

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1044 OF 2014

Savita Santram Mane

.. Applicant

Versus

Santram Kashinath Mane & Anr.

.. Respondents

Mr. Anand Chaware, Advocate for applicant.

Mr. S.K. Shinde, Advocate for applicant No.1.

Mr. V.M. Kagne, A.P.P. for respondent/State.

CORAM : A.V.NIRGUDE, J.

DATED : 04.05.2016

P.C. :-

1. Heard learned Counsel for the parties.
2. Facts leading to this litigation are as under:-
3. The applicant is admittedly a divorced wife of respondent No.1. In 1978 marriage of the parties took place. A daughter was also born. In 1982 dispute arose between husband and wife. In 1989 the applicant wife filed Criminal Misc. Application under section 125 of Cr.P.C. in the Court of Chief Judicial Magistrate, Latur, against respondent/husband. In May, 1989 the parties arrived at a compromise. During the pendency of the application, customary divorce took place between them.

As per compromise, respondent/husband paid a lump sum amount of Rs.51,000/-, in lieu thereof the applicant gave up her right of maintenance in future. From 1997 and till today applicant/wife did not get married. In 1997, daughter of the parties got married when the respondent/husband bore expenses. Rather belatedly in 2010, applicant/wife filed present application under section 125 of Cr.P.C. once again claiming maintenance from her divorced husband. The respondent/husband opposed this application mainly on the ground that applicant/wife had already given up her right of maintenance in 1989, when she received lumpsum amount and therefore, her application is not maintainable.

4. The question, therefore, is - whether the application under section 125 of Cr.P.C. is maintainable despite the event that took place between the parties in 1989?

5. Learned Counsel for the respondent placed reliance on following judgment, which are delivered by learned Single judges of this Court.

- (i) Shrawan Sakharam Ubhale Vs. Durga Shrawan Ubhale & Ors., 1990 Mh.L.J.418.
- (ii) Smt. Sushilabai w/o. Ravan Patil Vs. Shri Ravan Elji Patil & Anr., 1995(5) Bom.C.R.74.

- (iii) Vitthal Hiraji Jadhav Vs. Harnabai Vitthal Jadhav and Anr., 2003(4) Mh.L.J.23.
- (iv) Popat Kashinath Bodke Vs. Kamalabai Popat Bodge & Ors. 2003 ALL MR (Cri) 868.
- (v) Gajanan s/o. Pandurang Solanke Vs. Sheela Gajanan Solanke & Ors., 2005(1) Mh.L.J.348.

6. The learned Judges in the aforesaid judgments observed that once wife gave up her right of maintenance after receiving lumpsum amount, she would not be entitled to any maintenance in future.

7. In order to decide this controversy one need to peruse the relevant provisions of Cr.P.C. :-

125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or 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 or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the

Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means. Explanation.- For the purposes of this Chapter,-

(a) " minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875); is deemed not to have attained his majority;

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

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month' s allowances remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made: Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due: Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such

Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing. Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife' s refusal to live with him.

(4) No Wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

127. Alteration in allowance.

(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife, child, father or mother, as case may be, the Magistrate may make such alteration in the allowance he thinks fit: Provided that if he increases the allowance, the monthly rate of five hundred rupees in the whole shall not be exceeded.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that-

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,-

(i) in the case where, such sum was paid before such order, from the date on which such order was made,

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband by the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a monthly allowance has been ordered to be paid under section 125, the Civil Court shall take into account the sum which has been paid to, or recovered by, such person as monthly allowance in pursuance of the said order.

8. In 1989, the applicant/wife received Rs.51,000/- (Rupees Fifty One Thousand) in lumpsum and gave up her right of maintenance. She thought that the amount was sufficient to take care of her future maintenance. At the relevant time the amount was quite handsome and the wife would have led a respectable life, utilizing the amount for her maintenance. In those days, she also had a hope of getting remarried. But now her situation is changed, her daughter got married in 1997, from 1989 till 2010 the value of the amount which she received has got reduced due to perpetual inflation, which we suffered in our country. Assuming that the amount of Rs.51,000/- is still intact and its interest could be used for maintenance of the wife, the amount of interest generated by Rs.51,000/- now would be grossly insufficient for wife's maintenance. In other words, the time has changed and the wife's situation also changed. When she gave up her right of maintenance, it cannot be said that it was forever. Right of maintenance for the time being in those days was given up. In my view, due to change in situation right of maintenance has arisen once again in favour of the applicant/wife. She is, therefore, entitled to file application under section 125 of Cr.P.C. She must convince the Court that she is unable to maintain herself despite the amount she had received in 1989 in lumpsum. She has not remarried. She is neither living in adultery

and that her husband has sufficient means to provide maintenance.

9. Perused all the judgments referred to above. The facts of this case are different and this case can easily be distinguished. As said above, the settlement between the parties took place long ago when the parties were young and had lots of future prospects. Now that parties are old and have lost all the future prospects. The petitioner is struggling to survive. She cannot look at any one besides her married daughter but to her ex-husband for maintenance.

10. Going by the provisions of section 127 of Cr.P.C., we may come to a conclusion that the alteration of order of maintenance is permissible if a compromise takes place or divorce takes place with maintenance in lumpsum etc. This provision presupposes passing/existence of an order under section 125 of Cr.P.C.

11. In this case, order under section 125 of Cr.P.C. was not altered at all but the compromise was recorded to dispose of the application filed by the wife under section 125 of Cr.P.C. Therefore, husband cannot place reliance on this provision at all.

12. As said above, a new application is filed under Section 125 of Cr.P.C. One must decide such application in the light of those provisions.

13. Sub-section (1) of section 125 of Cr.P.C. enables a wife to make application for maintenance if she establishes that she was unable to maintain herself. Learned Counsel for the respondent-husband placed reliance on phrase utilized in sub-section (4) of section 125 of Cr.P.C., namely, "if they are living separately by mutual consent".

14. In this case, the wife started living separately due to divorce and not by mutual consent. If during subsistence of marriage mutual separation occurs, in such eventuality, the clause will apply. In my view, situation is now changed, which would give rise to a fresh cause of action for a wife to seek maintenance. The parties led required evidence in support of their case. However, the application was rejected mainly on technical grounds. It is, therefore, necessary for me to appreciate evidence that has come on record to decide as to how much amount should be awarded as maintenance to the petitioner. The petitioner has stated in her deposition that she is unable to maintain herself. However she has admitted that she has 5 Acres land standing in her name. She said that

this land was given to her by her father. She further stated that the land is not with her and grabbed by her brothers. I am not inclined to believe this part of her case. Nonetheless judicial notice is taken of the fact that for an aged woman like petitioner, land admeasuring 5 Acres is mostly liability than asset. Assuming that this land is put to use, the petitioner is not likely to reap profit. On the other hand the respondent-husband is in comfortable position. He recently got retired from Police Service. He has his immediate family like his wife and children. In such situation even after retirement he can easily maintain his ex-wife for her life.

15. The facts of this case are required to be appreciated from humanitarian point of view. At present the petitioner is old and unable to maintain herself. On the other hand the respondent is in better position financially or otherwise. The petitioner's married daughter is only relative she has in the world. She therefore cannot depend on her for her maintenance. If she demands maintenance from her daughter it might cause problems in daughter's marital life. In such situation the person who is in sight is the petitioner's ex-husband.

16. I direct the respondent to pay Rs.4,000/-

(Rupees Four Thousand) per month to the petitioner from the date of application. He shall further provide medical help, if required, in emergency situation to the petitioner.

17. The criminal application stands allowed and disposed of accordingly.

[A.V.NIRGUDE,J.]