

2009 ALD CRI 1 855 .

R. Rambilas v. Anita

Andhra Pradesh High Court (Mar 16, 2009)

CASE NO.

Crl. P 255 of 2008

ADVOCATES

K. Sat Baku

T.S. Praveen Kumar

Advocates.

JUDGES

Mr. Justice K.C. Bhanu

SUMMARY

1. 1999, in o. P. No. 259 of 1998 on the file of the additional Family Court, Secunderabad; that, in the year 1999, the first respondent was driven out from the house and she is unable to maintain herself.
2. He prayed to quash the impugned proceedings.
3. 1998 and continuation of the proceedings in the maintenance case is nothing but abuse of process of Court.
4. P. C. can be exercised to prevent abuse of process of Court or to secure ends of justice or to give effect to any order passed under this Code.
5. (8) IT is not in dispute before this Court that, both the petitioner and the first respondent filed OP No. 259 of 1998 before the Family Court, Secunderabad, under section 13 (b) of the Hindu Marriage Act for dissolution of their marriage which was solemnized on 14.
6. Challenging the same, A. A. O. No. 979 of 2002 was filed before this Court.
7. A Hon'ble Division Bench of this Court, by its order dated 23.
8. From the reading of the above judgment, it is clear that in spite of agreement relinquishing right to maintenance, the right of claiming maintenance will continue till the wife is remarried.
9. (16) THE criminal petition is devoid of merit and is dismissed.

JUDGMENT

(1) THIS criminal petition is filed under **Section 482 Cr. P. C.** to quash the proceedings in M. C. No. 215 of 2007 on the file of the Additional Family Court-cum-XXIII Additional Chief judge-cum-Additional metropolitan Sessions Judge, JHCBB, Nampally, Hyderabad.

(2) THE first respondent herein, who is wife, filed the Maintenance Case under **section 125 Cr. P. C.** stating that her marriage with the petitioner took place on 14. 9. 1994 at Hyderabad. It is further alleged that, after the marriage, husband continued harassing her to bring additional dowry of Rs. 25. 00 lakhs from her parents, and that playing fraud and undue influence, petitioner obtained consent divorce on 24. 5. 1999, in o. P. No. 259 of 1998 on the file of the additional Family Court, Secunderabad; that, in the year 1999, the first respondent was driven out from the house and she is unable to maintain herself. It is further stated that the petitioner was a reputed businessman running jewellery shop and getting income of more than Rs. 1. 00 lakh per month. Hence, the petition for maintenance.

(3) THE learned Counsel for the petitioner contended that, by virtue of mutual understanding, petitioner and the first respondent were living separately, and the wife undertook not to seek any maintenance or any relief or any other compensation from the husband; that, after a period of more than 8 years of passing of decree for divorce on mutual consent, the present maintenance case is filed; that, the understanding between the petitioner and the first respondent by way of mutual agreement, was confirmed by various Courts, and the respondent has no right to seek any maintenance from the petitioner as she has capacity to maintain herself. Hence, he prayed to quash the impugned proceedings.

(4) THE main contention of the learned counsel for the petitioner is that, the first respondent/wife had given up her right to seek maintenance as per agreement dated 16. 11. 1998 and therefore, continuation of the proceedings in the maintenance case is nothing but abuse of process of Court.

(5) ON the other hand, the learned counsel for the first respondent contended that, even a divorced wife is entitled for maintenance; that, the agreement and the divorce were obtained by playing fraud; that, even if any such agreement is there, that will not preclude the first respondent herein from claiming the maintenance. In support of his contention, the learned Counsel relied upon various decisions, which will be referred to, at appropriate time.

(6) THERE cannot be any dispute that, inherent powers under **Section 482 Cr. P. C.** can be exercised to prevent abuse of process of Court or to secure ends of justice or to give effect to any order passed under this **Code. section 125 Cr. P. C.** provides a swift and cheap remedy against any person, who, despite means, neglects or refuses to maintain his wife, which includes wife after divorce, who has not remarried and unable to maintain herself. Whether there is neglect by the petitioner, whether the petitioner was having sufficient means to maintain his wife, whether the wife is unable to maintain herself, are the questions of fact which are not yet decided so far. The only question that can be answered in this criminal petition is whether the agreement dated 16. 11. 1998 not to claim any maintenance, is a bar for claiming maintenance by wife.

(7) THE learned Counsel for the petitioner relied on a decision between the same parties herein, reported in Anita v. R. Rambilas, 2002 (5) ALD 502 (DB), wherein it is held thus : (Para 24)

"one more argument advanced by the learned Senior Counsel Mr. C. Pardhasarathy that no lady

would give up the custody of the child and would also give up the right of maintenance. This fact also would prove that her consent to the divorce petition was obtained by playing fraud or coercion or threat on her. We are not in agreement with the submission made by the learned Senior Counsel because the wife-appellant herein is an educated lady. She is a graduate. She used to speak and write in English. She had all opportunities to complaint to many people if at all the husband-respondent herein played fraud on her but she did not choose to do so. This fact itself is sufficient to prove that on her own accord, she had agreed to sign the divorce petition as the husband-respondent herein used to give mental torture to her by demanding a dowry of Rs. 25 lakhs for doing business. Demanding dowry after so many years of marriage and that is also a huge sum, drew the wife-appellant herein to go for divorce by mutual consent. If she had given up the custody of the child and her right of maintenance, she did so with open eyes for whatever reasons known to her."

