

IN THE HIGH COURT OF JUDICATURE AT MUMBAI  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL REVISION APPLICATION NO.272 OF 2015  
WITH  
CRIMINAL APPLICATION NO.238 OF 2015

Premchand Shantilal Lodha ... Applicant  
Vs.  
Swati Premchand Lodha and others ... Respondents

Ms Sunanda R. Kumbhat for Applicant.  
Mr. Rajesh More, APP for Respondent No.3-State.

**CORAM : R. G. KETKAR, J.**  
**DATE : 27<sup>TH</sup> AUGUST, 2015**

**P.C. :**

Heard Ms Kumbhat, learned Counsel for applicant and Mr. More, learned APP for respondent No.3-State at length.

2. By this Application under Section 401 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), the applicant has challenged the judgment and order dated 31.01.2015 passed by the learned Judge, Family Court, Nashik in Petition No.E-58 of 2012. By that order, the Family Court partly allowed the Petition and directed the petitioner to pay Rs.3,000/- each to respondent No.1 and respondent No.2 as maintenance from the date of application i.e. 16.03.2012.

3. In support of this Application, Ms Kumbhat strenuously contended that the Petition under Section 125 of Cr.P.C. was instituted by Ms Sushma Ratankumar Bora, mother-in-law of the petitioner. She submitted that respondent No.1 is the wife of the petitioner and respondent No.2 is the daughter of the petitioner. Respondents No.1 and 2 did not initiate proceedings under Section 125 of Cr.P.C. but the same

is initiated by the mother of the respondent No.1. She further submitted that for the first time, it has come on record in Petition under Section 125 that respondent No.1 is schizophrenic. The said fact was suppressed at the time of marriage, which was solemnized on 28.04.1998. She submitted that since the fact that respondent No.1 is schizophrenic was suppressed at the time of solemnization of marriage, the marriage itself is void.

4. Ms Kumbhat further submitted that on 13.04.2010, the document styled as 'compromise deed' was executed by respondent No.1 in favour of the petitioner. Under that deed, petitioner had paid Rs.3,50,000/- to the respondent No.1 towards full and final settlement of all her claims against the petitioner. It is not in dispute that the amount is paid over by the petitioner to the respondent No.1. She submitted that though the deed was executed in the year 2010, the proceedings under Section 125 are instituted in the year 2012. She has invited my attention to the - (i) newspaper cutting of 'Lokprabha' dated 26.04.1996. The said cutting does not disclose that respondent No.1 is schizophrenic; (ii) the deposition of Ms Sushma Ratankumar Bora and in particular paragraph 5 of the cross-examination. In paragraph 5, she admitted that petitioner has given Rs.3,50,000/- to the respondent No.1 as per the compromise deed dated 13.04.2010 at exhibit-40. She submitted that the said document will have to be treated as a document indicating mutual consent to live separately as contemplated by Section 125(4) of Cr.P.C. As the petitioner and respondent No.1 are separately residing by mutual consent, respondent No.1 lost her right to claim alimony from the petitioner. In any case, having received Rs.3,50,000/- from the petitioner, respondent No.1 is dis-entitled to claim any maintenance. In support of her submissions, she relied upon the decision of this Court in the case of *Vitthal Hiraji Jadhav Vs. Harnabai Vitthal Jadhav*, **2003 (4)**

**Mh.L.J. 23.**

5. I have considered the submissions advanced by Ms Kumbhat. I have also perused the material on record. As noted earlier, the Family Court has partly allowed the Petition instituted by respondents No.1 and 2. Perusal of the cause title of the Petition shows that respondents No.1 and 2 have filed the proceedings under Section 125 of Cr.P.C. through Ms Sushma Ratankumar Bora. She was examined as a witness on behalf of the respondents No.1 and 2. In her evidence, and in particular paragraph 2 thereof, she deposed that as the mental condition of respondent No.1 at the time of marriage was not proper, notice was issued in Lokprabha soliciting proposals. In pursuance thereof, petitioner expressed his desire to marry respondent No.1. She further deposed that as respondent No.1 is not mentally stable and is suffering from schizophrenia, she has produced a certificate dated 30.08.2010 issued by Psychiatrist Dr. Umesh Nagapurkar. She has identified signature of Dr. Umesh Nagapurkar and it was marked as exhibit. As the mental condition of respondent No.1 is not stable and respondent No.2 is minor, she has instituted proceedings after obtaining Court permission. As far as the petitioner is concerned, in his cross-examination, in paragraph 8, he admitted that before marriage, he had idea about mental condition of respondent No.1 and still he performed marriage with her.

