

Equivalent citations: I (1996) DMC 487

Bench: R Lodha

Gomaji vs Smt. Yashoda And Anr. on 13/9/1995

JUDGMENT

R.M. Lodha, J.

1. By this application filed by applicant Gomaji Ghanshyam Mohadikar under Section 482 of the Criminal Procedure Code, it is prayed that the proceedings initiated by non-applicant No. 1 Yashoda under Section 125 Cr.P.C. before the Judicial Magistrate, First Class, Tumsar and registered Misc. Criminal Case No. 75 of 1995 be quashed and set aside. This prayer is made by the applicant on the ground that prior to the initiation of the proceedings under Section 125 Cr.P.C, the applicant has already initiated proceedings for divorce under Section 13 of the Hindu Marriage Act, 1955 in the Court of the Civil Judge, Senior Division, Nagpur and the application under Section 125 Cr.P.C. has been filed by the non-applicant only to harass the applicant.

2. The applicant Gomaji Ghanshyam Mohadikar (for short, the 'husband') married the non-applicant No. 1 Yashoda (for short, the 'wife') on 20.6.1991 and the marriage between the parties took place at Sihora in Bhandara district. After sometime, the matrimonial dispute arose between the parties and without going into the details of the matrimonial dispute, suffice it to observe that the wife started living separately from the husband on 11.8.1993 and according to the husband, on that date dispute arose between husband and wife, since the husband suspected that wife had illicit relations with one Shankar Fakira Ninawe. On 6.6.1994 the husband filed a petition seeking a decree of divorce and dissolution of marriage under Section 13(1)(i) of the Hindu Marriage Act in the Court of the 3rd Jt. Civil Judge, Senior Division, Nagpur and the said Hindu Marriage Petition has been registered as Hindu Marriage Petition No. 128 of 94 and pending in the said Court. On 8.8.1994, admittedly, the wife made an application under Section 125 Cr.P.C. seeking maintenance from the husband. The grievance of the husband is that parallel criminal proceedings filed by the wife under Section 125 Cr.P.C. is an abuse of the process of the Court on the face of the pendency of Hindu Marriage Petition initiated by the husband seeking decree of divorce and dissolution of marriage and according to the husband, if at all, wife needs maintenance, she can seek appropriate order from the Civil Court where the proceedings for divorce and dissolution of marriage are pending.

3. Mr. Sagdeo, the learned Counsel for husband in support of his contentions relied upon the decision of the Madras High Court in *G. Ramanathan v. Mrs. Revathy*, (1989 Cri.L.J. 2037) and the judgment of this Court in *Ravindra Karmarkar v. Shaila*, 1992 Cri.L.J. 1845. On the other hand, Mr. Quazi, the learned Counsel for wife submitted that merely because husband has filed Hindu Marriage Petition seeking decree of divorce and dissolution of marriage, the right of wife for maintenance under Section 125 Cr.P.C. is not taken away and there is no bar that during the pendency of the marriage petition the wife cannot claim maintenance from the Criminal Court under Section 125 Cr.P.C. Mr. Quazi also submitted that till date the Civil Court has not granted any maintenance to the wife and, therefore, decisions relied upon by the learned Counsel for husband have no application in the facts and circumstances of the case. Mr. Quazi, the learned Counsel for wife relied upon the decision of the Apex Court in *Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors.*, ; *Tarabai v. Shamsingh and Anr.*, 1991 Mh.L.J. 521 and *Vishwanath v. Nirmala*, 1992 Cri.L.J. 1262 = I (1994) DMC 410.