Placing heavy reliance on the above decision, it is contended that, the first respondent/ wife had given up her right to claim maintenance and so she is not entitled for claiming maintenance.

(8) IT is not in dispute before this Court that, both the petitioner and the first respondent filed OP No. 259 of 1998 before the Family Court, Secunderabad, under section 13 (b) of the Hindu Marriage Act for dissolution of their marriage which was solemnized on 14. 6. 1994. After recording the evidence, their marriage was dissolved by an order dated 24. 5. 1999. thereafter, the wife, who is the first respondent herein, filed an application to recall the order of divorce, on the ground that her consent was obtained by her husband exercising fraud. The said petition was dismissed. Challenging the same, A. A. O. No. 979 of 2002 was filed before this Court. A Hon'ble Division Bench of this Court, by its order dated 23. 8. 2002, dismissed the said application, and the special leave petition filed against the said order was also dismissed. While dismissing the special leave petition, the Hon'ble supreme Court held that, dismissal of the special leave does not come in the way of the petitioner (wife) in approaching the competent Court seeking custody of minor son on all the grounds available in law.

(9) ON the other hand, the learned counsel for the first respondent placed strong reliance on a decision in **Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and others**, 1979 Cri. LJ 3, wherein it is held thus : (Para 22)

"we have been told by Shri S. T. Desai that the divorce proceeding has terminated adversely to his client but that an appeal is pending. Whether the appeal ends in divorce or not, the wife's claim for maintenance qua wife under the definition contained in the explanation (b) to section 125 of the code continues unless parties make adjustments and come on terms regarding the quantum or the right to maintenance. We make the position clear that mere divorce does not end the right to maintenance."

(10) THE learned Counsel for the first respondent also relied on a decision in **Gurmit Kaur v. Surjit Singh Alias Jeet Singh**, 1996 (1) ALD (Cr.) 70 (SC), wherein it is held thus : (Para 7)

"in view of the divorce agreement referred to hereinabove, the marital relations have come to a terminus. By virtue thereof, the respondent has already contracted the second marriage. In other words, the first marriage has been put to an end. The appellant thereby became entitled to claim maintenance and will continue to do so, so long as she- remains unmarried and is unable to maintain herself."

In the aforesaid case, agreement was entered between the parties therein and the wife had no objection to divorce and she had no claim or any demand from him. Therefore, from the reading

of the above judgment, it is clear that in spite of agreement relinquishing right to maintenance, the right of claiming maintenance will continue till the wife is remarried.

(11) THE learned Counsel for the first respondent also relied on a decision in **Rohtash Singh v. Smt. Ramendri and others**, 2000 cri. LJ 1498, wherein it is held thus :

"Claim for maintenance under the first part of **Section 125, Cr. P. C.** is based on the subsistence of marriage while claim for maintenance of a divorced wife is based on the foundation provided by Explanation (b) to **sub-section (1) of Section 125, Cr. P. C.** If the divorced wife is unable to maintain herself and if she has not remarried, she will be entitled to Maintenance Allowance."

(12) THE learned Counsel for the first respondent also placed strong reliance on a decision in **Bai Tahira v. AH Hussain Fissalli Chothia and another**, AIR 1979 sc 362, wherein it is held thus : (Para 10)

"the last defence, based on Mehar payment, merits more serious attention. The contractual limb of the contention must easily fail. The consent decree of 1962 resolved all disputes and settled all claims then available. But here is a new statutory right created as a projection of public policy by the Code of 1973, which could not have been in the contemplation of the parties when in 1962, they entered into a contract to adjust their then mutual rights. No settlement of claims which does not have the special statutory right to the divorcee under Section 125 can operate to negate that claim."

(13) THE learned Counsel for the first respondent lastly relied on a decision in **Sadasivan Filial v. Vijayalakshmi**, 1987 Cri. LJ 765, wherein it is held thus :

". . . Section 23 of the Contract Act renders such an agreement void if its consideration or object is unlawful. If the object or consideration of an agreement would defeat the provisions of any law, and if it is opposed to public policy, the agreement will be treated as unlawful, and consequently void. In that view of the matter, a clause in an agreement that the wife shall not be entitled to claim maintenance from the husband cannot be used as a defence in proceedings under section 125 of the code. . ."

(14) THEREFORE, from the above decisions, it is clear that, even if there is an agreement which would defeat the provisions of any law, the same cannot be used as a defence in a proceedings under **section 125 Cr. P. C.**

(15) IN view of the above decisions, it is clear that even if there is such an agreement where under and whereby the parties relinquished her right to maintain, it would not be a bar to file a petition under **section 125 Cr. P. C.** and therefore, the maintenance case is maintainable and question of quashing the same does not arise.

(16) THE criminal petition is devoid of merit and is, accordingly, dismissed.