

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Amk

CRIMINAL WRIT PETITION NO. 378 OF 2006

Shri Shrikant Govind Kamble

.. Petitioner

Vs.

Sou. Sadhana Shrikant Kamble & Ors.

.. Respondents

Mr. Wasim Samlewale i/b Mr. Umesh Mankapure for the Petitioner.

Mr. Dilip Bodake for Respondent Nos.1 & 2.

CORAM : M.S.SONAK, J.

DATE : 10th DECEMBER, 2015.

P.C.

1. Rule was granted in this petition on 24.03.2006. An ad interim relief in terms of prayer Clause (c) was granted only insofar as grant of maintenance to respondent-wife is concerned. This petition, insofar as called maintenance @ Rs.700/- p.m. to the petitioner's daughter i.e. respondent No.2 is concerned has already been dismissed.

2. This case, the Judicial Magistrate First Class (JMFC) by judgment and order dated 10.03.2004 had denied any maintenance to respondent No.1 wife but had directed the petitioner to pay maintenance @ Rs.700/- p.m. to respondent No.2 daughter. Respondent No.1, thereupon instituted Criminal Revision Application No. 9 of 2005 before the Sessions Judge, Satara questioning the JMFC's order dated 10.03.2004, to the extent, it had denied the maintenance to her. By judgment and order dated 08.11.2005, the Sessions Judge, Satara has allowed the revision instituted by respondent No.1 and directed the petitioner to pay maintenance @ Rs.1000/- p.m. to respondent No.1 along with costs of Rs.500/-. Hence the present petition by the petitioner husband.

3. Mr. Samliwale, learned Counsel for the petitioner, has submitted that in this case respondent No.1 deserted the petitioner without any reasonable cause. The petitioner was constrained to institute proceeding for divorce on the said ground, which divorce was ultimately granted to the petitioner. In the decree granting divorce, the petitioner was directed to pay alimony @ Rs.450/- p.m. to respondent No.1 and their daughter. During the pendency of execution proceedings, there was the compromise arrived at between the petitioner and respondent No.1. The compromise is recorded in Deed of Relinquishment dated 11.06.2001. In terms of compromise, respondent No.1, upon receipt of an amount of Rs.65000/- in full and final settlement as relinquished rights to receive arrears of maintenance as well as claim maintenance in future. Despite of this, respondent No.1 instituted proceeding under Section 125 of the Code of Criminal Procedure, which were rightly dismissed by the JMFC. The Revisional Court has exceeded its jurisdiction in interfering with the JMFC's order and awarding maintenance in favour of respondent No.1.

4. Mr. Samliwale, learned Counsel for the petitioner, submitted that the Revisional Court in the present case has virtually re-assessed the materials on record and on the basis of certain discrepancies, interfered with the JMFC's order, particularly on the aspect of the Deed of Relinquishment dated 11.06.2001. Mr. Samliwale has submitted that the Sessions Judge, Satara in the exercise of revision is not entitled to re-assess the materials on record and substituted its own opinion to that of the opinion of the JMFC. For all these reasons Mr. Samliwale submitted that the impugned order dated 08.11.2005 made by the Sessions Judge, Satara is required to be set aside.

5. Mr. Bodake, learned Counsel for respondent Nos. 1 & 2, submitted that the JMFC had completely failed to notice the serious

discrepancies and contradictions in the evidence of the witnesses examined by the petitioner. The Sessions Judge was, therefore, right and acted within the bound of his jurisdiction in disbelieving the case based upon the Deed of Relinquishment. In any case, Mr. Bodake submitted that the Division Bench of this Court in the case of **Geeta Satish Gokarna Vs. Satish Shankarrao Gokarna, 2004(3) ALL MR 229** has ruled that the clauses in Consent Terms, which disabled one of the spouses from even instituting proceeding in future for claiming maintenance or alimony are against public policy and consequently unenforceable.

6. Having heard the learned Counsel for the parties and perused the material on record, it is not possible to interfere with the well reasoned decision of the Sessions Judge. This is not a case where the Sessions Judge can be said to have exceeded the bounds of revisional jurisdiction. In this case, the JMFC whilst denying the maintenance to respondent No.1 had failed to take notice of the serious discrepancies and contradictions in the context of the Deed of Relinquishment. The petitioner, in the course of his deposition, had stated that an amount of Rs.65,000/- in cash, was paid by the petitioner to respondent No.1 simultaneous with the execution of the deed and in the presence of the witnesses, whose names appeared on the deed. One of the persons examined was not even the witness named in the deed. The second person, though a witness, did not support the petitioner on the aspect of payment of cash amount of Rs.65,000/- but only stated that the petitioner had told him that such cash amount has been paid. The Sessions Judge, in such circumstances, rightly disbelieved the case of the petitioner in the matter of payment of amount of Rs.65,000/-. The Sessions Judge has taken cognizance of several other contradictions and on the said basis refused to deny respondent No.1 maintenance. There is really no error of jurisdiction or perversity in the record of finding by the revisional Court.