4. On having given my thoughtful consideration to the contentions raised by the learned Counsel for parties, in my view, the present petition filed by the husband under Section 482 Cr.P.C. seeking quashing of criminal proceedings filed by the wife under Section 125 Cr.P.C. and pending in the Court of the Judicial Magistrate, First Class, Tumsar is wholly misconceived and devoid of any substance. Admittedly, in the proceedings initiated by the husband seeking decree of divorce and dissolution of marriage, till date no maintenance has

been awarded either by way of maintenance pendente-lite or otherwise. The wife is admittedly living separately and there is reasonable cause for the wife to live separately from the husband, because husband himself has filed a petition seeking decree of divorce and dissolution of marriage. That being the position, the wife cannot be denied maintenance under Section 125 Cr.P.C. if she is able to prove that the husband has neglected or refused to maintain her having sufficient means to support her. Pendency of Hindu Marriage proceedings or civil matrimonial dispute does not bar the proceedings of maintenance under Section 125 Cr.P.C. nor the jurisdiction of the Criminal Court in the proceedings under Section 125 Cr.P.C. is taken away merely because civil matrimonial proceedings are pending.

5. Now, various citations relied upon by the learned Counsel for parties may be considered. In G. Ramanathan's case (supra), the Madras High Court has held as under:

"4. When the Competent Civil Court has already (sic) of the matter and when it is possible without incurring any expenditure or any other inconvenience to approach, by way of a simple petition, the Civil Court so as to obtain maintenance, it is not proper on the part of the wife to go before the Magistrate for an order. The proper course is to approach the Civil Court which is already seized. Further, under Section 127 of the Cr.P.C. if an order regarding maintenance is passed by the Competent Civil Court, the Magistrate should have to set aside its own order which is more in the nature of a temporary nature made after a summary hearing to meet an emergent situation. Therefore, the fact of seizing the Magistrate when the Competent Civil Court has been already seized would cause only judicial waste of time since the order obtained is ultimately liable to be cancelled "

6. I am unable to persuade myself with the judgment of the Madras High Court. Mere fact that Civil Court is seized of the matrimonial proceedings, a statutory right provided to a destitute-wife under Section 125 Cr.P.C. cannot be denied. In the present case, all the more, admittedly, no interim maintenance has been awarded by the Civil Court and the learned Counsel for the husband candidly concedes that the application filed by the husband under Section 24 of the Hindu Marriage Act is pending. That being the position, the wife cannot be denied maintenance if she is able to make out a case of maintenance under Section 125 Cr.P.C. and merely because the civil matrimonial proceedings are pending adjudication and the Civil Court is seized of the matter, the proceedings under Section 125 Cr.P.C. cannot be held to be bad in law by any reckoning or under any principle.

7. The Single Judge of this Court in Ravindra Haribhau Karmarkar's case (supra) held as under:

"17. The non-applicants could not be allowed to ride two horses at a time (two simultaneous proceedings in two different Courts) and could not be permitted to continue the maintenance proceedings under Section 125 Cr.P.C. when they had already chosen the alternative remedy in Reg. Civil Suit No. 227/86. It is well-settled law that the judgment of the Civil Court shall prevail over the judgment of Criminal Court. The natural justice demands that parallel proceedings cannot be allowed to continue in different Courts.

18. The Civil judge, Senior Division, Buldana is directed to expedite the matter. Staying the proceedings in the Court of J.M.F.C. Buldana, will not cause any prejudice to the non-applicants, because they are already receiving a maintenance allowance @ Rs. 250/-per month for wife and Rs. 150/-p.m. for the daughter".

8. The judgment of this Court in Ravindra Karmarkar's case (supra) is clearly distinguishable and cannot be applied on the facts and in the circumstances of the case, because in that case, Civil Court had already granted interim maintenance on the application filed by the wife and in that context this Court observed that the wife in that case cannot be allowed to ride two horses at a time i.e. she cannot be allowed to proceed with two simultaneous proceedings in different Courts for maintenance. In the present case, admittedly, no maintenance pendente-lite has been awarded by the Civil Court and, therefore, the judgment in the case of Ravindra Karmarkar v. Shaila (supra) has no application.