6. It is also matter of record that the petitioner and the respondent No.1 executed document styled as 'compromise deed' on 13.04.2010, and that under that deed, petitioner had paid Rs.3,50,000/- to the respondent No.1. As far as the payment of Rs.3,50,000/- is concerned, respondent No.1 also did not dispute the receipt of the same. However, her case is that considering the mental condition of the respondent No.1

as also financial constraints, the petitioner got the compromise deed executed. Apart from that, it has come on record that respondent No.2 is suffering from heart ailments and she was operated. Perusal of the compromise deed dated 13.04.2010 shows that parties agreed to obtain divorce by mutual consent by filing proceedings in the Court of Civil Judge, Senior Division, Nashik. It is admitted position that till date, proceedings for divorce by mutual consent is not filed. In other words, the marriage between the petitioner and respondent No.1 still subsists. Despite that, it has come on record that the petitioner has remarried on 22.02.2009, and out of that wedlock, the son is born on 14.06.2010.

7. Ms Kumbhat relied upon the decision of this Court in the case of **Vitthal Hiraji Jadhav** (*supra*). In paragraphs 7 and 8, the learned Single Judge observed thus,

“7. The learned Magistrate lost sight of the provisions of Section 125(4), which provide that, no wife shall be entitled to receive an alimony from her husband under this Section, if she is living in adultery, or that without sufficient reason refuses to live with the husband, or if, they are living separately by mutual consent. This Court does not wish to enter into the controversy in respect of the authority of the said document as legal divorce, because, that pertains to the domain of Family Courts and away from the jurisdiction of this Court, so far as present roster is concerned. One thing is very clear as indicated by the said agreement of which the learned Magistrate has taken the cognizance that both the petitioner and respondent No. 1 entered into that agreement voluntarily and that agreement was supported by payment of a consideration for settling the claim of respondent No. 1 towards alimony receivable from the present petitioner. At least indicating mutual consent to live separately as contemplated by provisions of Sub-section (4) of Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Code for convenience).

8. When the husband and wife are residing separately by mutual consent, such wife loses the right to claim alimony from such husband, in view of provisions of Sub-section (4) of Section 125 of the Code. The language of Sub-section (4) is very clear on this point and there is no scope to deviate from it. The learned Magistrate has obviously committed a legal error and his order is

suffering from legal infirmity. The order, which is suffering from legal infirmity cannot be permitted to survive for a moment. Thus, it will have to be quashed by allowing this petition by issuing a writ of certiorari in favour of the petitioner. Thus, petition stands allowed. Both the orders in Misc. Application No. 97 of 1996 and Criminal Revision Application No. 392 of 1998 stand quashed with no order as to costs.”

8. In my opinion, the said decision has no application to the facts of the present case as respondent No.1 is, prima facie, not mentally fit to execute the document. It, therefore, cannot be said that by virtue of execution of the document, respondent No.1 has ceased to be wife of the petitioner or for that matter, has given up her claims against the petitioner. The reliance placed by Ms Kumbhat on the decision of this Court does not advance the petitioner's case.

9. The learned Judge in paragraph 11 has considered all the relevant circumstances as also considered the fact that respondent No.2 was operated surgically. After considering the income of the petitioner, the Family Court has awarded maintenance @ Rs.3,000/- per month each to respondent No.1 and respondent No.2. I, therefore, do not find that the Family Court has committed any error in passing the impugned order. Hence, Application fails and the same is dismissed. In view of the dismissal of the Application, Civil Application No. 238 of 2015 for stay does not survive and the same is disposed of as such.

**(R. G. KETKAR, J.)**

*Minal Parab*