

(2017) 01 MP CK 0137
MADHYA PRADESH HIGH COURT
Case No: 18 of 2015

Collector (Land
Acquisition Officer)
Mandla

APPELLANT

Vs

Ratiram (since
deceased) through LRs
Rajaram and others

RESPONDENT

Date of Decision: Jan. 13, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 125 - Order for maintenance of wives, children and parents
- Hindu Marriage Act, 1955, Section 25 - Permanent alimony and mainten

Citation: (2017) 01 MP CK 0137

Hon'ble Judges: Jarat Kumar Jain

Bench: Single Bench

Advocate: Prateek Maheshwari, Nilesh Dave

Final Decision: Dismissed

Judgement

1. This criminal revision has been filed under Section 19 (4) of Family Courts Act against the order dated 27/08/2014, passed by Principal Judge, Family Court, Dewas in MJC No.170/2014, whereby directed the non- applicant/husband to pay Rs.500/- per month, which is awarded as permanent alimony by the Civil Court.

2. Brief facts of this case are that, marriage of the applicant was solemnized with the non-applicant on 16/05/1989. Out of their wedlock, two daughters were borne. Subsequently, the applicant/wife filed a divorce petition No.49-A/1996, which was allowed on 27/07/1997, whereby their marriage was dissolved and non-applicant/husband was

directed to pay Rs.500/- per month to the applicant/wife as permanent alimony and also pay Rs.500/- per month to each daughter till they attain majority. Thereafter, the applicant filed an application on 01/10/2004 under Section 125 of Cr.P.C. against the non-applicant/husband stating that even after filing execution proceedings, she could not get the permanent alimony since the year 1999. Hence, she relinquished her right under the decree. Now, the non-applicant being a medical representative earning Rs.9,000/- per month, therefore, she is entitled Rs.2,000/- per month maintenance under Section 125 of Cr.P.C.

3. The non-applicant/husband resisted the application on the ground that under Section 25 of Hindu Marriage Act permanent alimony has already been awarded and on 29/04/2006, in complete satisfaction of the decree, execution application has been dismissed. Hence, the application under Section 125 of Cr.P.C. is not maintainable. The applicant/wife is earning Rs.12,000/- per month from beauty parlour; whereas, the non-applicant is a dispatch clerk and hardly earns Rs.2,100/- per month. Out of that amount, he has to maintain his second wife, four minor children and parents. Therefore, the applicant is not entitled for any maintenance under these proceedings.

4. Both the parties produced the evidence. After hearing learned counsel for the parties, learned Principal Judge has allowed the application and directed the non-applicant/husband to pay maintenance @ Rs.500/- per month, as per the decree passed by the Civil Court and the amount, which has already been paid under the decree be adjusted. Being aggrieved, the applicant/wife filed this revision.

5. Learned counsel for the applicant/wife submits that the nature of proceedings under Hindu Marriage Act and maintenance proceedings under Criminal Procedure Code are different. Hence, wife can pursue both the remedies simultaneously as held by this Court in the case of Naresh Kumar Rai vs. Smt. Mamta Rai 2003 (2) MPLJ 137]. Section 125 of Cr.P.C. does not lay down that existence of decree of maintenance passed by the Civil Court will bar jurisdiction of Magistrate to entertain a petition under Section 125 of Cr.P.C. For this purpose placed reliance on the judgment of Madras High Court in the Case of Linga Gounder vs. Raman 1978 CRLJ 469]. Thus, the finding of the learned Principal Judge that in view of the decree passed by Civil Court for permanent alimony, application under Section 125 of Cr.P.C. not maintainable is erroneous.

6. Learned counsel for the applicant further submits that while fixing maintenance, income of both the parties and social status should be considered. Husband had to maintain wife and children in the same status as they were before. For this purpose, placed reliance on the judgment of Hon"ble Apex Court in the case of Bhuwan Mohan Singh vs. Meena AIR 2014 SC 2875]. In the present time, the amount of Rs.500/- per month is very meager sum, hence, no one can maintain in this amount, however, learned Principal Judge has not considered this aspect of the matter. Thus, looking to the status and earning of the non-applicant, the amount be enhance upto Rs.2,000/- per month.

