

Cr.R.108/2017

Ramvaran Sharma
V.
Smt. Ramsnehi Sharma

11/05/2017

Shri Ashish Shrivastava, counsel for the applicant.

Shri Devendra Kumar Sharma, counsel for the respondent.

This criminal revision has been filed under Section 397,401 of CrPC against the order dated 02/01/2017 passed by Principle Judge, Family Court, Morena in Case No.75/2015 by which the application filed by the respondent under Section 125 of CrPC has been allowed and the applicant has been directed to pay Rs.4,000/- per month from the date of the filing of the application. Apart from that, the applicant has been directed to pay an amount of Rs.1,000/- towards the litigation expenses and an amount of Rs.2,500/- towards advocacy fee.

The necessary facts for the disposal of the present revision in short are that the respondent filed an application under Section 125 of CrPC alleging that she was married to the applicant in the year 1989 and sufficient dowry was given at the time of marriage. It was alleged that about 13 years back, the respondent was ousted from her matrimonial house. Thereafter, the report in the police station was lodged as well as the panchayat was convened. In the panchayat, it was stated by the applicant and his family members that in case the family of the respondent gives an amount of Rs.20,000/-, then they would keep the respondent with them. An amount of Rs.20,000/- was also given. Panchanama was prepared. It was alleged that because

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the respondent could not conceive, therefore, the applicant without obtaining divorce from the respondent, kept a lady known as Kalpana and is residing with her for the last 12 years. It was alleged that a month prior to the filing of the application, the applicant and his family members again assaulted the respondent and a report was lodged and the police registered an offence under Section 498-A of IPC. When the applicant and his family members filed an application for grant of bail, then it was disclosed for the first time that the applicant has taken divorce from the respondent about 22 years back. On 24/03/2015, the respondent came to know that by playing fraud, the applicant has obtained divorce and, accordingly, necessary action has been taken for getting the said decree set-aside. The respondent has no means of livelihood whereas the applicant has 20 bigha of land and tractor and buffaloes. The applicant is earning Rs.30,000/- per month and, therefore, a prayer was made for grant of Rs.15,000/- per month towards maintenance amount.

The applicant filed his reply to the application filed under Section 125 of CrPC. In reply, the applicant neither accepted nor denied the factum of marriage. He merely said that in this application, the respondent has alleged that she got married in the year 1989 whereas in the report on which offence under Section 498-A of IPC has been registered, she has stated that she was married in the year 1996. It was further alleged that why the respondent did not file any application under Section 125

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of CrPC for the last 13 years and so far as the payment of an amount of Rs.20,000/- is concerned, the said amount was deposited in the account of the respondent. It was further alleged that the applicant has already obtained divorce from the respondent in the year 1993. The applicant is a laborer and has the responsibility of maintaining his children, wife whereas the respondent is earning independently by doing stitching work. Accordingly, it was pleaded that the respondent is not entitled for maintenance amount.

The Trial Court also came to hold that in fact the respondent was residing with the applicant but it appears that by playing fraud, the applicant obtained the decree of divorce taking advantage of the illiteracy of the respondent. It was further held that the respondent is entitled to receive Rs.4,000/- per month by way of maintenance from the date of filing of the application.

Being aggrieved by the order of the Principal Judge, Family Court, it is submitted by the counsel for the applicant that even according to the averments made in the application filed under Section 125 of CrPC, the respondent left her matrimonial house about 13 years prior to the filing of the said application and under these circumstances where the application under Section 125 of CrPC was filed belatedly, the same is not maintainable. It is further submitted that the applicant had already obtained the divorce on the ground of impotency of the respondent. The respondent has failed to prove the income of the applicant and, therefore, the quantum of

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punishment which has been decided by the Trial Court is on a higher side. Further there is no reason for the Trial Court to grant maintenance from the date of the filing of the application.

To buttress his contentions, the counsel for the applicant relies upon the judgment of a Co-ordinate Bench of this Court passed in the case of **Ratan Lal v. Dhapu Bai** reported in **2003 1 MPJR 125** and **Kamla Bai v. Gajanand** reported in **1984 MPWN 170**.