9. The Apex Court in Captain Ramesh Chander's case (supra) dealt at length the ambit and scope of Section 125 Cr.P.C. and observed that the said provision is a measure of social justice and special enactment to protect the women and children and the said section calls for construction by Courts that fulfills the social functions. Dealing with the question that when the Civil Court has passed the interim maintenance under Section 24 of the Hindu Marriage Act which is inadequate and an application is filed under Section 125 Cr.P.C. for award of higher maintenance, whether the Magistrate in the proceedings under Section 125 Cr.P.C. has such jurisdiction or not, the Supreme Court, thus observed :

"6. Broadly stated and as an abstract proposition, it is valid to assert as Shri Desai did, that a final determination of a civil right by a Civil Court must prevail against a like decision by a Criminal Court. But here two factors make the principle inapplicable. Firstly, the direction by the Civil Court is not a final determination under the Hindu Adoptions and Maintenance Act, but an order pendente-lite, under Section 24 of the Hindu Marriage Act to pay the expenses of the proceedings and monthly during the proceedings such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable. Secondly, this amount does not include the claim for maintenance of the children although the order does advert to the fact that the respondent has their custody. This incidental direction is no comprehensive adjudication.

7. Therefore, barring marginal relevance for the Magistrate, it does not bar his jurisdiction to award a higher maintenance. We cannot, therefore, fault the Magistrate for giving Rs. 1000/- on this score.

8. The more important point turns on the construction of Section 125 Cri.P.C. which is a reincarnation of Section 488 of the old Code except for the fact that parents also are brought into the category of persons eligible for maintenance and legislative recognizance is taken of the devaluation of the rupee and the escalation of living costs by raising the maximum allowance for maintenance from Rs. 100/- to Rs. 500/-. The relevant portion of the section reads:

xxx xxx xxx xxx"

10. The ratio of the decision of the Supreme Court in Ramesh Chander's case (supra) is, thus clear that when there is final determination of a civil right by Civil Court, determination by the Civil Court must prevail against the decision of the Criminal Court, but where determination of the Civil Court is not final and only maintenance pendente-lite under Section 24 of the Hindu Marriage Act has been awarded, there being no comprehensive adjudication on the question of maintenance, the jurisdiction of the Magistrate under Section 125 Cr.P.C. is not barred. Thus, merely because the wife has moved an application under Section 24 of the Hindu Marriage Act before the Civil Court where the proceedings for divorce and dissolution of marriage initiated by the husband are pending, the jurisdiction of the Criminal Court of entertaining the application under Section 125 Cr.P.C. seeking award of maintenance by the wife is not at all barred nor on that count the wife can be denied the maintenance under Section 125 Cr.P.C. if the case for award of maintenance under Section 125 Cr.P.C. is made out.

11. In Tarabai Shamsingh Paradeshi's case (supra), this Court held as under:

"12. The submissions advanced by Mr. Raghuvanshi will have to be upheld as far as the principles of law are concerned in so far as the Civil Court, undoubtedly, acting in exercise of its matrimonial jurisdiction, is the Court of competent jurisdiction to finally determine the quantum of maintenance. There is no dispute about the fact that until it is done, it is always open to the aggrieved party to move the Criminal Court for an appropriate order under Section 125 of the Code of Criminal Procedure. On the facts of the present case, it is also clear that the application before the learned Magistrate was moved by the Petitioner- wife prior to the civil proceedings being instituted, and therefore the application at that point of time was maintainable. Even though the principles that have been enunciated in the above cited decisions and the submissions made by Mr. Raghuvanshi will have to be upheld, one cannot lose sight of the fact that all those decisions do very clearly

