

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 504 OF 2004

Ashok Deochand Mali (Bhamre)
Age : 44 years, Occ. Service,
R/o Kusumba Tal. & Dist. Dhule.

Petitioner

VERSUS

Malti Ashok Mali (Bhamre)
Age : 40 years, Occ. Labour,
R/o. Deobhane fata, Tal. & Dist. Dhule.

Respondent

....

Mr. D. J. Patil, Advocate h/f
Mr. N. B. Suryawanshi, Advocate for the Petitioner.
Mr. A. R. Syed, Advocate h/f
Mr. S. P. Brahme, Advocate for the Respondent.

....

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 09/06/2016

ORAL JUDGMENT:

1. This petition was admitted on 02.11.2004 and this Court refused interim relief to the petitioner.

2. The petitioner is aggrieved by the Judgment and order dated 27.08.2004, delivered by the Learned Judicial Magistrate First Class,

by which Criminal Misc. Application No. 650 of 2002 filed by the respondent seeking maintenance under Section 125 of the Code of Criminal Procedure, was allowed. The petitioner is also aggrieved by the Judgment of the Revisional Court dated 12.10.2004, by which the Revision Application filed by the petitioner was rejected.

3. The petitioner submits that the marriage in between the petitioner and the respondent was solemnised on 11.05.1985. Three daughters and one son are born out of the wedlock. The learned counsel for the petitioner makes a grievance that though a customary divorce was arrived at between the parties on 18.10.2000, the Trial Court as well as the Revisional Court failed to consider the effect of Section 125(4) and granted maintenance to the respondent. He strenuously submits that on account of the customary divorce that took place, the respondent was disentitled for claiming maintenance and her application under Section 125 should have been rejected, considering the effect and ambit of sub-Section 4 of Section 125.

4. Shri. A. R. Syed, learned Advocate for the respondent submits

that this petition deserves to be dismissed on two counts. Firstly, that the purported customary divorce which is said to have been arrived at by virtue of the document dated 18.10.2000, termed as Panch Farkat, was never registered and an un-registered document is not recognized in law. Secondly, even if it is presumed that the customary divorce has taken place, the Hon'ble Supreme Court (three Judges Bench), in the matter of *Bai Tahira vs. Ali Hussain Fissalli Chothia and another* **1979 AIR SC 362 : 1979 SCR (2) 75**, has concluded that a divorced wife has a right to seek maintenance under Section 125 and the dissolution of marriage makes no difference to the right to seek maintenance.

5. I have considered the submissions of the learned Advocates.

6. It is not disputed that the purported customary divorce document was not a registered document. The Trial Court has considered the same and has concluded that if the said document, (even if it is presumed to be admissible in evidence) is considered, it does not reveal that the customs as are required to be followed in the

concerned community of the litigating sides, were followed and hence even on that count the divorce can not be termed to be a customary divorce. The Trial Court, therefore, discarded the said document as it had no probative value.

7. The Trial Court has considered the earnings of the petitioner as is evident from paragraph No. 7 of the impugned order. The Trial Court noted that the petitioner has to maintain his four children and second wife. Considering this aspect, the Trial Court has directed the petitioner to pay a meagre amount of Rs.1000/- by way of maintenance to the respondent. The Revisional Court has rightly not found any perversity in the conclusions of the Trial Court.

8. In the Judgment of the Supreme Court, in the case of *Bai Tahira A vs. Ali Hussain Fissalli Chothia* (supra) it is concluded in paragraph No. 5 as under :-

“Shri Bhandare, appearing for the appellant, contended that the Courts below had surprisingly forgotten the plain provision in the Explanation (b) to Section 125 (1) of the Code which reads :

“wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

On this foundation, he urged that accepting the contention of the respondent that the appellant was a divorcee, his client was still entitled to an allowance. This is obviously beyond dispute on a simple reading of the sub-section and it is curious how this innovative and sensitive provision with a benignant disposition towards destitute divorcees has been overlooked at all the courts below. We hold that every divorcee, otherwise eligible, is entitled to the benefit of maintenance allowance and the dissolution of the marriage makes no difference to this right under the current Code. In the normal course, an order for maintenance must follow, the quantum having been determined by the learned Magistrate at the trial level.”

9. It is, therefore, evident that every divorcée who is otherwise eligible, would be entitled to the benefits of maintenance despite the dissolution of marriage. In the instant case, the dissolution of marriage has not been proved. So also, considering the earnings of the petitioner, I do not find that the quantum of maintenance granted by the Trial Court could be said to be exorbitant.

10. As such, I do not find any error in the impugned Judgments.

The petition being devoid of merit is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)