

Andhra High Court

Mondi Ammanna vs Mondy Appeyya And Anr. on 6 September, 1996

Equivalent citations: 1996 (4) ALD 550, 1996 (2) ALT Cri 669, 1997 CriLJ 1835, II (1997) DMC 8, 1996 (2) LS 335

Bench: A Hanumanthu

ORDER

1. This is a revision directed against the order of the learned Addl. Sessions Judge, Srikakulam in Crl. Revision Petition No. 74/94, dated 4-8-1995. The revision petitioner is the wife and the 1st respondent is the husband. For the sake of convenience, they are referred to hereinafter, as wife and husband.

2. The facts in brief, leading for filing of this revision are as follows :

The petitioner is the legally wedded wife of the 1st respondent and they have got a minor son. They lived happily for some time. As disputes arose, the wife has been living separately along with her minor son. The husband filed O.P. No. 48/77 on the file of the Addl. Sub-Judge, Srikakulam for restitution of rights. The wife, along with her son, filed O.S. No. 104/78 on the file of the Addl. Sub-Judge, Srikakulam for maintenance. Both the matters were tried together and they were disposed of on 29-9-1979. O.P. No. 48/77 filed by the husband was allowed and the wife was directed to join her husband. O.S. No. 104/78 was partly decreed. The claim of the wife for maintenance was rejected, but the claim of the minor son for maintenance was allowed and a sum of Rs. 50/- per month was granted. The wife preferred an appeal in A.S. No. 50/80 against the said dismissal of her claim for maintenance and the appeal was also dismissed by the learned Addl. district and Sessions Judge, Srikakulam. For recovery of arrears of maintenance E.P. No. 4/82 was filed by the minor son and an extent of 40 cents of land belonging to the husband was sold in auction for realising the said arrears of maintenance. As the wife refused to comply with the directions in O.P. No. 48/77 in joining her husband, the husband filed O.P. No. 4/81 on the file of the Addl. Subordinate Judge, Srikakulam for granting a decree of divorce, and it was allowed on 30-9-1982 and a decree of divorce was granted. In 1989, the wife filed M.C. No. 7/89 under Section 125, Cr.P.C. for granting maintenance in the Court of Munsiff Magistrate, Tekkali, Srikakulam District, as a divorced wife against her former husband alleging that she has no means to live, that her former husband failed to maintain though having sufficient means, that he had married one Jayalakshmi subsequent to the divorce and that she has no re-married after divorce. The husband resisted that application alleging that subsequent to the decree of divorce granted on 30-2-1982, he is not under obligation to maintain her, that she failed to obey the directions of the Court in O.P. No. 48/77 and therefore, divorce has been ordered, that the marriage between them is no longer subsisting, that the competent civil Court refused to grant maintenance and that the said order has become final, that the wife is not entitled to claim maintenance under Section 125 Cr.P.C. when the same was disallowed by a competent civil Court.

3. To substantiate their respective contentions, the wife examined PWs. 1 to 3 and marked Exs. A-1 and A-2 on her behalf and the husband himself got examined as RW-1 and marked Exs. D-1 to D-7. On a consideration of the oral and documentary evidence placed before him, the learned Magistrate

held that as a divorced wife, she is entitled for maintenance and directed the husband to pay maintenance at Rs. 200/- per month from the date of his order i.e. 7-7-1994. The learned Magistrate also held that the husband got sufficient means to pay the maintenance at that rate to the wife. Aggrieved of that order, the husband preferred revision in Crl. Revision Petition No. 74/94 to the Addl. District and Sessions Judge, Srikakulam. The learned Addl. Sessions Judge, Srikakulam by his order dated 4-8-1995 allowed that revision petition and set aside the order of the learned Magistrate granting maintenance to the wife by holding that she is not entitled for maintenance as a divorcee, as her claim for maintenance was rejected by a competent Civil Court and that the order of the civil Court has become final. Aggrieved of that order, the wife has preferred this revision.

4. Heard the counsel for the petitioner, the 1st respondent and the learned Public Prosecutor.

5. The point for consideration is whether the learned Addl. Sessions Judge, Srikakulam committed error in refusing to grant maintenance to the revision petitioner, who is a divorcee of the respondent on the ground that a competent Civil Court refused to grant maintenance earlier.

