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ABC 2020 (I) 45 BOM
ACQUITTAL & BAIL CASES
HIGH COURT OF BOMBAY
(Nitin W. Sambre, J.)
Criminal Writ Petition No 2547 of 2016 with
Criminal Writ Petition No.2546 of 2016
Decided on 18 December, 2019

SANJIVANI RAMCHANDRA KONDALKAR - Petitioner(s).
Versus
RAMCHANDRA BHIMRAO KONDALKAR & ANR- Respondent(s).

Law Covered:- (A) Code of Criminal Procedure, 1973 – Section 125(4) – Hindu Marriage Act, 1955 – Section 13 – Divorce on the ground of adultery by wife – Maintenance application rejected by court below – Held, divorce was ordered based on the allegation of adultery, the Court below has rightly held that the Petitioner-wife is not entitled for maintenance. (Para 9)

(B) Code of Criminal Procedure, 1973 – Section 125(4) – Claim of maintenance by wife – legal position – there is an expressed embargo on the right of a woman to claim maintenance – If the allegation of adultery are proved against such a women – or inspite of the husband being ready to maintain her & she refuses to cohabit – the women/wife can be refused payment of maintenance. (Para 9)

Held:- Learned counsel for the Petitioner has tried to rely on the judgments of the Apex Court in VANAMALA and ROHTAS SINGH supra so as to claim the status of the Petitioner-wife as that of a woman continues, inspite of the divorce ordered on 27.4.2000. The fact remains that, there is an expressed embargo on the right of a woman to claim maintenance, pursuant to the provisions under Sub-section (4) of section 125 of the Act. If the allegation of adultery are proved against such a women or inspite of the husband being ready to maintain her and she refuses to cohabit the women/wife can be refused payment of maintenance. (Para-9)

Counsel:- For Petitioner(s): Mr. Mahendra B.Deshmukh, Adv.
For Respondent(s): Mr. Kayyal P. Shah, Mr.S.S.Hulke, Advs.

Cases Referred:-

1. Vanamala Vs H.M.Ranganatha Bhatta, 1995 Dgls (Sc) 722, (Para-6)
2. Rohtas Singh Vs Ramendri, 2000 Dgls (Sc) 450, (Para-6)

JUDGMENT

NITIN W.SAMBRE, J.: - Heard. a

1. Both these Petitions are filed by the wife, questioning the order of denial of maintenance.

The un-disputed facts would be noted as under :

2. The parties to the Petition married on 6.5.1980 whereas the Petitioner was divorced by the Respondent in a Hindu Marriage Petition No.252 of 1996 preferred under section 13 of the Hindu Marriage Act, 1956 on 27.4.2000 on the ground of adultery. I am informed that the aforesaid Judgment was subjected to challenge in an Appeal however, the Appeal failed as the delay was not condoned. b
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3. In the aforesaid background, the Petitioner-wife moved an application for enhancement of maintenance from Rs.150/- and Rs.25/- to the son which was allowed by the impugned order dated 12.8.2010. The learned Magistrate enhanced the maintainance amount to Rs.500/- and Rs.400/- to the wife and son respectively, whereas, the Application for cancellation of the maintenance moved by the husband, pursuant to the provisions of Sub-section (4) of Section 125 of the Code of Criminal Procedure, 1973 came to be rejected. As such, the husband preferred a Criminal Revision Application No.204 of 2010. The aforesaid Revision came to be allowed vide the impugned judgment dated 13.7.2015 by the learned Additional Sessions Judge, Sangli. As such these Petitions. d
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4. As far as Writ Petition No.2547 of 2016 is concerned, the same is preferred by the Petitioner-wife questioning the Judgment dated 13.7.2015 wherein the Judgment dated 12.8.2010 passed by the learned Magistrate, rejecting the application for cancellation of maintenance amount, came to be allowed. f
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5. Learned counsel for the Petitioner-wife would urge that, even if the Petitioner is a divorcee, having regard to the provisions of Sub-section (4) of Section 125 of the Code of Criminal Procedure, 1973 she is entitled for maintenance as she continues, to be a woman, within the meaning of Sub-section (4) of Section 125 of the Act. h

6. He would draw support from the Judgments of the Apex Court in *VANAMALA VS H.M.RANGANATHA BHATTA reported in 1995 DGLS (SC) 722* and *ROHTAS SINGH VS RAMENDRI reported in 2000 DGLS (SC) 450* so as to support his aforesaid

a contentions. The sum and substance of the submission is even if there is a decree of divorce passed on the allegation of adultery, still bar under Sub-section (4) of Section 125 of the Act, will not be attracted, as even after divorce, she ceases to have the status of a wife but, she continues to be a woman.

b 7. Per contra the aforesaid submissions, learned counsel for the Respondent submits that the divorce proceedings initiated by the Respondent-husband came to be allowed, as the allegation of adultery was proved against the Petitioner-wife. According to him, in view of the statutory embargo under Sub-section (4) of Section 125 of the Act, the Court below has rightly held that the Petitioner is not entitled for maintenance.

8. Considered rival submissions.

d 9. Learned counsel for the Petitioner has tried to rely on the judgments of the Apex Court in **VANAMALA and ROHTAS SINGH** supra so as to claim the status of the Petitioner-wife as that of a woman continues, inspite of the divorce ordered on 27.4.2000. The fact remains that, there is an expressed embargo on the right of a woman to claim maintenance, pursuant to the provisions under Sub-section (4) of section 125 of the Act. If the allegation of adultery are proved against such a women or inspite of the husband being ready to maintain her and she refuses to cohabit the women/wife can be refused payment of maintenance.

f 10. As far as factual matrix of the aforesaid case, namely **VANAMALA and ROHTASH SINGH** is concerned, both these cases are based on identifying and recognizing the right of a woman who was divorced not on the ground of proved adultery.

g 11. In the aforesaid background, both these Judgments will be hardly of any assistance to the Petitioner. Considering the expressed embargo on the right of the Petitioner, to claim maintenance particularly, divorce was ordered on 27.4.2000 based on the allegation of adultery, the Court below has rightly held that the Petitioner-wife is not entitled for maintenance.

h 12. In the aforesaid background, no case for interference is made out. Both these Petitions lack merit.

13. Dismissed.

Result:- Petitions dismissed.