

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 4330 OF 2008

Ashok S/o Chandrakant Bongulwar,
Age : 37 year, Occu- Professional /Nil,
R/o: Nandigram Society, Nanded.

...APPLICANT

VERSUS

Asha W/o Ashok Bongulwar,
Age : 26 years, Occu.- Professional,
Rp: Datta Nagar Nanded.

...RESPONDENT

...

Mr. J. M. Murkute, Advocate for Applicant

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CORAM : K.K. SONAWANE, J.

DATED : 9th JANUARY, 2019.

JUDGMENT :

1. The applicant moved present application under section 482 of the Code of Criminal Procedure (Cr.P.C.) and put in controversy the legality, validity of the concurrent findings expressed by the learned Sessions Judge, Nanded and learned 5th Judicial Magistrate, First Class, Nanded, in Criminal Revision Application No. 79 of 2008 and Misc. Criminal Application No. 87 of 2005 respectively. The proceeding of Misc. Criminal Application No. 87 of 2005 was filed by respondent-wife for maintenance under Section 125 of Cr.P.C. Learned Magistrate allowed the application and granted maintenance of Rs.1000/- per month to respondent-wife from the date of application.

2. Being aggrieved by the findings of maintenance, husband i.e. applicant-herein preferred Criminal Revision Petition No. 79 of 2008, but the same also came to be dismissed by learned Sessions Judge, Nanded and upheld the finding of grant of maintenance to the respondent-wife. The impugned respective Judgments and orders of granting maintenance to the respondent-wife under section 125 of Cr.P.C. are the subject-matter of the present application.

3. Learned counsel for applicant submits that the marriage in between spouses was solemnized on 15-02-2001. After the marriage, husband started demanding amount of dowry. There were allegations of cruelty and harassment to respondent-wife at the hands of applicant-husband. Eventually, after obtaining signature of respondent-wife forcibly on blank stamp paper, she was driven out of the matrimonial house on 31-12-2004 and left in lurch at the mercy of parents. The respondent-wife cast allegation that she was neglected and refused to maintain her on the part of husband. She has no source of income. The husband is medical practitioner having hand-sum income as well as immovable property at Nanded, therefore, she approached to the learned Magistrate seeking maintenance @ Rs. 1500/- per month.

4. The applicant - husband on receipt of notice appeared in

the proceeding before the learned Magistrate and filed reply. It was alleged that the husband has already paid Rs. 3,11,000/- to the wife on account of lumpsum permanent alimony. Thereafter, matrimonial proceeding filed for divorce came to be dismissed as the petitioner-wife shown inclination not to proceed further in the matter. According to applicant-husband, respondent-wife has no any legal right to claim any maintenance after acceptance of lump-sum amount towards permanent alimony. Learned Magistrate did not consider all these attending circumstances and drawn the erroneous conclusion that respondent - wife is entitled to get maintenance amount of subsistence @ Rs.1000/- per month from the date of application. Eventually, the learned Magistrate passed the impugned order and directed the applicant-husband herein to pay maintenance.

5. Being aggrieved with the order of maintenance granted by the learned Magistrate in favour of respondent-wife herein, the applicant-husband approached to learned Sessions Judge and filed Criminal Revision Petition No. 79 of 2008 and put into controversy the findings of the learned Magistrate. Unfortunately, learned Sessions Judge found reluctant to cause any interference in the findings of the learned Magistrate and at last rejected the Criminal Revision Application filed on behalf of applicant - husband. Thereafter, applicant husband knocked the door of this Court by preferring present Criminal Application seeking relief to

quash and set aside the concurrent findings of granting maintenance in favour of respondent-wife by invoking inherent powers under section 482 of the Cr.P.C.