6. The learned counsel for the petitioner submits that under extended definition of wife as a divorced wife under Section 125(1)(b) explanation of Cr.P.C. the revision petitioner is entitled to claim maintenance as she has been divorced subsequent to the passing of the civil Court decree and it is a statutory right to claim maintenance as a divorcee. The argument of the learned counsel for the respondent is two fold. Firstly, that there are civil Court decrees of competent jurisdiction in O.S. No. 107/78 and O.P. No. 47/77 on the file of the Addl. Sub-Judge, Srikakulam, to the effect that the wife is guilty of deserting her husband and further she was directed to join her husband, but she failed to do so and on that score, she was refused maintenance and the said decrees are binding and the wife is not entitled for maintenance even as a divorcee and if maintenance is granted to the wife, under those circumstances, it is nothing but giving premium to a wife who is at fault and who withdrew her company from her husband voluntarily. Secondly, that the said decrees of the civil Court in O.S. No. 107/78 and O.P. No. 48/77 have become final between the parties and as such, the wife is not entitled to sue for maintenance under Section 125 Cr.P.C.

7. Section 125, Cr.P.C. is a benign provision enacted to ameliorate the economic condition of neglected wives, discarded divorcees, minor children, whether they are legitimate or illegitimate, and parents. The proceedings under Section 125 Cr.P.C. are of a summary nature and they are intended to enable the said persons to get maintenance in a speedy manner. Section 125, Cr.P.C. requires, as a sine qua non, for its application, neglect by husband or father. In the instant case, it is not disputed that the revision petitioner herein is the legally wedded wife of the respondent till he obtained divorce as per the orders in O.P. No. 4/81 on the file of the Addl. Subordinate Judge, Srikakulam. The learned Magistrate in M.C. No. 7/89 gave a finding that the husband neglected to maintain the petitioner. The learned Addl. Sessions Judge in Crl. Petition No. 74/94 has spoken nothing to the contrary. There is also nothing in the evidence of the husband as RW-1 that he has been giving allowances to his divorced wife. His case, on the contrary, is that she has forfeited her claim because of divorce and civil decree which has become final negating her claim for maintenance. Hence, his plea is his right to ignore. Therefore, the basic condition of neglect to maintain the revision petitioner is satisfied. The first contention of the counsel for the respondent is

that the wife is guilty of desertion of her husband and that inspite of the direction of the civil Court, she refused to join her husband and fulfil her marital obligations and as she refused to perform her marital obligations, she is not entitled for maintenance and a valid decree of divorce has been granted on the ground that she voluntarily deserted her husband and therefore, even as a divorcee, she is not entitled for maintenance. Under Section 125(1), Cr.P.C., a wife is entitled for maintenance if she is unable to maintain herself. Under explanation (b) to Section 125(1) Cr.P.C., a divorced woman is included in the term 'wife'. It therefore, follows that even a divorced woman is entitled for maintenance if she is unable to maintain herself. There are catena of decisions of our High Court and Supreme Court for the proposition of law that even a divorced woman, who has been divorced on the ground that she had deserted the husband is entitled for maintenance under Sub-section (1) of Section 125, Cr.P.C.

8. In *Bai Tahira v. Ali Hussain Fissalli Chothia*, 1979 Cri LJ 151, the Supreme Court in para 5 held thus :

"We hold that every divorcee otherwise eligible, is entitled for the benefit of maintenance allowance and the dissolution of the marriage makes no difference to this right under the Code."

In *Smt. Vanamala v. H. M. Rangathan Bhatta*, (1995) 3 Crimes 524 their Lordships of the Supreme Court held that a divorced wife, if not remarried is entitled to maintenance. In that case their Lordships explained the scope of Section 125(1) and (4), Cr.P.C. as follows :

"Section 125 makes provision for grant of maintenance to wives, children and parents. Sub-section (1) of Section 125 inter alia says that if any person having sufficient means to neglect or refuses to maintain herself, a Magistrate of the First Class may, upon proof of such neglect or refusal order that person to make a monthly allowance for the maintenance of his wife not exceeding Rs. 500/- in the whole as such Magistrate thinks fit and to pay the same to such persons as the Magistrate may from time to time direct. Clause (b) of the Explanation to sub-section (1) defines the expression wife to include a woman who has been divorced by, or has obtained a divorce from her husband and has not re-married. In the instant case, it is not contended by the respondent that the appellant has re-married after the decree of divorce was obtained under Section 13(b) of the Hindu Marriage. It is also not in dispute that the appellant is a legally wedded wife of the respondent prior to passing of the decree of divorce. By virtue of definition referred to above, she would, therefore, be entitled for maintenance if she could show that the respondent had neglected or refused to maintain her."

