

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

CRIMINAL REVISION APPLICATION NO.196 OF 2016

Sunil Bhupal Kumbhar

.. Applicant

vs.

Sangita Sunil Kumbhar & Anr.

.. Respondents

Mr.Mahindra B. Deshmukh for the applicant

Mrs.S.C.Kumbhar i/b Mr.Dhairsheel Sutar for the respondent nos.1 and 2

CORAM : K. K. TATED, J.

DATE : JULY 7, 2017

P.C.:

1. Heard the learned counsel for the parties.
2. By this Civil Revision Application, applicant husband is challenging the order dated 16.2.2016 passed by Judge, Family Court, Kolhapur in Petition E 32/2014 filed by respondent wife under section 125 of the Criminal Procedure Code, 1973 directing applicant to pay maintenance of Rs.10,000/- per month to the respondent wife and Rs.5,000/- per month to minor son Saurabha Sunil Kumbhar from the date of filing of application till 29.1.2015 i.e. till the son attains majority. Trial Court also directed to pay sum of Rs.3,000/- towards costs.
3. The learned counsel for the petitioner submits that impugned order passed by Family Court dated 16.2.2016 is bad in law and same

is required to be set aside. He submits that as per section 125 of the said Code, wife is entitled maintenance if husband failed to maintain her or refuse to take care of her. He submits that in the present proceeding, initially applicant filed petition under section 9 of the Hindu Marriage Act for restitution of conjugal right read with section 13 for Divorce on the ground of desertion. He submits that Civil Judge, Senior Division Sangli by its judgment and decree dated 14.3.1997 granted divorce on the ground of desertion. To that effect, he relies on following portion of said judgment.

“The opponent is pet daughter of her parents, she has deserted the applicant. The applicant has been deprived to enjoy his married life since 14.8.94. The applicant then issued a notice on 24.6.95 to her calling upon her to come and stay with him. He is ready and willing to accept and co-habit with her. She has withdrawn his company without just and reasonable cause and has deserted the applicant. Therefore he has filed this application. The opponent has not filed her say and the application proceeded against her with so say. Thereafter, the applicant has examined himself at Ex.11 in support of his contention, he has examined his father Bhupal Anna Kumbhar at Ex.14. He has deposed that on 14.6.93 he married with opponent. Thereafter, she lived with him and later-on on 14.8.94 left his house without his consent, at that time she was pregnant. His father Vitthal Kumbhar had gone to take her back but she did not come. Again his father Vitthal Kumbhar and friend of applicant went to bring her but she refused to come. Thereafter, with the media of Roopa Shaha Social Worker, the compromise between applicant and opponent was effected but as per such compromise she did not come to stay with the applicant. Thereafter, on 24.6.95 the applicant issued a notice to Opponent, it is at Exh.12. Its postal acknowledgement is at Exh.13. After receipt of the notice Exh.12 she did not come for co-habitation to applicant. His father also has deposed that he alongwith Vitthal Kumbhar had gone to bring the wife of applicant but she did not come with them. He says that opponent is not ready to stay with the

applicant without any cause. The applicant states that he has made every efforts to bring her back but she has deserted him since 14.8.94, and therefore he has filed this application on 15.9.95 for Restitution of Conjugal Rights and in the alternative for the decree & divorce. He says that he wants divorce from the Opponent. The opponent is not appeared bared in this petition and the evidence of the applicant has gone on record unchallenge.”

4. The learned Counsel for the Petitioner submits that on the basis of this decree passed by the Trial Court u/s.13 of the Hindu Marriage Act, the impugned order is required to be set aside. He further submits that on the date of passing order by Family Court under section 125 of the Criminal Procedure Code, respondent no.2 Son attained majority.

5. The learned Counsel for the Petitioner submits that in the present proceedings, respondents filed Regular Civil Suit No. 67 of 2007 before the Civil Judge, Junior Division Miraj for partition and possession of the Petitioner's property. He submits that, that suit was decreed by consent of both the parties by order dated 29.1.2009. They filed consent praecipe at Exhibit-38. As per the compromise, applicant paid sum of Rs.1,30,000/- to the respondent no.1 towards her maintenance as well as of respondent no.2. He submits that these facts were not considered by the Family Court at the time of passing impugned order.

6. The learned counsel for the Petitioner submits that Family Court in paragraph 30 of the impugned order erred in coming to the conclusion that respondent wife is entitled to maintenance as per [a] and [b] of sub section [1] of section 125 of the said Code. He further submits that Family Court ought to have held that once decree for

divorce passed on the ground of desertion, there is no question of applying the provisions of section 125 of the Criminal Procedure code.

7. The learned Counsel for the Petitioner submits that Family Court erred in observing that the decree obtained by petitioner under section 13 of the Hindu Marriage Act in Hindu Marriage Petition No.143 of 1995 is not correct according to law.