6. Learned counsel for the applicant - husband submits that there was customary divorce in between the spouses and permanent alimony of Rs. 3,11,000/- was already paid to the respondent-wife. She has also withdrawn the matrimonial proceeding bearing HMP No. 13 of 2005 filed before the learned Civil Judge, Senior Division. In such circumstances, respondent-wife is not entitled for any maintenance amount from the applicant-husband. Learned counsel fervidly contends that learned Magistrate as well as learned Sessions Judge did not appreciate the circumstances on record in its proper perspective. The evidence of the Advocates Shri Khandil and Shri Dharmale was available on record to prove the customary divorce in between spouses on payment of permanent alimony. The compromise in between the parties for divorce was prepared in presence of these advocates. Moreover, these persons were the witnesses to the payment of lump-sum amount through banker cheque to the respondent-wife. Learned counsel for the applicant added that respondent -wife has accepted the amount towards permanent alimony, therefore, she is not entitled to claim maintenance again from husband. Learned counsel also gave much more emphasis on subsequent event i.e respondent-wife

has already performed the marriage pending the proceeding, and on that count, also she is not entitled to claim maintenance.

7. It is to be noted that Mr. Malte, learned counsel appearing for respondent-wife shown inability to argue the matter for want of instructions and filed appearance withdrawal *pursis* on record. In such circumstances, opportunity of hearing the respondent-wife could not be availed for adjudication of the dispute on merit. However, in view of nature of the subject-matter in regard to maintenance under section 125 of Cr.P.C., there is no impediment to proceed further for decision of the present application on merit in absence of respondent-wife.

8. I have given anxious consideration to the arguments advanced on behalf of the applicant, I have also gone through the concurrent findings of the learned Sessions Judge and learned Magistrate for grant of maintenance under section 125 of Cr.P.C. in favour of respondent-wife. It appears that there was no illegality and imperfection in the impugned orders passed by the learned Sessions Judge and learned Magistrate, Nanded. Admittedly, the circumstance of payment of permanent alimony to the wife in lieu of divorce are not brought on record to prove unequivocally that wife accepted the amount of Rs.3,11,000/- towards permanent alimony and relinquished her right to claim maintenance in future. In absence of candid circumstances on

record, it would be difficult to conclude that wife relinquished her right of maintenance by accepting lump sum amount of Rs. 3,11,000/- towards maintenance from husband. The learned Sessions Judge and learned Magistrate found reluctant to accept the factum of divorce in between spouses. Learned Sessions Judge categorically mentioned that there is no evidence on record in regard to customary divorce in between spouses.

9. It has also not brought on record that there was custom for recognizing the divorce by consent in between spouse at the relevant time. Moreover, in absence of evidence to that effect on record, it would unsafe to accept the contentions propounded on behalf of respondent-husband that there was customary divorce taken place in between spouses by executing compromise deed. Moreover, there was no any divorce decree passed by the Court of law. In contrast, proceeding of HMP No. 13 of 2005 filed on behalf of respondent wife was shown dismissed as withdrawn. Therefore, it would hazardous to draw adverse inference that wife is not entitled to any maintenance from the husband.

10. I do not come across with any perverse findings to cause interference in the impugned order of grant of maintenance passed by the learned Magistrate as well as learned Sessions Judge rejecting criminal revision petition filed by applicant-husband. Learned counsel for the applicant-husband attempted

to draw attention of this Court towards supervening circumstance that the respondent-wife has performed second marriage pending the present case. Admittedly, respondent-wife is not present before the Court. Learned counsel Mr. Malte, appeared on behalf of her got himself discharged from the proceedings. In absence of respondent-wife, it would unjust and improper to draw inference unilaterally against wife about her second marriage pending the application. In case, the respondent-wife has performed second marriage pending the application, the husband has an remedy to avail under law to get impugned order of maintenance revoke, rescind or modified from the concerned trial Court by filing an application under Section 127 of Cr.P.C.

11. In view of aforesaid observation, there is no propriety to cause any interference in the impugned judgments and orders by learned Judicial Magistrate First Class and learned Sessions Judge. In the result, present petition being devoid of merit stands dismissed. No order as to costs.

[K. K. SONAWANE]
JUDGE

MTK.