It is also observed in the same decision thus "On a plain reading of this Section it seems fairly clear that the expression 'wife' in the said sub-section does not have the extended meaning of including a woman who has been divorced. This is for the obvious reason that unless there is a relationship of husband and wife there can be no question of a divorced woman living in adultery or without sufficient reason refusing to live with her husband. After divorce where is the occasion for the woman to live with her husband ? Similarly there would be no question of the husband and wife living separately by mutual consent because after divorce there is no need for consent to live separately. In the context, therefore, sub-section (4) of Section 125 does not apply to the case of a woman who has been divorced or who has obtained a decree for divorce. In our view, therefore, this

contention is not well founded."

9. A Division Bench of this Court in Criminal M.P. Nos. 1581 and 1582 of 1989 dated 7-2-1990 held that a divorcee wife till she is remarried is entitled for maintenance. In *D. Laxman Rao v. Smt. B. Kamlabai*, our Learned Brother V. Raja Gopal Reddy took the same view and observed that "It is clear even a divorced woman who has been divorced on the ground that she has deserted the husband, is entitled for maintenance under sub-section 1 of Section 125. Cr.P.C."

10. On a reference by a learned single Judge, Division Bench or this Court in *L. Srinivasula Reddy v. L. Ramalaxmamma*, (1996) 2 Andh LT (Cri) 111 considered the point "whether a divorced wife when a finding is recorded that she alone deserted her husband in an application under Section 13(i) of Hindu Marriage Act, and if she continues as divorcee without being married again, is entitled for maintenance and what is the effect of sub-section (4) of Section 125 of Cr.P.C. upon sub-section (1) thereof and their Lordships answered that reference as follows :

"The wife is entitled for maintenance even though she has been divorced by her husband as long as she remains unmarried and she is not in a position to maintain herself and in spite of her request, her husband has refused to maintain her or neglected her. Maintenance will be disallowed only when it is shown that the wife is re-married. Thus, the effect of Section 125(4), Cr.P.C. is that a divorced wife is defined in Section 125(1). Explanation (b) of Cr.P.C. is entitled for maintenance."

From the above it is clear, that a divorced wife who deserted her husband and has not re-married and not living in adultery, is entitled for maintenance.

11. With regard to his second contention, the learned counsel for the respondent-husband relied on the decisions in *Muralidhar Chinthaman Waghmare v. Smt. Prathiba Muralidhar Waghmare*, 1986 Cri LJ 1216 and *Smt. Geetha Kumari v. Shiva Charan Dass*, 1975 Cri LJ 137, *Harish Mansuklal v. Hansa Gauri Ram Shakar*, 1982 Cri LJ 2033, *Vishramgi v. Kausalyabai*, 1984 (2) DMC 227 and *Girish Bai Babu Bai Raja v. Hansaben Girish Chandra*, (1986) 1 Guj LR 630, for the proposition of law that the proceedings in the Civil Court are substantial whereas, the proceedings under Section 125, Cr.P.C. are of a summary nature, that once the civil Court of competent jurisdiction comes to the conclusion that the wife is not entitled to maintenance, the Criminal Court under Section 125 Cr.P.C. cannot sit in appeal over the said decision and that the findings by a civil Court on rights claimed by the parties are binding on criminal Court and the final determination of the civil rights by a civil Court must prevail against a like decision by a criminal Court. There is no dispute with regard to the said proposition of law. It is true, in the instant case the claim of the wife for maintenance in O.S. No. 104/1988 was rejected by a competent civil Court and it was confirmed in appeal in A.S. No. 50/1990 by a competent appellate Court and thus, it has become final. It is also true that the husband filed O.P. No. 48/1977 for restitution of conjugal rights and it was allowed. As the wife failed to join the husband in pursuance of the orders in O.P. No. 48/77, the husband filed O.P. No. 4/81 for granting divorce and it was allowed on 30-9-1982. By virtue of that decree in O.P. No. 4/81, the petitioner herein has become a divorced wife. As a divorced wife, she is claiming maintenance. It is true that the right to claim maintenance from the husband, ordinarily, depends upon the readiness of the wife to fulfil her marital obligation under the roof of the husband. When

