

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1861 OF 2004

Sou. Kavita Balaso Kamelekar.] ... Petitioner

Versus

1. Balaso Ganapati Kamlekar.]
2. The State of Maharashtra.] ... Respondents

None present.

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

P. C. :-

1. Neither the parties nor their Advocates are present. However, considering that the petition relates to the year 2004, the same is disposed of on merits.

2. The challenge in this petition is to the Judgment and Order dated 19/07/2004 made by the 5th Additional Sessions Judge, Sangli, ('ASJ'), by which the learned ASJ has set aside the Judgment and Order dated 31/01/2004 made by the Judicial Magistrate First Class, Sangli (JMFC), who had awarded maintenance of Rs.600 per month to the petitioner.

3. There is no dispute that the petitioner and the respondent no.1 were legally married and further even a child was born to them in November 1999. It is the case of the that the respondent no.1 obtained her signature on a stamp-paper upon which was endorsed a Consent Divorce Deed. The learned JMFC, vide Judgment and Order dated 31/01/2004, after taking into consideration the contents of the so called 'Consent Divorce Deed', had awarded compensation at the rate of Rs.600/- per month to the petitioner. The learned ASJ, by the impugned Judgment and Order dated 19/07/2004, however, has set aside the Judgment and Order dated 31/01/2004 made by the J MFC, by relying almost entirely upon the 'Consent Divorce Deed'.

4. In my judgment, the material on record establishes that the ingredients of Section 125 of Code of Criminal Procedure, 1973 ('Cr.P.C.') have been duly fulfilled in this case. Relying upon the clauses contained in the 'Consent Divorce Deed', there was no question of denying the petitioner maintenance.

5. This Court, in the case of ***Geeta Satish Gokarna Vs. Satish Shankarrao Gokarna***¹, has held that any provision in a contract, under which the wife purports to give up her claim for future maintenance is void, being contrary to public policy.

6. In the case of ***Vanmala (Smt.) Vs. H. M. Ranganatha Bhatta***², the Hon'ble Apex Court has held that a wife who may have

¹ 2004 (3) Mh.L.J. 159

² (1995) 5 Supreme Court Cases 299

obtained a decree of divorce by mutual consent but has not remarried, is nevertheless entitled to maintenance under Section 125 of Cr.PC. In para 3 of the said Judgment, the Hon'ble Apex Court has held thus :-

“3. Section 125 of the Code makes provision for the grant of maintenance to wives, children and parents. Sub-section (1) of Section 125 inter alia says that if any person having sufficient means neglects or refuses to maintain his wife unable to maintain 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 not exceeding Rs. 500/- 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. Clause (b) of the explanation to the sub-section defines the expression 'wife' to include a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. In the instant case it is not contended by the respondent that the appellant has remarried after the decree of divorce was obtained under Section 13-B of the Hindu Marriage Act. It is also not in dispute that the appellant was the legally wedded wife of the respondent prior to the passing of the decree of divorce. By virtue of the definition referred to above she would, therefore, be entitled to maintenance if she could show that the respondent had neglected or refused to maintain her. Counsel for the respondent, however, invited our attention to Sub-section (4) of Section 125, which reads as under :-

125. (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.

On a plain reading of this Section it seems fairly clear that the expression 'wife' in the said sub-section does not have the extended meaning of including a woman who has been divorced. This is for the obvious reason that unless there is a relationship of husband and wife there can be no question of a divorcee woman living in adultery or without sufficient reason refusing to live with her husband. After divorce where is the occasion for the women to live with her husband ? Similarly there would be no question of the husband and wife living separately by mutual consent because after divorce there is no need for consent to live separately. In the context, therefore, Sub-section (4) of Section 125 does not apply to the case of a woman who has been divorced or who has obtained a decree for divorce. In our view, therefore, this contention is not well founded."

7. In view of the aforesaid, the impugned Judgment and Order dated 19/07/2004 made by the learned ASJ cannot be sustained and the same is hereby set aside. Rule is therefore made absolute in terms of prayer clause (b). The respondent no.1 shall pay costs of Rs.5,000/- (Rupees Five Thousand Only) to the petitioner.

(M. S. SONAK, J.)