7. Even, if it is accepted that the Deed of Relinquishment had indeed been executed by respondent No.1, the perusal of the same indicates that the same was executed because the petitioner was not at all regular in the matter of payment of alimony amount of Rs.450/-. The Deed of Relinquishment itself states this circumstance and proceeds to recite that it would not be possible for respondent No.1 to approach Courts from time to time in order to enforce the alimony amount and, therefore, the rights to arrears of maintenance as also future maintenance are being relinquished. Mr. Samliwale has submitted that the darkhast proceeding initiated by respondent No.1 has since been dismissed, relying upon Deed of Relinquishment dated 11.06.2009. Assuming this is so, the Deed of Relinquishment had a highest affects claim of arrears of maintenance/ alimony @ Rs.450/- p.m. awarded by the judgment and decree by which the petitioner was granted a divorce. There is no question of relinquishment of right to claim maintenance in future or the relinquishment of rights to even initiate proceedings for claim of maintenance in future. Such a clause would clearly be hit by doctrine of public policy. Such a clause cannot be enforced in a Court of Law, as the same would be opposed to public policy.

8. The Division Bench of this Court in the case of **Geeta Satish Gokarna** (supra) in the context a similar clause in the Consent Terms filed by the parties before the Civil Court has held as under:

8. *Having considered the judgment in the case of **Hirabai Bharucha** (supra) the question really would be whether under Section 25(1) a party who has been divorced is entitled to maintenance even if in the consent terms had agreed not to claim alimony/maintenance. The language of Section 25 shows that it is a power conferred on the Court at the time of passing of the decree or at any time subsequent thereto on an application made to award alimony or maintenance. This is a jurisdiction to be exercised by the Court. The parties, therefore, cannot by an agreement between*

*themselves, agree to oust the jurisdiction of the Court which otherwise Parliament has conferred. The second aspect of the matter is that permanent alimony and maintenance are a larger part of the right to life. These provisions have been included to enable a person unable to maintain herself to be protected. The learned single Judge of this Court in Hirabai Bharucha interpreting Section 40 of the Parsi Marriage Act has taken a view following similar views taken by English Courts that such a Section is based on public policy. That public policy is now reflected in our Constitutional philosophy. The power is conferred on the Court with the object of helping the weak. Therefore, any clause in a contract or consent terms providing to the contrary would be against public policy. (See **Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress & Ors.**, AIR 1991 S.C. 101). Clause 5 of the consent terms is clearly severable from the other terms of the consent terms. Clause 5 would be contrary to public policy and consequently that clause will have to be treated as nonest. The only question is whether Clause 4 would bar the appellant herein from so applying. The very fact that clause 5 was placed differently from clause 4 will indicate that it ought to cover situations other than those covered by clause 5. Even otherwise clause 4 to the extent that prohibits a party from claiming maintenance would also suffer similar consequences as Clause 5 of being against public policy. Considering the above discussion the appellant was not barred from applying under Section 25(1). The application, therefore, by the appellant was clearly maintainable. The learned trial Judge was right in so holding. The Cross Objections, therefore, filed by the respondent on that count must be rejected.*

9. There is no merit in the contentions that since the divorce was obtained by the petitioner on the ground of desertion, the petitioner is not liable to pay any maintenance to respondent No.1. Such contention was rejected by the Hon'ble Apex Court in the case of **Rohtash Singh Vs. Smt. Ramendri & Ors.**, 2000 Cr.L.J. 1498 by observing that allowance under Section 125 of the Criminal Procedure Code and the plea of desertion by wife cannot be treated to be an effective plea in support of the husband's refusal to pay her the maintenance allowance. After decree of divorce is passed, there is no obligation to live with the husband, and though marital

relations came to an end by the divorce granted, respondent continues to be wife within the meaning of Section 125 of the Criminal Procedure Code on account of explanation (b) to Section 125 of the Code which provides that a woman who is divorced by her husband on account of decree passed by the Court continues to enjoy the status of the wife for the limited purpose of claiming maintenance from her ex-husband. As a wife she is entitled to maintenance unless she suffers from any of the disabilities mentioned in Section 125. In another capacity as a divorced woman she cannot disentitle to claim maintenance from the person as once she was the wife. A woman if after her divorce, becomes destitute and cannot be maintain herself, then the man who was, once, her husband continues to be under statutory duty and obligation to provide maintenance to her.

10. Therefore, on cumulative consideration of the facts and circumstances of the present case as also the law on the subject, no case is made out to interfere with the impugned order dated 08.11.2005 made by the Sessions Judge, Satara. This petition is, therefore, dismissed. Interim relief stands vacated. There shall be, however, no order as to costs.

11. The petitioner is directed to pay arrears of maintenance to respondent No.1 within the period of 3 months from today. In case the arrears are not paid within the period of 3 months, then the same shall carry interest @ 10% p.a.

(M.S.SONAK, J.)