the civil Court orders the wife to go and stay with her husband and fulfil her marital obligation, it presupposes that she has no justification to be away from the husband and refuse to perform her corresponding marital obligation. In the instant case, as the petitioner failed to perform her marital obligation and as she was living separately from her husband, the civil Court in O.S. No. 104/78 refused to grant maintenance to the petitioner. But, because of the decree of divorce obtained by the husband, the petitioner is no longer obliged to fulfil the marital obligation. Because of the divorce decree obtained by the husband, the divorced wife gets a right of maintenance under Section 125(1) Explanation (b) of Cr.P.C. It is statutory right. Because of divorce, she is no longer under the marital obligation to the husband. Yet she can claim maintenance if the husband neglects to maintain her and as long as she remains unmarried and not guilty of unchastity. The above decisions cited by the learned counsel for the husband are relevant if the husband had not obtained the decree for divorce and the wife had to continue her marital obligation to the husband. Those decisions are not applicable in the instant case as the wife became a divorcee on account of the decree of divorce obtained by the husband and the petitioner is entitled for maintenance under Section 125(1) Explanation (b) of Cr.P.C. as a divorcee.

12. There is also another direct decision of the Kerala High Court on the point in *Mampekkattu Nanu v. Mampekkattu Vasantha*, 1986 Cri LJ 652 wherein, the Kerala High Court held thus at page 653 (of Cri LJ) :

"During the subsistence of the marriage, refusal by wife to submit to a decree for restitution of conjugal rights may bar her claim for separate maintenance. But after divorce, whatever be the circumstances of divorce, she has no obligation to discharge the marital duties and none of those grounds will prevail against her claim. In such cases, in the absence of any disqualification available under law she is entitled to get maintenance. The fact that she has filed an earlier application when the marriage was subsisting and suffered a dismissal of the same on grounds available only against a wife whose marriage is subsisting is no reason to dismiss her application in the capacity as a divorced wife. The second application in such cases in a different capacity under a distinct and independent cause of action unconnected with the previous one and it cannot be treated as a second application itself."

The learned Magistrate has correctly interpreted the law by observing "In the changed circumstances and in view of the changed status of the petitioner as divorced wife, it can be categorically held that the decision of the civil Court is not a hurdle to the petitioner to come to this Court and the Court can grant maintenance under Section 125(1) Explanation (b) of Cr.P.C. and hence, the petitioner is entitled to claim maintenance from the respondent." The learned Addl. Sessions Judge has not properly appreciated the facts and law in this case and he has committed error by observing that in view of the civil Court judgment in O.S. No. 104/1978 confirmed in A.S. No. 50/80, the wife is not entitled for maintenance. The wife's claim for maintenance under Section 125(1) Cr.P.C. could not have been granted if she had continued as wife and if there had been no decree of divorce obtained by her husband on account of the said civil Court decrees. But, on account of the decree of divorce obtained by her husband, she has become a divorcee and as a divorced wife she gets a right for maintenance and it is a statutory right. Hence, the second contention of the learned counsel for the husband also cannot be accepted.

13. In the light of my above discussion, I hold on the point that the learned Additional Sessions Judge, Srikakulam committed an error in refusing to grant maintenance to the revision petitioner, who is a divorcee of the respondent and the said error has to be rectified by allowing this revision petition. The learned Magistrate granted maintenance at Rs. 200/- per month to the petitioner from the date of his order and also granted Rs. 1,000/- to the petitioner towards the costs of the petition. Considering the status of the parties, the quantum of maintenance at the rate of Rs. 200/- per month cannot be said to be excessive.

14. In the result, the revision petition is allowed. The order of the learned Additional Sessions Judge, Srikakulam in Criminal Revision Petition No. 74/1994, dated 4-8-1995 is set aside and the order of the learned Munsiff Magistrate, Tekkali in M.C. No. 7/89 dated 7-7-1994 is confirmed. The respondent-husband is directed to pay Rs. 500/- to the petitioner towards costs of this petition.

15. Revision allowed.