

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.150 OF 2004

Satyawan Kashiram Ghanekar.] ... Petitioner

Versus

1. Smt. Savitri Satyawan Ghanekar,]
2. The State of Maharashtra.] ... Respondents

None present.

CORAM :- M. S. SONAK, J.
DATE :- JANUARY 07, 2016

P. C. :-

1. Neither the petitioner nor his Advocate are present. However, considering that this petition relates to the year 2004, it is appropriate that the same is disposed of on merits.

2. The challenge in this petition is to the orders dated 26/09/2002 and 19/07/2003 made by the Judicial Magistrate First Class, Chiplun ('JMFC') and the Additional Sessions Judge, Khed ('ASJ') awarding maintenance at the rate of Rs.400/- to the respondent no.1. The two Courts have recorded concurrent findings of fact that the respondent no.1 was unable to maintain herself and the petitioner has failed in his duty to maintain the respondent no.1. There is no perversity in the concurrent record of such findings of fact.

3. The main ground raised in the memo of petition is that the Civil Judge at Ratnagiri, having already dissolved the marriage between the petitioner and the respondent no.1 on the ground of mental cruelty and desertion, the respondent no.1 cannot claim any maintenance from the petitioner. In this regard, there is reference made to the provisions contained in Section 125 (4) of the Code of Criminal Procedure, 1973 ('Cr.P.C.') which provide that no wife shall be entitled to refuse maintenance from the husband under this section if, without sufficient reason, she refuses to live with her husband.

4. The plea raised is no longer *res integra*. In the case of ***Rohtash Singh Vs. Smt. Ramendri and Ors.***¹, the Hon'ble Apex Court has held that the wife against whom a decree for divorce has been passed on account of her deserting the husband can claim maintenance allowance under Section 125 of Cr.P.C. and the plea of desertion of wife cannot be treated to be an effective plea in support of the husband's refusal to pay her the maintenance allowance. In fact, after the decree of divorce is passed, the wife is under no obligation to live with the husband but though the marital relations came to an end by the divorce granted by the Family Court under Section 13 of the Hindu Marriage Act, the respondent continues to be "wife" within the meaning of Section 125 of Cr.P.C. In this regard, reference is required to be made to Explanation (b) to Sub-section (1) which provides that a woman who has been divorced by her husband on account of a decree passed by the Family Court under the Hindu

¹ 2000 Cri.L.J. 1498

Marriage Act, continues to enjoy the status of wife for the limited purpose of claiming maintenance allowance from her ex-husband. As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125 (4). In another capacity, namely, as a divorced woman, she is again entitled to claim maintenance from the person of whom she was once the wife. If a woman becomes a destitute after divorce and cannot maintain herself or remains unmarried, the man who was, once, her husband continues to be under a statutory duty and obligation to provide maintenance to her. However, since decree of divorce in the present case was granted on the ground of desertion, it is possible to take a view that prior to the decree of divorce dated 24/04/2003, the petitioner was not liable to pay maintenance.

5. However, considering that this is a writ petition of the year 2004 and the amount of maintenance awarded was quite meagre, in my judgment, it would not be appropriate to interfere with the impugned orders or direct any refund or adjustment at this stage. Writ jurisdiction is to be exercised to advance the cause of justice and not merely upon some legal point being made out.

6. Accordingly, the petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)