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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

904 CRIMINAL WRIT PETITION NO. 815 OF 2022

Farhana D/o. Sk. Chand
@ Bhikansaheb Qureshi

....Petitioner

VERSUS

Zakir Ahmed S/o. Abdul Mannan

.....Respondent

.....

Mr. K. N. Shermale, Advocate for the Petitioner.

Mr. P. N. Nagargoje, Advocate for the Respondent.

CORAM : S. G. MEHARE, J.

DATE : 24th SEPTEMBER, 2024.

PER COURT :

1. Heard learned counsel for the Petitioner and learned counsel for the Respondent.

2. The Petitioner-wife has filed an application under Section 125 of the Code of Criminal Procedure against the Respondent-husband for maintenance before the learned Judicial Magistrate. The learned Judicial Magistrate allowed the application and granted her maintenance. The husband had challenged the said order vide Revision Petition No. 25/2006 before the learned Additional Sessions Judge, Ambajogai.

3. The learned Additional Sessions Judge, on 08.01.2007, decided the said revision under challenge and took the view that the Family Court has jurisdiction to convert the application of the appellant under Section 125 of Code of Criminal Procedure to application under Section 3 of 1986 Act for Muslim women and to decide the same. In short, he took the view that a Muslim woman cannot file an application under Section 125 of the Code of Criminal Procedure.

4. The learned counsel for the husband has fairly conceded that a Muslim woman is also entitled to file an application under Section 125 of the Code of Criminal Procedure. Learned counsel for the Applicant has relied on the case of Mohd Abdul Samad vs. The State of Telangana and another in Criminal Appeal no. 2842/2024 (Arising out of Spl. Leave Petition (Criminal) No. 1614/2024) dated 03.07.2024. The learned counsel for the Applicant has fairly conceded that the view of the Hon'ble Supreme Court in the case of Mohd Abdul Samad (supra) is squarely applicable to this case. In view of the question answered by the Hon'ble Supreme Court, this Petition deserves to be allowed.

5. The learned Additional Sessions Judge has modified the impugned order dated 29.08.2005 passed by learned Judicial Magistrate First Class is modified. The application filed by Applicant No. 1 for maintenance under Section 125 of the Code of Criminal Procedure has been rejected. It was directed that the non-applicant shall pay maintenance of Rs. 500/- per month to Applicant No. 2 from the date of the application. The non-applicant would pay the costs of Rs. 1,000/- to the Applicants granted by the Trial Court. Thus, the view of the learned Additional Sessions Judge is clear that the petition under Section 125 of the Code of Criminal Procedure by the wife is not maintainable. Therefore, it could be inferred that the legality and propriety of the order of learned Judicial Magistrate First Class has not been tested on the anvil of the law. Therefore, to make justice for all, the Court is of the view that this matter needs to be remitted to the learned Additional Sessions Judge. Hence, the following order :-

ORDER

- (i) Writ Petition is allowed.
- (ii) The judgment and order of learned Additional Sessions Judge, Ambajogai passed in Criminal Revision No. 25/2006 dated 08.01.2007 stands quashed and set aside.

(iii) The case is remitted to the Court of Additional Sessions Judge, Ambajogai, to decide the revision application afresh by giving all the parties appropriate opportunity.

(iv) Since the matter is old, learned Additional Sessions Judge is requested to dispose of the revision within a month after the parties appear.

(v) Both parties are directed to appear before the learned Additional Sessions Judge, Ambajogai, on 07.10.2024.

(vi) The amount deposited before the learned Additional Sessions Judge, Ambajogai, be paid to the Applicant if not withdrawn, and it would be adjusted towards the arrears of maintenance, subject to the decision of the learned Additional Sessions Judge, Ambajogai.

(S. G. MEHARE)
Judge