

AIR 2013 SUPREME COURT 1541
SUPREME COURT

DR. K. S. RADHAKRISHNAN, J. and DIPAK MISRA, J.

Special Leave Petition (Civil) No. 11800 of 2013 (arising out of C. C. No. 1297 of 2012), **D/-15-3-2013**

Nagendrappa Natikar v. Neelamma

Criminal P.C. (2 of 1974), S.125- Hindu Adoptions and Maintenance Act (78 of 1956), S.18- Maintenance - Granted under S. 125 - Is tentative - Does not foreclose remedy available under 1956 Act - Compromise to receive permanent alimony and give up right to claim maintenance reached in proceedings under S. 125, Criminal P. C. - Order passed accordingly - Would not preclude wife from making claim under S. 18 of 1956 Act.

Section 125, Cr. P. C. is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children. Section 125 is not intended to provide for a full and final determination of the status and personal rights of parties. Order made under Section 125, Cr. P. C. is tentative and is subject to final determination of the rights in a civil court. Any order passed under S. 125, Cr. P. C. by compromise or otherwise cannot foreclose the remedy available to a wife under S. 18(2) of the 1956 Act. Where in proceedings

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under S. 125, Criminal P. C. the parties entered into compromise whereby the wife agreed to receive consolidated sum towards permanent alimony and give up her claim for maintenance and the proceedings came to be disposed of in terms of compromise, the order passed would not preclude wife from claiming maintenance under 1956 Act. **(Paras 1011)**

Rameshwar Prasad Goyal, for Petitioner.

Judgement

1.K. S. RADHAKRISHNAN, J. :-Delay condoned.

2.The question that is raised for consideration in this case is whether a compromise entered into by husband and wife under Order XXIII, Rule 3 of the Code of Civil Procedure (CPC), agreeing for a consolidated amount towards permanent alimony, thereby giving up any future claim for maintenance, accepted by the Court in a proceeding under Section 125 of the Code of Criminal Procedure (CrPC), would preclude the wife from claiming maintenance in a suit filed under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 (for short "the Act").

3.The marriage between the petitioner (husband) and respondent (wife) took place on 24.5.1987. Alleging that the petitioner is not maintaining his wife, respondent filed an application under Section 125, Cr. P.C. for grant of maintenance before the 1st Additional JMFC at Gulbarga, being Misc. Case No. 234 of 1992. While the matter was pending, an application was preferred by the parties under Order XXIII, Rule 3, C.P.C. on 3.9.1994 stating that the parties had arrived at a compromise, by which the respondent had agreed to receive an amount of Rs.8,000/- towards permanent alimony and that she would not make any claim for maintenance in future or enhancement of maintenance. Consent letter dated 30.3.1990, which is in Kannada, the English translation of the same reads as follow :

"Consent letter :

I, Neelamma W/o Nagendra Natikar, Age 23 years, R/o Old Shahabad, do hereby execute this consent letter in favour of my husband Nagendra Natikar with free will and consent without coercion and misrepresentation. After my marriage with Nagendra Natikar, I could not lead marital life happy with my husband due to my ill health as prior to my marriage, I was suffering from backache, Paralysis stroke to my left hand and left leg and was also suffering from epilepsy (Fits disease) and therefore I have myself decided to withdraw from marital life. I have given my consent for mutual divorce. I have no objection if my husband would contract second marriage with someone. Prior to my marriage I was suffering from chronic disease. I had asked my father not to celebrate her marriage with anyone. My father forcibly got marriage with Nagendrappa Natikar. Henceforth I will not make any further claims and also forfeit my rights in future and I will not claim compensation or maintenance or alimony. I am satisfied with the payment of Rs.8000/- and I will not make any further claims against my husband.

I have executed this consent letter in favour of my husband without any force of anybody and free from misrepresentation or coercion. My father-mother or any other family members have no objection for executing this consent letter.

Signature of Executant

Neelamma

(Signed in Kannada))

Signature of witnesses :

1. Tippanna (signed in Kannada)
2. Devindrappa (signed in Kannada)
3. Syed Zabiullah Sahab (signed scribe)"

The Court, on the same day, passed the following order :

"Parties both present. Both parties and advocates files compromise petition. The contents of the compromise petition is read over and explained to them. They admit the execution of the same before court. Respondent

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paid Rs.8000/- (eight thousand) before court towards full satisfaction of the maintenance as per compromise recorded. In view of the compromise, petition dismissed."

4.Respondent wife then filed a Misc. Application No. 34 of 2003 under Section 127, Cr.P.C. before the Family Court, Gulbarga for cancellation of the earlier order and also for awarding future maintenance, which was resisted by the petitioner stating that the parties had already reached a compromise with regard to the claim for maintenance on 3.9.1994 and hence the application for cancellation of the earlier order is not maintainable. The Court accepted the plea of the husband and took the view that since such an order was still in force and not set aside by a competent Court, it would not be possible to entertain an application under Section 127, Cr.P.C. The application was, therefore, dismissed on 31.7.2006.

5.We notice, while the application under Section 127, Cr.P.C. was pending, respondent wife filed O.S. No. 10 of 2005 before the Family Court, Gulbarga under Section 18 of the Act claiming maintenance at the rate of Rs.2,000/- per month. The claim was resisted by the petitioner husband contending that, in view of the compromise reached between the parties in Misc. Case No. 234 of 1992 filed under Section 125, Cr. P.C., respondent could not claim any monthly maintenance and hence the suit filed under Section 18 of the Act was not maintainable. The question of maintainability was raised as a preliminary issue. The Family Court held by its order dated 15.9.2009 that the compromise entered into between the parties in a proceeding under Section 125, Cr.P.C. would not be bar in entertaining a suit under Section 18 of the Act.

6.The suit was then finally heard on 30.9.2010 and the Family Court decreed the suit holding that the respondent is entitled to monthly maintenance of Rs.2,000/- per month from the defendant husband from the date of the filing of the suit.

7.Aggrieved by the said order, petitioner took up the matter before the High Court by filing an appeal, being M.F.A. No. 31979 of 2010, which was dismissed by the High Court by its judgment dated 28.3.2011, against which this SLP has been preferred.

8.Shri Raja Venkatappa Naik, learned counsel appearing for the petitioner, husband, submitted that suit filed under Section 18 of the Act is not maintainable, in view of the order dated 3.9.1994, accepting the consent terms and ordering a consolidated amount towards maintenance under Section 125, Cr.P.C.

9.We are in complete agreement with the reasoning of the Family Court and confirmed by the High Court that the suit under Section 18 of the Act is perfectly maintainable, in spite of the compromise reached between the parties under Order XXIII, Rule 3, C.P.C. and accepted by the Court in its order dated 3.9.1994.

10.Section 125, Cr.P.C. is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children. Section 125 is not intended to provide for a full and final determination of the status and personal rights of parties, which is in the nature of a civil proceeding, though are governed by the provisions of the Cr.P.C. and the order made under Section 125, Cr.P.C. is tentative and is subject to final determination of the rights in a civil court.

11.Section 25 of the Contract Act provides that any agreement which is opposed to public policy is not enforceable in a Court of Law and such an agreement is void, since the object is unlawful. Proceeding under Section 125, Cr.P.C. is summary in nature and intended to provide a speedy remedy to the wife and

any order passed under Section 125, Cr.P.C. by compromise or otherwise cannot foreclose the remedy available to a wife under Section 18(2) of

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the 1956 Act.

12. The above being the legal position, we find no error in the view taken by the Family Court, which has been affirmed by the High Court. The Petition is, therefore, dismissed in limine.

Petition Dismissed.
