

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

CRIMINAL REVISION NO. 54/ 2019

Smt. Nilima w/o Vikas Meshram
(Maiden name : Nilima d/o Pralhad Ramteke)
Aged about 51 years, occu: Household
R/o Plot No. 23, Mayur Nagar
Nari Road, Nagpur. .. **APPELLANT**

versus

Vikas s/o Balwant Meshram
Aged about 63 years, occu:Retired
R/o A-1, Aya Nagar New Colony
Phase II Bhubalia Mohalla
(Dharamvir Colony)
New Delhi 110 067. .. **RESPONDENT**

.....
Mr. S. Chandrashekhar Adv. for appellant
Mr. M A Sable, Adv. for respondent
.....

CORAM: MRS.SWAPNA JOSHI, J.
DATED: 3rd September, 2019

ORAL JUDGMENT:

1. Mr. Manoj Sable, learned Advocate appears for respondent -sole and hence the office objection does not survive.
2. **Admit.** Heard finally with the consent of learned counsel appearing for respective parties.

3. This Revision is filed by the applicant-wife challenging the order dated 6th April, 2017 passed by the learned Family Court, Nagpur in Petition No. E-524/2012 dismissing the application filed by the applicant-wife for maintenance u/s 125 of the Code of Criminal Procedure.

4. It is the case of the applicant that marriage between the applicant and respondent herein, was solemnized on 23rd December, 1971 as per the Buddhist rites and customs at Gaddigodam, Nagpur. Out of the wedlock they had three children. The respondent was doing a Government job, whereas the applicant-wife was a housewife. It is the case of the applicant that she came to know that the respondent had an extra marital affair with one lady by name Kiran. When the applicant questioned him, the respondent beat and ousted the applicant from the house. In the year 1988 the respondent quarelled with the applicant and threw her out of the house with her son. The respondent, however, kept both their daughters with him. According to the applicant, she is living at the mercy of her relatives. In the meantime, her

second daughter-Parul expired, however, the respondent did not inform her about the sad death. According to the applicant, the respondent is drawing a salary of more than Rs.1 lakh per month. The applicant had filed the application u/s 125 Cr.P.C.

5. The respondent raised a preliminary objection on the point of maintainability of the petition before the Family Court, Nagpur. It was contended that the applicant was having an illicit relationship with one Kenedy Johnson @ Pinku and also one Dharamver when they were staying at New Delhi. After solemnization of marriage, they shifted to New Delhi in the year 1981 itself. It is the case of the respondent that the applicant started neglecting the respondent and their two daughters. The respondent filed a petition for divorce against the applicant bearing No. HMA-598/1993 in Sessions Court at Delhi on 27.07.1993. So also, the applicant had filed a petition u/s 125 Cr.P.C. in the Court at Delhi. It is the case of the respondent that on 6.11.1993, the petitioner left matrimonial home with her son and on 11.3.1994 both filed a joint application for dissolution of marriage

by a decree of divorce by mutual consent u/s 13-B of the Hindu Marriage Act bearing HMA No.598/1993. They filed affidavits duly sworn in before the Oath Commissioner which were verified and signed by both of them. As per the consent terms, it was decided that the applicant would keep the custody of her son and would maintain him out of her own earnings. The applicant had agreed not to claim the maintenance from respondent and to withdraw her maintenance petition u/s 125 Cr.P.C. The applicant also accepted *streedhan* articles. According to the respondent, the applicant then remained absent and therefore on 18.11.1995 an *exparte* divorce decree was passed in HMA No.598/1993 in favour of the respondent. Thus, according to the respondent, since March 1992, the applicant has been living separately from him and after a gap of 20-years she has filed an application u/s 125 Cr.P.C., which is not maintainable.

6. The learned Judge of the Family Court has observed that from the year 1988 till the date of alleged desertion i.e. 2012, the applicant has not filed any petition for maintenance against the

respondent claiming that he has deserted her for a lady by name Kiran; so also the petition u/s 125 Cr.P.C. filed by the applicant before the Delhi Court has been dismissed in default. It was observed that it is not proved by the applicant that in the year 1988 the respondent drove her out of her house. On the contrary, it was observed that it was the applicant who left the company of the respondent on her own. The applicant has also received all *streedhan*.

7. There is no illegality or perversity noticed in the impugned judgment. Admittedly, the applicant had not filed any application u/s 125 Cr.PC after it was dismissed in default by the Delhi Court in the year 1993; so also the decree of divorce is passed in favour of respondent in the year 1995, which was an *exparte* order. The applicant has not bothered till filing of this application u/s 125 CrPC which is filed in the year 2012, after a long span under Section 125 Cr PC. No doubt, the applicant-wife is entitled for maintenance. However the applicant-wife has to prove that husband is not maintaining herself and she is unable to

maintain herself. Undisputedly for a period of 20-years, the applicant -wife has not claimed any maintenance from the respondent. The fact that for last 20 years the petitioner did not ask for maintenance u/s 125 Cr PC itself, shows that she has sufficient means to maintain herself and she had accepted the *exparte* decree of divorce passed by Delhi Court. Thus, no reasons are forthcoming from the applicant as to why she did not file the petition for maintenance till 2012.

8. It appears that though the decree of divorce by mutual consent did not take place due to absence of the applicant before the Delhi court, the fact that the applicant filed the petition for divorce by mutual consent; so also considering her behaviour of not filing any petition u/s 125 CrPC for a long period of twenty years indicates that the applicant has decided not to claim maintenance from the respondent. In fact, the applicant has complied the consent terms inasmuch as she kept the son with her; so also she accepted *streedhan* and had not claimed maintenance for herself and her son, however, she backed out, and, as such, the

Delhi Court could not pass any decree of mutual consent and an *exparte* decree was passed in the year 1995 which the applicant has not challenged.

9. In view of the facts and circumstances, the applicant is not entitled for any maintenance from the respondent. The learned Judge of the Family Court has rightly considered all these aspects and has dismissed the petition. I am of the considered view that no interference is required in the impugned judgment and order passed by the Court below. The Revision fails and is dismissed.

JUDGE

sahare