

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 145 OF 2015

KAMAL DURGANANAD PAGI.

... Petitioner

Versus

DURGANAND @ GURU PAGI.

... Respondent

Mr. Ryan Da Piedade Menezes, Advocate for the petitioner.

Coram:- C. V. BHADANG, J.

Date:- 21st June, 2016

P.C.

By this petition, the petitioner is challenging the judgment and order dated 08/04/2015 passed by the Learned Sessions Judge at Margao in Criminal Revision Application No.13/2014/A which arose out of an order dated 04/01/2014 passed by the learned Judicial Magistrate, First Class, Canacona in Maintenance Application No.1/M/2010. By the said order, the learned Magistrate while disposing of the application under Section 125 of Cr.P.C. filed by the petitioner and an application under Section 127(1)(2) of Cr.P.C., filed by the respondent husband, had cancelled the order of interim maintenance and closed the proceedings. While doing so, the learned Magistrate had directed the respondent to pay to the petitioner a sum of Rs.2,500/- per month from 19/07/2012 till 31/10/2012 i.e. Rs.7,500/- and a further amount of Rs.1,500/- being interest payable on the maintenance allowance. The order of maintenance has been cancelled on the ground that the marriage between the parties has been declared to be null and void by the competent Civil Court by a

judgment and order dated 31/10/2012. The Courts below have concurrently held that a wife, whose marriage has been declared to be null and void, would not be entitled to maintenance under Section 125 of Cr.P.C.

2. Indisputably, the judgment of the Civil Court declaring the marriage between the parties as null and void, was subject matter of challenge before this Court in Second Appeal No.39/2015. The learned Counsel for the petitioner does not dispute that the Second Appeal has been dismissed on 10/06/2016. Thus, the judgment and order declaring the marriage between the parties as null and void has attained finality.

3. Section 125 of Cr.P.C. provides for maintenance to a destitute wife. A wife under the said Section includes a woman, who has been divorced by husband or who has obtained divorce from her husband and who has not remarried. It can, thus, be seen that the wife as envisaged under Section 125 of Cr.P.C. would not include a wife, whose marriage has been declared to be null and void which, in effect, means that there was no valid marriage solemnized or contracted between the parties. In such circumstances, I do not find that any exception can be taken to the concurrent findings recorded by the Courts below.

4. The learned Counsel for the petitioner has placed reliance on

Article 69 of Decree No.1 of 25/12/1910, which reads thus :

"Article 69 - The annulment of marriage has, as between the spouses, likewise in divorce, the same effects as in the case of dissolution of marriage by death in respect of their properties and persons, in the part not specifically regulated."

It is submitted that under the personal law applicable to the parties, the legal effect / civil consequences, are similar where the marriage has been dissolved by a decree of divorce or where the marriage has been declared as null and void. He, therefore, submits that applying the personal law as contained in the aforesaid provisions, the petitioner would be entitled to maintenance.

5. I do not find that the submission can be accepted for more reasons than one. Firstly, this is not a ground made out in the application for maintenance before the Magistrate nor was it raised before the Sessions Judge. That apart, even in the present writ petition, there is no ground based on Article 69 of Decree No.1 of 25/12/1910 raised. Thus, it would not be possible for this Court to examine the same for the first time in writ jurisdiction. Secondly, in my considered view, once maintenance is claimed under Section 125 of Cr.P.C., we will have to go by the entitlement of the wife as envisaged in the said section and not with reference to the personal law of the parties. Once, the wife as contemplated under Section 125

of Cr.P.C. includes only a woman, who has been divorced by her husband or who has obtained a divorce from her husband and who has not remarried, it would not be possible to hold that the wife as mentioned in the said section would include a woman, whose marriage has been declared to be null and void.

6. For these reasons, no interference is called for in the impugned judgment. The petition is without any merit and is, accordingly, dismissed, with no order as to costs.

C. V. BHADANG, J.

SMA