Per contra, it is submitted by the counsel for the respondent that the application under Section 125 of CrPC is a measure of social justice and has been enacted to provide speedy remedy to the women and the children and, therefore, it has to be interpreted liberally. Furthermore, the application under Section 125 of CrPC would be maintainable only when the wife is unable to maintain herself. If the wife, at earlier point of time, was able to maintain herself and with the passage of time, if she losses her income, then still she can file an application under Section 125 of CrPC and it cannot be said that the wife should live the life of starvation. It is further submitted that in the present case, it is not the case of the respondent that she is residing separately for the last 13 years. On the contrary her case is that about a month prior to the filing of the application, she was beaten and, accordingly, a complaint was lodged and an offence under Section 498-A of IPC was registered against the applicant and his family members. The respondent is an illiterate lady and taking advantage of

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the illiteracy, the applicant obtained an ex-parte decree of divorce on the ground of the impotency whereas impotency is not a ground for grant of divorce under Section 13 of Hindu Marriage Act. At the most it can be said to be voidable marriage but the Trial Court has granted divorce on the ground of impotency as if the impotency is a ground under Section 13 of the Hindu Marriage Act. It is further submitted that even for declaring the marriage as voidable marriage, the law provides that where the marriage could not be consummated because of impotency of the respondent, then the said marriage would be voidable marriage.

In the present case, the allegations are that as the respondent could not conceive, therefore, she was impotent. If a lady fails to conceive, then it cannot be said that she is impotent and, therefore, by no stretch of imagination it can be said that the marriage is voidable marriage. Further, it is submitted by the counsel for the respondent and as the applicant himself was responsible for delay in the early disposal of the application under Section 125 of CrPC, therefore, the Trial Court did not commit any mistake in directing for grant of maintenance amount from the date of the application. The counsel for the respondent also relied upon the judgment of the Supreme Court in the case of **Chaturbhuji v. Sita Bai** reported in **(2008) 2 SCC 316** and judgment of this Court passed in the case of **Shobha v. Krushnakant Pandya** reported in **(2009) 1 MPHT 61** and submitted that the words "unable to maintain" is not meant for

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punishing a person for his/her past neglect but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. Section 125 of CrPC has been enacted for doing social justice specially to the women who have been treated with cruelty or have been ousted from their matrimonial house because of non-fulfillment of the demand as well as to protect the children who are the victims of differences between their parents. It is further submitted that the basic purpose of providing maintenance under Section 125 of CrPC is that the wife may live the life which is consistent with the status of her matrimonial family. It is further submitted that in the present case, it is incorrect to say that the respondent was ousted from her matrimonial house about 13 to 14 years back but she has specifically stated that she was ousted from her matrimonial house about one month prior to the filing of the application under Section 125 of CrPC. Even otherwise, the application under Section 125 of CrPC cannot be rejected on the ground that the wife was ousted or is residing separately for the last several years. Although, in case of delay in filing application under Section 125 of CrPC, the wife may be required to explain the delay for not filing the application at earlier point of time.

Heard the learned counsel for the parties.

So far as the delay in filing the application under Section 125 of CrPC is concerned, the counsel for the applicant has referred to paragraph 3 of the application

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filed under Section 125 of CrPC and submitted that the respondent was ousted from the matrimonial home about 13 years back and no explanation has been given for not filing the application under Section 125 of CrPC at the earliest point of time. If the pleadings of the respondent are considered alongwith the evidence, then it would be clear that the respondent has explained the contentions made in paragraph 3 of the application. She has stated that about 13 years back also she was ousted from her matrimonial house and she had lodged a complaint. However, she has specifically stated in her evidence that she was ousted from her matrimonial house about 1½ years prior to the date of recording of her evidence.

The Trial Court has also come to a conclusion that there is no delay in filing the application under Section 125 of CrPC.

Thus, it is clear that the submissions made by the counsel for the applicant that the application under Section 125 of CrPC is delayed is misconceived and it cannot be accepted in the light of the pleadings as well as the evidence of the parties.

So far as the question of divorce is concerned, it is submitted by the counsel for the respondent that the decree of divorce was obtained by playing fraud and the respondent was residing with the applicant and, even then, the applicant somehow managed to get an ex-parte decree of divorce and an appeal is already pending against the said decree of divorce, therefore, it cannot be

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said that the decree of divorce has attained finality. Furthermore, it is submitted that merely because a decree of divorce has been passed, the same cannot be a good ground for rejecting the application under Section 125 of CrPC unless and until it is found that the wife has remarried after such divorce. There is no allegation by the applicant that the respondent has remarried and, therefore, the decree of divorce even otherwise has no relevance.

