

(1998) 08 BOM CK 0046

In the Bombay High Court

Case No : Criminal Writ Petition No. 112 of 1991

Smt. Sushilabai Patil

APPELLANT

Vs

Shri Ravan Elji Patil and another

RESPONDENT

Date of Decision : 27-08-1998

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 125, 245

Citation : (1999) 1 ALD(Cri) 175 : (1999) 5 BomCR 74 : (1998) CriLJ 4749 :
(1999) 1 DMC 610 : (1999) 1 RCR(Criminal) 731

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : D.P. Adsule, app, Padmakant M. Shah, for the Appellant; R.S. Mhamane, for the Respondent

Judgement

T.K. Chandrashekhara Das, J.—This petition is filed by the petitioner/wife for maintenance u/s 125 of the Criminal Procedure Code against the respondent/husband. Both the courts below rejected her application for maintenance.

2. It is an admitted case of both the parties that the petitioner had filed petition for maintenance earlier and while pending the said petition the parties had compromised and executed an agreement on 14-11-1975 where by the petitioner had received Rs. 7500/- in lieu of maintenance and she had agreed that she will not claim further for any maintenance from the respondent/husband. In view of this agreement the petition filed by the petitioner before the learned Magistrate in Misc. Application No. 91 of 1987 was dismissed as the petitioner had surrendered the right to get maintenance u/s 125 of the Cr.P.C. as per that agreement. Against that order the petitioner filed Criminal Revision Application No. 245 of 1989 which was also dismissed by the learned Additional Sessions Judge, Dhule by his order dated 12-10-1990. Against this order, the petitioner has approached this Court by way of this petition.

3. I heard Counsel Mr. P.M. Shah for the petitioner, Mr. R.S. Mhamane for

respondent No. 1 and A.P.P. Mr. D.P. Adsule for the State-respondent. After hearing both the sides I find that the petition is liable to be dismissed.

4. A question has been raised before me as to whether a wife who was neglected to maintain by her husband, who once agreed for a consolidated amount of maintenance by surrendering her right to get maintenance periodically u/s 125 of the Cr.P.C., can subsequently claim maintenance?. The learned Counsel appearing for the parties brought to my notice that similar question was referred to by the Division Bench (Nagpur Bench) of this Court and reported in 1990 M.L.J. 81, and same has been answered by the Division Bench. (Nagpur Bench) comprising of Justice V.A. Mohta & Justice G.D. Patil by its judgment dated 11-1-1991. It appears from the judgment that two criminal revision applications bearing Nos. 200 of 1989 and 218 of 1989 were referred to the Division Bench for decision. As per the judgment of Division Bench it has been held that a wife can enter into an agreement for consolidating payment of maintenance by surrendering her right to get maintenance u/s 125 of the Cr.P.C. The Division Bench has observed in para No. 4 of the said judgment that :--

"In Criminal Revision Application No. 218 of 1989 basic facts are that the wife was granted maintenance by the trial Court u/s 125 Cr.P.C. despite divorce by mutual agreement under the terms of which the wife had waived her right to maintenance on receiving Rs. 5,000/-. Aggrieved by the said decision, revision was preferred by the husband before the Sessions Judge, who, relying upon the case of Shravan (supra) came to the conclusion that there was a divorce by mutual consent on certain terms and conditions, one of which was payment of Rs. 5000/ in full and final settlement of the claim for maintenance past and future and hence there was no justification whatsoever for claiming maintenance. It seems to us that the approach adopted by the learned Sessions Judge is faultless. This application, therefore, has no substance and is, therefore, dismissed."

5. In view of the above observation of the Division Bench of this Court, I find no ground to interfere the order passed by the courts below. The writ petition, therefore, fails and it is dismissed.

6. Petition dismissed.