

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

**CRIMINAL APPLICATION NO.54 OF 2018
IN
CRIMINAL REVISION APPLICATION (ST) NO.64 OF 2018**

Shri.Rajaram Shankar Gopal (Ghodake) ...Applicant
V/s.
Smt.Meena Rajaram Gopal (Ghodke) & Ors. ...Respondents

Ms.Priyanka N. Patil for the Applicant.

Mr.Amar Parsekar a/w Mr.Sachin Shetye for Respondent Nos.1 and 2.

CORAM : SMT.BHARATI H. DANGRE, J.

DATE : 06th APRIL 2018

P.C.

1. The present application challenges the order passed by the Judge Family Court on 30th August 2016 directing the applicant-husband to pay an amount of maintenance of Rs.3,000/- per month to the applicant No.1 and Rs.5,000/- towards the applicant No.2 for maintenance from the date of application on 11th October 2011.

2. The said order came to be passed on an application filed by the respondent No.1-wife under Section 125 of the Criminal Procedure Code, 1973.

3. I have heard learned counsel for the applicant and also heard learned counsel for the respondents. The main thrust of the argument of the learned counsel for the applicant is that in the year 2007 there were proceedings instituted in the Court of Third Joint Civil Judge, Senior Division, Nashik and in the said proceedings in terms of Section 13B of the Hindu Marriage Act, the marriage between the parties came to be dissolved by consent. The decree was drawn on the basis of the said consent terms and the said decree contemplated a specific clause that the applicant would pay an amount of Rs.1,11,000/- towards the respondent No.1 and her daughter for the purposes of meeting her past and future expenses and this was in lieu of her right to claim maintenance in the future. The decree specifically recorded that the said terms were acceptable to both the parties and they had willingly accepted the said terms and decided to part away.

The learned counsel for the applicant submits that thereafter respondent filed an application under Section 125 of the Criminal Procedure Code in the Court of Judicial Magistrate First Class, Nashik which was registered as Criminal Case No.393 of 2007 in which there was a mention of the compromise reached between the parties in proceeding No.463 of 2006 and the receipt of an amount of Rs.1,11,000/- was also specifically mentioned. The

Magistrate, by an order dated 29th March 2008 was pleased to reject the said application. Against the said rejection a revision was preferred, which came to be withdrawn on 17th August 2010 before the Court of Additional Sessions Judge, Nashik. According to the learned counsel for the applicant in this backdrop of the facts, a fresh application was filed seeking maintenance under Section 125 of the Criminal Procedure Code on 11th October 2011 in the Family Court, Nashik is totally unsustainable. She would submit that in absence of such preceding facts, being taken into consideration the Family Court passed erroneous order.

The learned counsel for the applicant would also submit that the applicant was not served with the copy of the proceedings filed under Section 125 of Cr.P.C. and the proceedings were concluded out ex-parte on the basis of the noting made by the Court to the effect that notice was duly served but the respondent failed to appear.

4. Per-contra the learned counsel for the respondents supports the impugned order passed by the Family Court and would submit that it is the right of the divorced woman to receive maintenance for herself and her daughter, taking into consideration for growing needs. He would submit that on dismissal of an

application under Section 125 of the Cr.P.C. there is no embargo in instituting the proceedings a fresh, in view of the change in circumstances.

5. The moot question arises in the present petition is whether the Family Court is justified in passing of the order in the light of the compromise effected between the parties as long as in the year 2007 and merely by taking advantage of the subsequent development by concealing the truth and material fact. The issue is also whether a decree passed by a Competent Court can be permitted to be frustrated in such a fashion and manner.

6. It is admitted that the proceedings instituted by the parties which came to be compromised by a decree under Section 13B of the Hindu Marriage Act. The respondent-wife agreed to settle issues and to respectably part with the applicant-husband by accepting an amount of Rs.1,11,000/-. In the order passed by the Court, recording the compromise the Court has specifically recorded that he had inquired from both the parties about assenting to the said terms and which were reduced into a writing after making sure that the parties have no dispute about the said terms and accordingly decree came to be passed.

It appears that in the year 2007 the respondent was satiated with an amount of Rs.1,11,000/- in the given circumstances and nonetheless it can be observed that Rs.1,11,000/- was not a small amount in the year 2007. Subsequently, the respondent No.1 unsuccessfully filed proceedings under Section 125 and also filed an revision being aggrieved by the rejection of the said application.

7. It is noteworthy to mention that on perusal of the application which were subsequently filed under Section 125 the reference was made to the proceedings which came to be compromised and resulted into a decree for divorce for mutual consent and this weighed in the mind on the learned Judicial Magistrate in rejecting the said application. However, the present application filed under Section 125 makes an interesting reading. The applicant in the said application proceeds as if the marriage is subsisting and the applicant in the application has narrated the ill treatment given to her. She also narrated that some signatures were obtained on the paper which had resulted into an acceptance of the terms of an amount of Rs.1,11,000/- and some documents were signed from her. This application has been preferred in January 2011 and it is surprising that after 2007 when the compromise was effected between the parties, all the 4 years and even when in

earlier round, when application was moved seeking maintenance under Section 125 of the Criminal Procedure Code, the allegation as regards fraud and coercion to sign the compromise was never raised by the applicant. It cannot be said that the Family Court is at fault, since the Family Court was not appraised of such developments of past in the peculiar facts, on an assumption that there was a neglect and refusal on the part of the non-applicant to maintain the applicant and considering that the applicant-husband is a police constable, the Family Court allowed the application and directed maintenance to be paid by the impugned order.

Another strange feature which is to be noted is that the Family Court had specifically made a noting on 21st November 2015 that the non-applicant was duly served but he has failed to put his appearance. Perusal of the application which is filed before the Family Court reflects the address of the non-applicant as follows :

“Shri.Rajaram Shankar Gopal (Godhke), Age-36 years,
Occupation: Service, R/o. C/o. Worli Police Station,
Mumbai”

8. It is surprising that on such an address a copy would have been served on the respondent. In the present application the applicant has given his address as resident of Chehadi, NisargaLonge, Samarth Krupa Nagar, Row House No.11, Nashik

Road, Nashik. The Family Court merely by making a noting that the notice was duly served has presumed that it was served on the respondent and there was failure on his part to appear in the proceedings, proceeded to decide the matter ex-parte, making an observation "though the non-applicant duly served with the notice but he fails to appear and hence the matter was proceeded to ex-parte". The said approach of the Family Court, appears to have resulted into travesty of the justice, as far as the applicant is concerned. Had the applicant been represented before the Family Court, he would have brought all the relevant facts and the earlier proceedings to the notice of the Court and then, it would have been open to the Court to determine the value of the compromise decree drawn in the year 2007 and whether in the peculiar circumstances, which is being referred to as 'change in circumstances', an application under Section 125 ought to have been entertained. However since the applicant did not get an opportunity to appear before the Family Court in the above mentioned circumstances, all such factors were not taken into consideration resulting into the passing of the impugned order.

9. In the interest of justice the impugned order passed by the Family Court is quashed and set aside. The matter is remanded

back to the Family Court and to be decided after within a period of six months. The Family Court is also directed to take into consideration the application of the delay filed by the present applicant and on due consideration of its own merit and re-consider the matter. The Family Court would also take into consideration the effect of the concealment of the necessary and material facts from the Court in respect of the earlier round of litigation and would after affording opportunity to applicant, reconsider the entire issue. The parties are at liberty to tender and file necessary documents, if they deem fit in support or in opposition of the application No.213 of 2011 pending with the Family Court at Nashik.

(SMT.BHARATI H. DANGRE, J.)