7. Learned counsel for the non-applicant/husband supports the impugned order and submits that the applicant/wife has filed the execution proceedings against the non-applicant and on 08/04/2006, the proceedings have been disposed of after satisfaction of the execution application. During the pendency of this execution proceeding, the applicant/wife filed this application for maintenance under Section 125 of Cr.P.C. The applicant can not proceed simultaneously against the non-applicant/husband in civil proceedings as well as criminal proceedings. So far as the quantum is concerned, after considering the evidence on record, the learned Principal Judge has rightly declined to enhance the amount. There is no substance in this revision, hence, the revision is liable to be dismissed.

8. After hearing learned counsel for the parties, perused the record.

9. The question for consideration before this Court is whether after passing the decree for permanent alimony, the wife can file the application claiming maintenance under Section 125 of Cr.P.C. stating that she has relinquished her right under the decree passed in her favour.

10. Patna High Court held that "even though a decree for divorce has been passed by any competent Court, a petition under Section 125 of Cr.P.C. is still maintainable and it is not necessary that relief of maintenance should be sought only under Section 25 of Hindu Marriage Act" (see (1990) 2 Pat. LJR 214). Bombay High Court held that "provisions of Section 25 of Hindu Marriage Act do not stand in the way of Magistrate granting relief under Section 488 of Cr.P.C." (see (1981) Bom. CR 962). Orissa High Court held that "rejection of maintenance to wife under the provisions of Section 25 of Hindu Marriage Act will not bar her from seeking relief under Section 125 of Cr.P.C. but the Civil Court order shall be considered by the Criminal Court before passing appropriate order under Section 127 (2) of Cr.P.C." (see (1994) CRLJ 1168).

11. Madras High Court in the Case of Linga Gounder vs. Raman 1978 CRLJ 469. held that "a number of decided cases, which clearly lay down that the existence of a Civil Court decree for maintenance can not operate as a bar to a proceeding for obtaining maintenance, being instituted under the Criminal Procedure Code. It is also held that Civil Court's decree passed for maintenance under Section 125 of Cr.P.c. in the year 1975 is maintainable and quantum of maintenance could be fixed at a higher rate than what was granted in the decree.

12. With the aforesaid, I am of the view that a decree of divorce has been passed by competent Court and permanent alimony has been fixed, even application under Section 125 of Cr.P.C. is maintainable. However, while passing the order, the Magistrate has to consider the Civil Court's order of permanent alimony.

13. In this case Civil Court has passed ex-parte divorce decree in favour of applicant on 21/07/1997 and fixed permanent alimony @ Rs.500/- per month. The Court has to consider whether the applicant is entitled for enhancement of maintenance amount.

14. The applicant/wife deposed that the non- applicant/husband is a Medical Representative and he use to earn Rs.15,000/- per month. This fact is specifically denied by the non-applicant/husband. He deposed that he is a dispatch clerk in Kash Pharma Agency and use to get Rs.2,100/- per month. He further deposed that after divorce, he has solemnized second marriage and he is having four minor children.

15. The applicant/wife has not filed any documentary or oral evidence to corroborate her testimony. Thus, it is not proved that the non-applicant/husband is a Medical Representative and he earns Rs.15,000/- per month. The applicant/wife in her deposition admitted that non-applicant/husband has to maintain his second wife and four minor children. Thus, the applicant/wife is unable to prove that non- applicant/husband is having sufficient means to pay more maintenance than fixed by the Civil Court.

16. With the aforesaid, I am of the view that the applicant/wife has failed to make out a case for enhancement of maintenance amount. Hence, there is no illegality or impropriety in the impugned order. Thus, the revision is hereby dismissed.