under Section 125, Cr. P.C. for award of maintenance was filed on 28.05.1993, during the pendency of husband's petition for divorce. Decree of divorce was passed on 15.07.1995 on the ground of desertion. Application filed under Section 125, Cr. P.C. was allowed separately. Divorce decree passed having become final, it was contended that the obligation of the husband to maintain a woman with whom all relations came to an end should also be treated to have come to an end. Said contention was repelled by the Apex Court as follows:

"11 This plea, as we have already indicated above, cannot be accepted as a woman has two distinct rights for maintenance. As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125(4). In another capacity, namely. as a divorced woman, she is again entitled to claim maintenance whom the person of whom she was once the wife. A woman after divorce becomes a destitute. If she cannot maintain herself or remains unmarried, the man who was once her husband continues to be under a statutory duty and obligation to provide maintenance to her."

(Emphasis supplied)

10. In the present case, it is not the defence of the respondent, that the petitioner has married another person and by being not chaste she has lost the right to claim maintenance from him. The Magistrate has found that the petitioner having no sufficient income, is unable to maintain herself.

11. In *Smt. Dukhtar Jahan v. Mohammed Farooq* (1987) 1 SCC 624, Apex Court with regard to scope of the proceedings under Section 125, Cr. P.C. has opined as follows:

"16... Proceedings under Section 125, Cr. P.C., it must be remembered, are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner."

(Emphasis supplied)

12. In *Vimala (K.) v. Veeraswamy (K.)*, (1991) 2 SCC 375, while discussing about the basic purpose under Section 125 of Cr. P.C., Apex Court has held as follows:

"3. Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife".

(Emphasis supplied)

13. In *Kirtikant D. Vadodaria v. State of Gujarat and another* (1996) 4 SCC 479, with regard to the dominant purpose behind Section 125, Cr. P.C., and the manner in which the case should be dealt with, Apex Court has held as follows:

"15 While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitute and starvation."

(Emphasis supplied)

14. Grant of maintenance to wife has been perceived as a measure of social justice which becomes clear from the decision in *Chaturbhuj v. Sita Bai* (2008) 2 SCC 316, Para 5) and the legal position was emphasised by the Apex Court as follows:

"6. Section 125, Cr. P.C. is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Captain Ramesh Chander Kaushal v. Veena Kaushal* (1978) 4 SCC 70, falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural

duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in *Savitaben Somabhai Bhatiya v. State of Gujarat* ((2005) 3 SCC 636)."

(Emphasis supplied)

15. In *Nagendrappa Natikar v. Neelamma* (2014) 14 SCC 452, it has been made clear by the Apex Court, that the provision made as per Section 125, Cr. P.C. is to provide for a summary and speedy relief by way of maintenance to a wife, who is unable to maintain herself and her children.

16. The Family Courts Act was enacted for the establishment of Family Courts for adopting and facilitating the conciliation procedure and to deal with family disputes in a speedy and expeditious manner. Wherever the Family Court has not been established, the Magistrate or other Courts exercising the jurisdiction under Section 125, Cr. P.C. should keep in view the fact that being a summary proceedings, the claim for maintenance should be decided, with as much expedition as is possible also keeping in view the time limit prescribed in the Karnataka (Case Flow Management in Subordinate Courts) Rules, 2005.

17. In the present case, the course which the learned Sessions Judge has adopted in passing the impugned order is clearly contrary to the very objects behind making the provision under Section 125, Cr. P.C. The learned Sessions Judge has not kept in view the fact that there was an earlier order of remand and that the JMFC has decided the case by giving opportunity to the respondent i.e., in terms of the order of remand passed in R.P. No. 11 of 2011. The approach of the learned Session Judge is flawed and not legally proper. Thus the impugned order is arbitrary and capricious and cannot be sustained.

18. The claim having been made under Section 125, Cr. P.C. more than five years back, directing the petitioner to approach another forum, when there is no dispute with regard to the marital status of the parties is wholly arbitrary. By the procrastination of the case and by giving scope for multiplying the litigation, the system would suffer, apart from the fact that the destitute woman is driven from pillar to post. The impugned order is insensitive.

19. The petitioner's claim for award of maintenance which was opposed by filing the revision petition should have been decided on its merit rather than driving her to another forum, which would again consume considerable time and in the process, she may suffer immense harm thereby resulting in denial of justice. The delay in rendering of justice speedily in matters like the one under Section 125, Cr. P.C. would amount to denial of justice, which should be avoided by the Courts.

20. Since the revision petition has not been decided on its merit by the learned Sessions Judge, there is no other option left, than remand the case for a time bound consideration and decision.

In the result, the petition is allowed and the impugned order is set aside. Both parties are directed to appear before the District and Sessions Court at Koppal,

on 23.07.2016 and receive further orders. The Court below shall decide the case by keeping in view the observations made supra and in accordance with law, with utmost expedition and before 30.09.2016.