

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.336 OF 2001

Jagdish Ramgir Gosavi.] ... Applicant

Versus

Sou. Rajashri Jagdish Gosavi and Ors.] ... Respondents

Mr. S. V. Kotwal for Applicant.

CORAM :- M. S. SONAK, J.
DATE :- DECEMBER 02, 2015

P. C. :-

1. The challenge in this petition is to the order dated 31/07/2001 made by the II Additional Sessions Judge, Baramati, awarding maintenance in favour of the respondent-wife.

2. Mr. S. V. Kotwal, learned Counsel for applicant, has submitted that in the present case, the respondent-wife, without any cause, had deserted the petitioner-husband. The petitioner had applied for and even obtained a decree for restitution of conjugal rights. Ultimately, since the decree was not honoured, the petitioner applied for and obtained a decree of divorce on the ground of desertion. In such circumstances, Mr. Kotwal submitted that the

respondent-wife was not entitled to award of any maintenance. Mr.Kotwal placed reliance of the decision of ***Bhagwan Raoji Dale Vs. Sushma alias Nanda Bhagwan Dale and another***¹ in respect of contentions raised in this Criminal Revision Application.

3. Section 125 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), *inter alia*, provides that any person having sufficient means neglects or refuses to maintain his wife, unable to maintain herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife at such monthly rate as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time direct. Explanation (b) to Section 125 of Cr.P.C. provides that the term 'wife' includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. The explanation makes it quite clear that even a divorced woman continues to enjoy the status of 'wife' for the purposes of claim of maintenance under Section 125 of Cr.P.C.

4. The question as to whether a wife against whom decree for divorce has been made on account of her deserting the husband can claim maintenance under Section 125 of Cr.P.C. or not, is no longer *res integra*. The Hon'ble Supreme Court, in the case of ***Rohtash Singh Vs. Smt. Ramendri and Others***², at paras 8, 9 and 9A has observed thus :

¹ 1998(2) Mh.L.J. 819

² 2000 Cri.L.J. 1498

“8. Admittedly, in the instant case, the respondent is a divorced wife. The marriage ties between the parties do not subsist. The decree for divorce was passed on 15th of July, 1995 and since then, she is under no obligation to live with the petitioner. But though the marital relations came to an end by the divorce granted by the Family Court) under Section 13 of the Hindu Marriage Act, the respondent continues to be "wife" within the meaning of Section 125, Cr. P.C. on account of Explanation (b) to Sub-section (1) which provides as under:

Explanation.- For the purposes of this Chapter-

(a) ...

(b) "wife" includes woman who has been divorced by, or has obtained a divorce from her husband and has not remarried.

9. On account of the Explanation quoted;' above, a woman who has been divorced by her husband on account of a decree passed by the Family Court under the Hindu Marriage Act, continues to enjoy the status of wife for the limited purpose of claiming Maintenance Allowance from her ex-husband. This Court in Ramesh Chander Kaushal v. Mrs. Veena Kaushal observed as under :

9. This provision Is a measure of social justice and specially enacted to protect women and children and falls within the constitutional

sweep of Article reinforced by Article We have no doubt that sections of statutes calling for construction by Courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause - the cause of the derelicts.

9A. Claim for maintenance under the first part of Section 125, Cr. P.C. is based on the subsistence of marriage while claim for maintenance of a divorced wife is based on the foundation provided by Explanation (b) to; Sub-section (1) of Section 125, Cr. P.C. If the divorced wife is unable to maintain herself and if she has not remarried, she will be entitled to Maintenance Allowance. The Calcutta High Court had an occasion to consider an identical situation where the husband had obtained divorce on the ground of desertion by wife but she was held entitled to Maintenance Allowance as a divorced wife under Section 125, Cr. P.C. and the fact that she had deserted her husband and on that basis a decree for divorce was passed against her was not treated as a bar

to her claim for maintenance as a divorced wife. (See : Sukumar Dhibar v. Smt. Anjali Dasi. The Allahabad High Court also, in the instant case, has taken a similar view. We approve these decisions as they represent the correct legal position.”

5. In the light of the aforesaid legal position, it is not possible to follow the decision in the case of *Bhagwan Dale (supra)*. There is accordingly no case made out to exercise the revisional jurisdiction. This Criminal Revision Application is therefore dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)