

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.133 OF 2015

Shri Akbar Hussain Khan,
S/O Hussain Khan,
major in age,
\$R/O Flat no.24/52,
Pereira Residency Complex,
Chowgule Colelge, Gogol,
Margao, Goa.

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Petitioner

V e r s u s

Smt. Saira Khan,
W/o Akbar Khan,
major in age,
R/O Flat No.25/52,
Pereira Residency Complex,
Chowgule College, Gogol,
Margao, Goa.

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Respondent.

Ms. Susan Linhares, Advocate for the Petitioner.

Mr. Kakodkar S. S., Advocate for Respondent.

CORAM: S. B. SHUKRE, J.
DATE: 28TH JANUARY, 2016.

ORAL JUDGMENT:

Heard. Rule. Rule made returnable forthwith. Heard finally by
consent.

2. This writ petition challenges two judgments and orders, one dated

30/5/2015 and the other dated 23/2/2012. Both these judgments and orders have been delivered in Criminal Revision applications filed against the orders impugned therein. Now, on instructions, learned counsel for the petitioner has restricted her challenge in this writ petition to the judgment and order dated 30/5/2015 passed in Criminal Revision application no.127/2013 by the Addl. Sessions Judge-I, South Goa, Margao.

3. After grant of maintenance to the respondent at the rate of Rs.3000/- per month by Court of Judicial Magistrate First Class, Margao, the petitioner raised a challenge and pleaded for modification of the order of maintenance by filing another application under section 127 Cr.P.C. on the ground that there was a change in the circumstances. This application was rejected by the learned Magistrate by his order dated 8/10/2013. The matter was carried to the Court of Addl. Sessions Judge by invoking revisional jurisdiction under section 397 Cr.P.C and thus the Criminal Revision Application no. 127/2013 came to be filed. After hearing both sides, the learned Addl. Sessions Judge found that there was no illegality nor any impropriety committed by the learned Magistrate while allowing the application under section 127 (1).

4. Being aggrieved by the order passed on 30/5/2015 now the petitioner, the husband of the respondent is before this Court in the present writ petition.

5. Learned counsel for the petitioner submits that the petitioner's monthly income is not enough and that the order of maintenance of Rs.3000/- per month passed in favour of respondent no.1 has now become burdensome for the petitioner.

6. According to the learned counsel for the respondent in order to show entitlement to seek modification of the maintenance order passed under section 127 of Cr.P.C., it is necessary for the applicant, who is the petitioner in this petition, to submit proof of change of circumstances after passing of the order which the petitioner has failed to do. Therefore, there is no merit in this petition.

7. On perusal of the impugned order, I find that there is neither any illegality nor arbitrariness nor any breach of any relevant principles of law committed by the learned District Judge while dismissing the Revision application filed against the order dated 8/10/2013 passed by the learned Judicial Magistrate, First Class, Margao rejecting the application filed under section 127 of Cr.P.C.

8. It is well settled law that in order to invoke jurisdiction of criminal Court under section 127, it is necessary that the applicant submits proof relating to change in circumstances. On going through the impugned

judgment and order as well as the order passed by the learned Magistrate, I could not see that any such proof has been tendered by the petitioner in support of his said contention. Learned counsel for the petitioner also could not point out to me any such proof having being submitted by the petitioner. Consequently, as rightly submitted by the learned counsel for the respondent there is no merit in this petition.

9. There is yet another ground of challenge raised by the petitioner and it is regarding his marriage with the respondent being unlawful, as the respondent suppressed the fact at the time of her marriage with the applicant that she was already married and her marriage with her first husband was in subsistence. This ground would not be available under section 27(1) of Cr.P.C and in order to resort to this ground, the petitioner would be required to seek necessary orders from the competent court regarding cancellation of his marriage and then a resort can be made to the provisions contained in Section 127(2) of Cr.P.C. In fact the learned Magistrate has already found no merit in this ground and this finding of the learned Magistrate now has attained finality after the appeal against such finding came to be dismissed.

10. In the circumstances, this writ petition being devoid of merit deserves to be dismissed. The writ petition stands dismissed. Rule stands discharged.

11. With this order, the order directing calling of record and proceedings is recalled. If record and proceedings have been sent to this Court, it be sent back to the concerned Court.

12. Parties are directed to appear before the concerned Court on the date already fixed in the Execution proceedings pending before the Court of Judicial Magistrate First Class, Margao.

S. B. SHUKRE, J.

Ap/-