

M.Cr.C. No.7016/2016

10/01/2017

Shri Pravir Porwal, learned counsel for the applicant.

Shri V.K. Varangoankar, learned counsel for the respondent.

This is a petition under Section 482 of the Code of Criminal Procedure against order dated 30.06.2016 passed by learned Additional Sessions Judge, Khategaon, District Dewas in Criminal Revision No.23/2016, whereby and whereunder the learned revisional Court has declined to interfere with the order dated 22.01.2016 rendered by Judicial Magistrate First Class, Khategaon in MJC No.14/2013 directing the petitioner to pay maintenance allowance to the respondent @ Rs.2,000/- per month.

The order passed by the Magistrate, which has been maintained by the learned revisional Court, has been challenged on the ground that firstly, the prayer for maintenance was made after about 24 years; secondly, that the respondent has married again and thirdly, that the petitioner is not earning sufficiently so as to pay Rs.2000/- per month by way of maintenance to the respondent. It is also submitted that the respondent was duly divorced by the petitioner and, therefore, under the Muslim law, he is no more liable to pay maintenance to her.

Per contra, learned counsel for the respondent has submitted that all the aforesaid factors were duly taken into consideration not only by the learned Magistrate but also by the learned revisional Court also and, therefore, in this

petition, which is nothing but a second revision against the revisional order, no scope for interference is there.

Heard the learned counsel for the parties and perused the record.

The learned revisional Court has considered in para-17 that a Muslim wife even after divorce is entitled to get maintenance from her previous husband till her remarriage. Reliance in this regard has rightly been placed on the decision of the apex Court in *Shabana Bano vs. Imran Khan*, AIR 2010 SC 305, para 23 whereof runs as under:

“29. Cumulative reading of the relevant portions of judgments of this Court in Danial Latifi (2001 AIR SCW 3932) and Iqbal Bano (2007 AIR SCW 3880) (supra) would make it crystal clear that even a divorced Muslim woman would be entitled to claim maintenance from her divorced husband, as long as she does not remarry. This being a beneficial piece of legislation, the benefit thereof must accrue to the divorced Muslim women.”

Therefore, the plea that the parties are Muslims and the petitioner is not under an obligation to pay maintenance because the respondent has been divorced by him is unsustainable.

As regards delay in filing the petition for grant of maintenance, the learned revisional Court has dealt with this aspect in para-18 of the impugned judgment. It has been held that delay by itself cannot be a ground to deny maintenance to the wife because the provision for

maintenance is to sub-serve a social purpose and to prevent vagrancy. In this connection a reference can be made to the pronouncement of this court in *Sakun Bai (Smt.) vs. Ramji, 1998 (I) MPWN Note 166*, relevant observations whereof are as under:

"Now the other point, considered sufficient by the Courts' below, for dismissing the petitioner's application for grant of maintenance, that the petitioner/wife had approached the Court quite late i.e. after about 7 years of her having obtained divorce from her husband. At the first place, the Code of Criminal Procedure does not prescribe any period of limitation for filing of an application, under Section 125, for grant of maintenance. Secondly, there may be various reasons for the delay in filing the application under Section 125, of the Cr.P.C. As under the scheme, maintenance cannot be granted beyond the date of the filing of the application, the husband, in the event of delay in filing the application under Section 125 Cr.P.C., must thank his wife for not approaching the Court early, or else he would have to pay the maintenance for that period also. Delay in filing an application under Section 125 Cr.P.C., can never be a ground for debarring the wife, who is otherwise legally entitled to receive maintenance from her husband, from seeking maintenance under Section 125 of the Cr.P.C."

In *Golla Seetharamulu vs Golla Rathanamma and Anr. 1991 CriLJ 1533*, a D.B. of the A.P. High Court dealing with the plea of limitation for seeking maintenance under

section 125 Cr.P.C. has held as under:

"Simply because the wife has not claimed maintenance for a long period, it does not mean that she has completely abandoned her right or voluntarily given up her right to claim maintenance. In her application she pleaded that she has no other source of income and she is unable to maintain herself. She might be living with her parents to the utter humiliation of other ladies and without any courtesy and respect which a daughter is entitled to in her parental house if she is living quite happily and peacefully with her husband, with the only fond hope of reunion. But when all her hopes are shattered away, and when there is no other source of income and when she feels herself a burdensome to her parents or brothers, she has approached the Court claiming maintenance. Apart from that, Section 125 Cr.P.C. has not restricted the period of limitation to claim maintenance. When the statute has not prohibited any wife to claim maintenance with (within) any period of limitation, the petitioner is not entitled to plead that she has waived her right to claim maintenance due to the long lapse of 10 or 12 years after she left his house. Due to the changed circumstances in her parents house, her parents may not be willing to maintain her and they may not be in a position to maintain her since other children have grown up and some other problems might have cropped up in her family."

In view of the aforesaid, it cannot be said that either the respondent waived her right to claim maintenance by not filing a petition for pretty long time or that she forfeited her right to claim maintenance under Section 125 of 'the Code.

As regards the plea that the petitioner is not able to earn sufficiently, so as to pay maintenance to the respondent, the learned revisional Court has dealt with this issue in para-22,

23, 24 & 25 of the impugned order and referring to various authorities has come to the conclusion that a husband who is physically fit cannot be allowed to take shelter under the plea that he is not having any income.

The issue as to the sustainability of the plea raised by the husband that he does not have means to pay, has been considered at length by the apex Court in *Shamima Farooqui vs. Shahid Khan, (2015) 5 SCC, 705*. The relevant part of the judgment runs as under:

“There can be no shadow of doubt that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife’s right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right.”

Though it is contended that the respondent has entered into a second marriage, however, the petitioner in his statement recorded before the learned Magistrate has not deposed in this regard.

In view of the above, this petition having no force, deserves to be and is accordingly, hereby dismissed.

(Ved Prakash Sharma)
Judge