

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 78 OF 2015

Keshav Arun Tulaskar Applicant

Versus

Bhagyashree Keshav Tulaskar Respondents
and Anr.

Ms. Sara Hakim I/by. Hakim Salim AR for Applicant.
None for Respondent No.1.
Mr. P.H.Gaikwad, APP for State.

**CORAM : K. K. TATED, J.
DATED : 9TH JUNE, 2017.**

P.C.

. Heard learned Counsel Ms. Sara Hakim for Applicant.
Though Respondent No.1 served none appeared on behalf of her.

2. By this Criminal Revision Application, the Applicant is challenging the Judgment dated 1st October, 2014 passed by the Judicial Magistrate First Class, Sawantwadi in Criminal Misc. Application No. 63 of 2012 under Section 125 of the Code of Criminal Procedure, directing the Applicant – husband to pay a sum of Rs. 1500/- per month by way of maintenance to the Respondent – wife and also to pay a sum of Rs. 1000/- towards the costs.

3. Being aggrieved by the said order, Applicant – husband preferred Criminal Revision Application No. 71 of 2014 before the Sessions Court, Sindhudurg-Oros. That Criminal Revision Application also stand rejected by the Sessions Court on 13th January, 2015 stating that Applicant failed to make out the case for setting aside the order passed by the learned Magistrate awarding maintenance charges of Rs. 1500/- per month to the Respondent – wife.

4. Being aggrieved by the orders passed by both the Courts below, Applicant – husband preferred the present Criminal Revision Application challenging the orders passed by both the Courts below.

5. The learned Counsel Ms. Sara Hakim for Applicant submit that in the present proceedings, Applicant and Respondent No.1 got married as per Hindu Vedic Rites on 27th June, 2007. Thereafter Respondent – wife left the matrimonial home with all her belongings in the first week of July, 2007.

6. The learned Counsel for the Applicant submit that initially the Respondent – wife filed case for maintenance Under Section 125 of the Code of Criminal Procedure before Judicial Magistrate First Class, Vengurla on 9th June, 2009. As no one appeared on behalf of Respondent No.1 on several occasion, the learned Judicial Magistrate First Class, Vengurla passed order below Exh.1 and dismissed the application for want of prosecution. The said order read thus :

“Applicant absent when called out. Learned Advocate for Applicant filed application at Exh.19 and 20 contending that he has sent notice to applicant for cancellation of Vakalatnama. Since then neither applicant nor learned advocate for applicant appeared before this Court to proceed with the application. Today also applicant and her advocate absent. Specific order has been passed below Exh.1 on 8/3/2010. In spite of that applicant failed to appear and proceed with the application. Hence, application is dismissed for want of prosecution.”

7. The learned Counsel for Applicant submit that the Applicant filed divorce petition under Section 13 (1) (ib) of the Hindu Marriage Act, 1955. She submit that as no one appeared on behalf of Respondent - wife in the Petition filed by the Applicant - husband for divorce, the Court passed ex parte decree on 27th January, 2010 and allowed Applicant's divorce application. He submit that thereafter on 29th August, 2010, Applicant performed the second marriage.

8. The learned Counsel for Applicant submit that on 20th February, 2011 First Information Report came to be registered against Respondent – wife and other relatives at Sawantwadi Police Station under Sections 143, 147, 148, 149, 324, 323, 452, 504 of Indian Penal Code. She submit that after following due process of law, the learned Magistrate convicted Respondent – wife in that criminal case.

9. The learned Counsel for Applicant submit that as a counter-blast, Respondent – wife filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 on

5th May, 2011. She submit that the said application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 came to be dismissed on 19th April, 2012 as not maintainability and in lieu of the Divorce Decree. Thereafter, the Respondent – wife filed the present application on 7th June, 2012 being Criminal Miscellaneous Application No. 63 of 2012 under Section 125 of the Code of Criminal Procedure before the Judicial Magistrate First Class, Sindhudurg for maintenance of Rs. 1500/-. She submit that the learned Magistrate passed the Judgment on 1st October, 2014 and awarded maintenance of Rs. 1500/- per month. She further submit that the same was confirmed by the Sessions Court on 27th October, 2014. Hence, the present Criminal Revision Application.

10. The learned Counsel for Applicant submit that the court below erred in considering the fact that the Respondent – wife was employed as a Nurse in Government Health Scheme at district places. She submit that the Respondent – wife at that time was earning near about Rs. 8000/- per month. She further submit that to prove these facts, the Applicant called Dr. Ashwini Mainkar, as witness.

11. The learned Counsel for Applicant submit that the court below erred in not considering the fact that Applicant has already got divorced after the divorce decree. Therefore, there is no question of allowing the Respondent's application under Section 125 of the Code of Criminal Procedure.

12. The learned Counsel for Applicant submit that the court below ought to have considered that under Section 125 (4) of the

Code of Criminal Procedure, the wife is entitled to maintenance in case she is unable to maintain herself. She submit that in the present proceedings admittedly Respondent is earning near about 8000/-. These facts were not considered by the Courts below at the time of passing the impugned orders.

13. The learned Counsel for Applicant submit that the Applicant is working as a LIC Agent. She submit that Applicant – husband do not have any fixed income. Some time he may earn more than Rs. 25,000/- or some time less than that. Those facts were also brought on record before the courts below, but the same were not considered at the time of passing the impugned orders.

14. The learned Counsel for Applicant submit that though the Respondent was duly served in the present proceedings, for last several occasions, nobody is appearing on behalf of Respondent. She submit that Respondent – wife is not interested in the present proceedings.

15. The learned Counsel for Applicant submit that in the interest of justice, this Hon'ble Court be pleased to set-aside both the orders passed by the courts below and dismiss the Respondent's application under Section 125 of the Code of Criminal Procedure claiming the maintenance from Applicant – husband.

16. I heard learned Counsel for Applicant. Admittedly, in the present proceedings, the Applicant – husband by examining Dr. Mainkar brought on record that at that time the Respondent – wife was earning a sum of Rs. 8000/- per month. Same supported and

clear from Exh. 43 and 44 placed on record.

17. Bare reading of Section 125 of the Code of Criminal Procedure shows that Court can award maintenance to the wife in case she is unable to maintain herself. In the present proceedings, the evidence on record clearly shows that the wife was earning Rs. 8000/- per month whereas the Applicant being LIC Agent do not have any permanent income. These facts were not considered by both the courts below.

18. In view of above mentioned facts and averments made in petition, I am satisfied that both the Courts below failed to appreciate evidence on record properly at the time of passing the impugned orders.

19. Considering these facts, I am of the opinion that Applicant has made out the case for allowing this Criminal Revision Application. Hence, the following order.

ORDER

(A) The Judgment and Order dated 1st October, 2014 passed by learned Judicial Magistrate First Class, Sawantwadi in Criminal Miscellaneous Application No. 63 of 2012 under Section 125 of the Code of Criminal Procedure is set-aside.

(B) No order as to costs.

(K.K.TATED, J.)