specify that the order made under Section 125 of the Code of Criminal Procedure will be valid, subsisting and an enforceable order until the Civil Court finally decides the issue of maintenance. The term "finally adjudicates the rights of the parties" which is the principle that is culled out, will have to be interpreted as meaning until the time when the Civil Court determines the issue on merits. Though normally a final order would be a reasoned order after evaluating the merits, on the unusual and peculiar facts of this case, the learned Trial Magistrate was right in pointing out that the Civil Court, though if had passed an order for a decree for divorce had not decided the issue of maintenance finally and conclusively on merits and to that extent the learned Trial Magistrate was justified in deciding the application that was pending before him. The reasoning of the learned Sessions Judge who has upheld the contentions advanced by the Petitioner- wife that the issue of maintenance has not been decided on merits before the Session Court and, that regardless of this fact, the order of the Civil Court will prevail, appears to be faulty and to that extent will have to be interfered with. As far as the quantum is concerned, the Revisional Court has very correctly come to the conclusion that the quantum of Rs. 150/- per month does not deserve to be interfered with. To this extent, the last part of the order of the learned Sessions Judge reducing the amount of maintenance that had earlier been awarded from Rs. 150/- p.m. to Rs. 60/-p.m. for the period after 30.4.1983 requires to be set aside and the order of the learned Trial Magistrate will have to be confirmed to this extent.

13. As indicated by me earlier, the present case has been presented a very unusual set of facts and a virtually exceptional situation. In the light of the principles of law that steam from a reading of Section 125 of the Code of Criminal Procedure and the submissions advanced by Mr. Raghuvanshi, which I have upheld, certain corrective steps as far as the present case is concerned, will, undoubtedly, be necessary. Section 125 of the Code of Criminal Procedure supports the contention of Mr. Raghuvanshi that the order passed under Section 125 of the Code of Criminal Procedure will require modification depending on the order that is passed by the Civil Court when the issue is finally determined. In the present case, therefore, the Petitioner, if she is so advised, will have to apply to the Matrimonial Court for reconsideration of the order dated 30.4.1983 and for variation of that order on the basis of the material that is placed before the Court. The petitioner is granted a period of 3 (three) months within which to make the application, if she so desires, upto which point of time the order of the learned Magistrate shall continue. If the petitioner approaches the Civil Court, it shall be open to the Civil Court to make an appropriate ad-interim or interim order. If the petitioner for any reason, does not approach the Civil Court, the order of the learned Trial Magistrate shall stand automatically vacated on the expiry of the period of 3 (three) months and from then onwards the earlier order of the Civil Court dated 30.4.1993 shall become effective".

12. In Tarabai's case (supra), it is again clearly laid down that unless the Civil Court finally determines the quantum of maintenance in exercise of its matrimonial jurisdiction, it is always open to the aggrieved party to move Criminal Court under Section 125 Cr.P.C. for maintenance and in my view, the proposition laid down in Tarabai's case (supra) cannot be disputed and is in accordance with the ratio laid down by the Apex Court in Captain Ramesh Chowder's case (supra). This Court again in Vishwanath v. Nirmala, 1992 Cr.L.J. 1262 (supra) reiterated the legal position and it was also held that merely because maintenance has been granted by the Civil Court to the applicant under the Hindu Adoptions and Maintenance Act, the application under Section 125 Cr.P.C. is not barred.

13. No manner of doubt is left about the legal position that unless the Civil Court finally adjudicates the question of maintenance in the matrimonial proceedings, neither the jurisdiction of the Criminal Court in the proceedings under Section 125 Cr.P.C. for award of maintenance is barred during the pendency of civil proceedings nor the right of the wife under Section 125 Cr.P.C. can be denied if during the pendency of matrimonial proceedings, the wife is able to make out the case in the proceedings under Section 125 Cr.P.C. that she has been neglected and refused to be maintained by the husband and has no independent financial source of her own to maintain herself. Any order passed by the Criminal Court awarding maintenance in the proceedings under Section 125 Cr.P.C. would be subject to the adjudication on the question of maintenance by the Civil Court and the wife cannot take advantage of the two orders of maintenance passed by the Civil Court as well as the Criminal Court. After the final adjudication is made by the Civil Court on the question of

maintenance, the wife is entitled to maintenance as ordered in the civil proceedings, till such time the order of maintenance granted under Section 125 Cr.P.C. cannot be faulted.

14. In view of the foregoing discussion, there is no merit in this criminal application filed by the husband under Section 482 Cr.P.C. and the same is liable to be dismissed and is dismissed accordingly.