Section 125(1) Explanation B reads as under:-

“wife includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried”

Therefore, even accepting that a decree of divorce has been passed against the respondent, it cannot be said that the respondent is not entitled for maintenance.

So far as the quantum of the maintenance amount is concerned, it is clear that the applicant is an able body person and he has not claimed that he is suffering from any ailment.

Considering the price index as well as the inflation, an amount of Rs.4,000/-, which has been awarded by the Court below, cannot be said to be on a higher side.

It is further submitted that the Trial Court committed a material illegality by awarding maintenance from the date of the application because under Section 125 of CrPC, the maintenance shall be payable from the date of the order, however, the Magistrate may direct that the maintenance amount shall be payable from the date of the application. It is submitted that for directing

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the applicant to pay maintenance from the date of the application, special reasons should have been assigned by the Court below which has not been done and, accordingly, the order be made applicable from the date of the order.

From the order-sheets of the Court below, it appears that the application was filed on 13/04/2015 and on 17/04/2015, the notices were issued. On 15/05/2015, the applicant appeared and prayed for time to file reply to the application under Section 125 of CrPC as well as reply of application for grant of interim maintenance. On the next dates of hearing i.e., 18/06/2015, 09/07/2015 and 24/07/2015, the applicant sought time to file reply to the applications. On 03/08/2015, the reply was filed and the case was fixed for arguments on the application for grant of interim maintenance. On 11/08/2015, the case was adjourned for arguments on the application for grant of interim maintenance. On 20/08/2015, the arguments were heard and, accordingly, on 03/09/2015, the order was passed and an application for grant of interim maintenance was kept pending and the case was fixed for filing of reply to the application under Section 125 of CrPC. On 21/09/2015, it was observed by the Trial Court that since the reply to the application under Section 125 of CrPC has already been filed, therefore, fix the case for recording the evidence of the respondent. On 19/10/2015, the witnesses of the respondent were present but the counsel for the applicant expressed his inability to cross-examine them, therefore, the evidence

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could not be recorded. On 20/09/2015, the case was adjourned because the lawyers were on strike. On 18/01/2016, as the witnesses of respondent were not present, therefore, the case was adjourned to 22/02/2016. On 22/02/2016, the witnesses of the respondent were present but the adjournment was sought by the counsel for the applicant and, accordingly, the case was adjourned. On 29/03/2016, the witness of the respondent was present but the witness could not be examined. On 22/04/2016, although the respondent was present but the applicant changed his counsel, therefore, case was adjourned. On 23/05/2016, the presiding officer was on leave. On 16/06/2016, the case was adjourned to 25/07/2016. On 25/07/2016, as the presiding officer was on leave, therefore, the case was adjourned to 29/08/2016. On 29/08/2016, one witness was examined and cross-examined but another witness could not be examined because of paucity of time and the case was adjourned to 21/09/2016. On 21/09/2016, witnesses were not present, therefore, the case was adjourned to 06/10/2016. On 06/10/2016, an objection was raised with regard to the maintainability of the application under Section 125 of CrPC. Reply was filed and the Court directed that the application shall be considered after the evidence of the parties are over and the case was adjourned to 20/10/2016. On 20/10/2016, the respondent examined one witness and closed her case. On 05/11/2016, the case was adjourned at the request of the counsel for the applicant. On 09/11/2016,

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again the applicant sought time and the matter was adjourned to 19/11/2016. On 19/11/2016, a last opportunity was given to the applicant to produce certain documents as well as to produce his witnesses. On 22/11/2016, some documents were produced and the matter was adjourned to 28/11/2016 for evidence. On 28/11/2016, the evidence of the applicant was recorded and the case was adjourned to 01/12/2016 for examination of remaining witnesses. On 01/12/2016, last opportunity was granted and on 21/12/2016, the applicant examined his witness and closed his evidence. On 26/12/2016, case was adjourned for final arguments and the final arguments were heard on 28/12/2016. Thus, it is clear that on most of the occasions, the case was adjourned because of the adjournment sought by the applicant and, therefore, it cannot be said that the applicant was not responsible for delay in disposal of the application under Section 125 of CrPC.

Accordingly, it is held that the Trial Court did not commit any mistake in directing the applicant to pay maintenance amount from the date of the application.

Accordingly, this revision fails and is hereby **dismissed**.

(G.S.Ahluwalia)
Judge