

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1260 OF 2017

Laxmikant Sambhaji Bomble ...Petitioner

Versus

Manish Laxmikant Bomble and Another ...Respondents

Mr. S. S. Gangakhedkar, Advocate for the Petitioner.

Mr. A. P. Deshmukh, Advocate for Respondents.

CORAM : R.M. JOSHI, J.

DATE : OCTOBER 19, 2023

PER COURT:

1. This Petition is filed taking exception to the order dated 21.07.2017 passed by Family Court in Petition No. E-25/2014 (Misc. Cri. Application No. 325/2010) under Section 125 of Code of Criminal Procedure (for short 'CrPC') directing Petitioner – husband to pay maintenance to divorced wife i.e., Respondent No. 1.

2. It is the case of Petitioner that marriage performed between Petitioner and Respondent No. 1 was dissolved by judgment and order dated 26.09.2016 passed in HMP No. 16/2016 by learned CJSD, Nanded and thereafter the status of parties as husband and wife

has come to an end. It is thus case of Petitioner that the Respondent No. 1 is not entitled for maintenance as being wife within the meaning of Section 125 CrPC.

3. Learned Counsel for Petitioner submits that since the order of dissolution of marriage dated 26.09.2016 is neither set aside nor even stayed by any competent Court the same binds the parties herein. It is his contention that remedy of maintenance under Section 125 CrPC is available to the wife i.e., legally wedded wife and on dissolution of marriage, the relation of husband and wife does not subsist. He further submits that the basic requirement of divorce is based on the ground of desertion and cruelty. It is his submission that in view of findings recorded by the competent Court that Respondent No. 1 deserted the Petitioner, there is bar created under Section 125(4) of CrPC which disentitles a woman who without any reason fails to reside with husband to seek any maintenance.

4. Learned Counsel for the Respondents opposed the said contention by placing reliance on the judgment of Hon'ble Apex Court in case of Rohtash Singh Vs. Smt.

Ramendri and Others, 2000 CRI.L.J. 1498 and Dr. Swapan Kumar Banerjee v. State of West Bengal and Another, AIR 2019 SC 4748.

5. There is no dispute about the fact that the Petitioner and the Respondent No. 1 were legally wedded husband and wife. Further it is admitted that the Petitioner had filed HMP No. 16/2016 for dissolution of marriage. The said proceeding was decided ex-parte against Respondent No. 1 and by order dated 26.09.2016 the marriage between them was dissolved. Further the said order came to be passed with observation that Respondent No. 1 has deserted the Petitioner husband. Hon'ble Apex Court in case of Dr. Swapan Kumar Banerjee (supra) has held that a divorced wife is entitled to claim maintenance under Section 125 CrPC. Explanation (II) to Section 125 CrPC creates a deeming fiction which includes a divorced woman to be a wife, and therefore, a woman who has been divorced by her husband can still claim maintenance under Section 125 CrPC and only when she remarries the said right gets extinguished.

6. As far as contention of learned Counsel for Petitioner about there being divorce granted on the

ground of desertion and for that purpose there is bar created under Section 125(4) CrPC is concerned, the Hon'ble Apex Court in the aforestated judgment has held that once the relationship of marriage comes to an end, the woman obviously is not under any obligation to live with her former husband. It is further observed that the deeming fiction of the divorced wife being treated as a wife can only be read for the limited purpose for grant of maintenance and the deeming fiction cannot be stretched to the illogical extent that the divorced wife is under a compulsion to live with the ex-husband. It is candidly recorded therein that the husband cannot urge that he can divorce his wife on the ground that she has deserved him and then deny maintenance which should otherwise be payable to her on the ground that even after divorce she is not willing to live with him.

7. The provision of Section 125 CrPC read with aforesaid judgment clearly shows that unless divorced wife is able to maintain herself or she has remarried, the right to claim maintenance from husband does not get extinguished by factum of dissolution of marriage.

8. In view of aforestated decision, there is no

substance in the Petition. Hence, Petition stands dismissed.

(R.M. JOSHI, J.)

Malani