8. The learned counsel for the petitioner submits that Family Court ought to have considered that in Hindu Marriage Petition No.143 of 1995 decree of divorce was passed on 14.3.1997 on the ground of willful desertion on the part of respondent no.1. On this background, Section 125 of the said Code is applicable in the present case.

9. The learned counsel for the petitioner further submits that the learned Judge failed to consider that Regular Civil Suit No. 67 of 2007 was filed by respondent no.1 wife on behalf of her two sons Shubham and Saurabh and the said suit came to be compromised on 29.1.2009 on the basis of compromise pursis Exhibit-38 waiving their right in the property and maintenance by accepting lumpsum Rs.1,30,000/- by Demand Draft dated 3.10.2009. Despite this position by overlooking the compromise, the learned Judge erred in granting the maintenance amount to the respondent.

10. The learned counsel for the petitioner further submits that in Execution Application bearing no.36 of 2016 filed by respondent wife, he paid sum of Rs.3,13,000 by cheque and Rs.95,000/- by cash for which the respondent executed the receipt, which are on record in execution proceeding.

11. On the basis of these submissions, the learned counsel for the applicant submits that impugned order passed by Family Court dated 16.2.2016 in petition E 32/2014 is required to be set aside.

12. On the other hand, the learned counsel for the respondent wife submits that the Family Court after considering the provisions of section 125 of the said Code awarded maintenance charges to the wife as well as son. She submits that as per section 125 of the Code, if husband is unable to maintain the wife then he is liable to pay maintenance charges. She submits that these facts were considered by the Family Court at the time of passing impugned order.

13. The learned counsel for the respondent further submits that applicant obtained decree for divorce in Hindu Marriage Petition No.143 of 1995 on 14.3.1997 by fraud. She submits that because of oral settlement, she has not challenged the said order. She further submits that respondent wife started co-habiting with the applicant even thereafter. These facts were not disclosed by the applicant in the present application. Hence, application is required to be dismissed with cost. She further submits that Family Court specifically recorded in paragraph 43 of the impugned order that till respondent no.1 gets employment, applicant have to pay sum of Rs.5,000/- towards maintenance charges of respondent no.2. She submits that as on today, respondent no.1 wife is not in employment. Therefore, applicant may be directed to pay maintenance charges as per Family Court's order to the respondent no.1. Hence, there is no substance in the present Civil Revision Application and same is required to be dismissed with costs.

14. I have heard both the sides at length. For the convenience of deciding this Criminal Revision Application, section 125 of the said Code is reproduced hereinbelow which reads thus:

“125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain-

- (a) his wife, unable to maintain herself, or*
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or*
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or*
- (d) his father or mother, unable to maintain himself or 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 or such child, father or mother, at such monthly rate not exceeding five hundred rupees 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:*

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.”

15. Bare reading of section 125 of the Code shows that if any person having sufficient means, neglects or refuses to maintain his wife then she is entitled maintenance charges from her husband. In the present proceedings, petitioner filed Hindu Marriage Petition No.143 of 1995 under section 9 and 13 of the Hindu Marriage Act for conjugal rights and divorce on the ground that respondent no.1 wife on her own deserted him. Though the said petition was contested by wife through her advocate, Mr.S.S.Adiwarekar, Civil Judge, Senior Division Sangli after considering the evidence on record categorically held that the respondent wife on her own left the company of applicant and granted the decree of divorce on the ground of desertion, this shows that respondent wife on her own left matrimonial home without any cause of action. Therefore, there is no reason for wife to demand anything under section 125 of the said Code.

16. Apart from that, respondent and her sons filed Regular Civil Suit No. 67 of 2007 before Civil Judge, Junior Division Miraj for partition and separate possession of the applicant's property. Pursuant to the compromise, applicant paid sum of Rs.1,30,000 to the respondent for full and final settlement towards her maintenance as well as son's maintenance. Apart from that, in Execution Application No.36 of 2016 filed by wife, the applicant paid sum of Rs.3,13,000 by cheque and Rs.95,000 in cash. To that effect, receipts were placed on record by the Petitioner. In any case, as per the orders passed by Family Court dated

16.2.2016 under section 125 of the said Code, respondent no.2 is entitled maintenance @ Rs.5,000/- per month only for 7 months i.e. from the date of filing application dated 25.7.2014 till attaining the majority on 29.1.2015. This shows that wife is entitled maintenance for 7 months only. That is already paid by the applicant in Execution Application No.36 of 2016.

17. In view of the above mentioned facts, I am of the opinion that order passed by Judge, Family Court, Kolhapur dated 16.2.2016 in Petition E 32/2014 is required to be set aside. Hence, Criminal Revision Application is allowed as under :

- (a) The impugned Judgment and Order dated 16.02.2016 passed by Ld.Judge of the Family Court at Kolhapur in Petition E No.32 of 2014 filed by the Respondents is set aside.
- (b) Applicant is not entitled to recover any amount from the respondent if it is paid.
- (c) No order as to costs.

(K.K.TATED, J.)