



CRR No-1965-2018

1

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON 13th OF JULY, 2026

CRIMINAL REVISION NO.1965 of 2018

JAGANNATH SONI

Versus

SMT. MUNNIBAI @ ARUNA KUMARI SONI

.....
Appearance:

Shri Purushottam Das Jaiswal, Advocate for the petitioner.

Shri Anand Chawla, Advocate for the respondent.
.....

ORDER

This criminal revision has been preferred by the petitioner/husband challenging the order dated 31.03.2018 passed by Principal Judge, Family Court, Katni in Miscellaneous Case No.60/2016 whereby the Family Court has allowed an application under Section 125 Cr.P.C. and awarded an amount of Rs.10,000/- to the respondent/wife, towards monthly maintenance.

2. Taking this Court to the interim order dated 26.10.2018 passed in instant criminal revision, learned counsel for the petitioner submits that



CRR No-1965-2018

2

upon due consideration, this Court as an interim measure directed the petitioner to pay an amount of Rs.4000/- per month to the respondent/wife and according to the order dated 26.10.2018, the petitioner is paying the maintenance amount regularly.

3. Learned counsel for the petitioner submits that admittedly, previously also an application under Section 125 Cr.P.C. was filed by the respondent/wife and was allowed on 28.09.1989 directing the petitioner to pay an amount of Rs.300/- per month and upon filing criminal revision, the amount was reduced to Rs.200/-per month vide order dated 27.11.1991, therefore, second application under Section 125 Cr.P.C. was not maintainable, first being allowed on merits. He submits that although this aspect was considered by the Family Court in paragraph 14 of the impugned order, but it wrongly held that second application under Section 125 Cr.P.C. is maintainable because the previous order under Section 125 Cr.P.C. granting maintenance does not operate as *res judicata* to the second application, if it is based on new facts.

4. Learned counsel for the petitioner also submits that an ex parte decree for divorce was also passed against the respondent/wife on



CRR No-1965-2018

3

28.06.2002 on the ground of adultery and an application filed for setting aside ex parte decree, by the respondent/wife under Order 9 Rule 13 CPC, was also dismissed on 21.10.2003, however, despite placing certified copies of both the judgment and order on record of the Family Court and in spite of sufficient cross-examination done in that regard to the respondent/wife, the Family Court has committed an illegality in discarding the said judgment and order, on the ground that the judgment and decree of divorce being ex parte, does not operate as *res judicata*. He also submits that since the findings in relation to the adultery attained finality due to dismissal of an application under Order 9 Rule 13 CPC and the same remained unchallenged, therefore, even if both the judgment and order dated 28.06.2002 and 21.10.2003 were not exhibited, the Court had rightly taken cognizance of the same vide paragraph 9 of the impugned order, but committed an illegality in discarding them on the ground that the same do not operate as *res judicata*. With the aforesaid submissions he submits that in these circumstances the respondent/wife is not entitled to any maintenance and the Family Court has committed an illegality in passing the impugned order and in awarding an amount of Rs.10,000/-



CRR No-1965-2018

4

per month to the respondent/wife. With these submissions, he prays for allowing the criminal revision.

5. Learned counsel for the respondent/wife supports the impugned order and prays for dismissal of the criminal revision, however he does not dispute about passing of the previous order of maintenance and judgment and decree of divorce on the ground of adultery as well as rejection of the application under order 9 rule 13 CPC.

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

7. First of all, as is clear from paragraph 14 of the impugned order, previously an application under Section 125 Cr.P.C. was filed by the respondent/wife, which was allowed on 28.09.1989 by awarding an amount of Rs.300/- per month, which was modified vide order dtd. 27.11.1991 in the criminal revision filed by the petitioner/husband, by reducing the amount of maintenance to Rs.200/- per month.

8. As has been observed by the Family Court vide paragraph 9 of the impugned order, previously, upon filing of the application/petition by the petitioner/husband, an ex parte decree of divorce was passed on 28.06.2002 by recording specific finding that the respondent/wife is



CRR No-1965-2018

5

living in adultery and after desertion of the petitioner/husband, she gave birth to two children and from the certified copy of order dated 21.10.2003 passed by Additional District Judge, Umaria in Miscellaneous Civil Suit No.3/02, it is clear that the ex parte decree of divorce attained finality due to dismissal of an application under Order 9 Rule 13 CPC filed by the respondent/wife and there is nothing on record to show that the order dated 21.10.2003 was challenged by the respondent/wife or was set aside in any subsequent proceeding.

9. Apparently, the Family Court vide paragraphs 9 and 14 of the impugned order, discarded the aforesaid judgment/order passed in two previous proceedings on the ground that they do not operate as *res judicata* and allowed the application under Section 125 Cr.P.C., awarding an amount of Rs.10,000/- per month to the respondent/wife, placing reliance on the decisions in the case of Mahua Biswas (Smt) vs. Swagata Biswas and Another, (1998) 2 SCC 359 (in this case, after decision of first application under Section 125 Cr.P.C. both parties compromised the matter and they started residing together, and thereafter due to some dispute, they got separated again, then the Court held that two views are possible, one is that previous order is not wiped out in such circumstances



CRR No-1965-2018

6

and second is, wife can be compelled to file fresh proceedings, which will be injustice and followed the first view and revived the previous order of maintenance); and Sunanda Chandrakant Karanjkar vs. Chandrakant Bhaskar Karanjkar and another, **1988 MhLJ 610** (in this case first application under Section 125 Cr.P.C. was dismissed on merits and second application was held to be maintainable by holding that second application is not barred by principle of res judicata).

10. As mentioned above, both the said decisions do not provide any help to the case of respondent/wife, they being distinguishable on facts. As such, the Family Court has committed an illegality in discarding the submissions of the petitioner, placing reliance on the aforesaid two decisions in respect of maintainability of second application under Section 125 Cr.P.C. by observing that previous orders dated 28.09.1989 and 27.11.1991 passed on the application under Section 125 Cr.P.C. do not operate as *res judicata*.

11. In my considered opinion when an order awarding maintenance, was passed in the previous proceeding under Section 125 Cr.P.C., then in the light of changed circumstances, respondent/wife was free to move an



CRR No-1965-2018

7

application under Section 127 Cr.P.C. for enhancement of the maintenance amount and second application under Section 125 Cr.P.C. for awarding maintenance was not maintainable at all in presence of alternative/statutory remedy under Section 127 of Cr.P.C.

12. So far as the question of legal effect of the ex parte judgment and decree of divorce is concerned, it is well settled that an ex parte decree is as good as bi-party decree and until and unless the same is set aside in the appropriate proceedings, the same is having its legal effect and operates as res judicata and can be used to discard the claim of the opposite party.

13. The Hon'ble Supreme Court has, in the case of Erach Boman Khavar v. Tukaram Shridhar Bhat, (2013) 15 SCC 655 held as under:

“37. In this context, we may fruitfully reproduce a passage from *Arukkani Ammal v. Guruswamy* [(1987) 100 LW 707 (Mad)] : (LW p. 708, para 1)

“1. ... It is also difficult to appreciate the view taken by the District Munsif that ex parte decree cannot be considered to be ‘full decree on merits’. *A decree which is passed ex parte is as good and effective as a decree passed after contest.* Before the ex parte decree is passed, the court has to hold that the averments in the plaint and the claim in the suit have been proved. It is, therefore, difficult to endorse the observation made by the Principal District Munsif that such a decree cannot be considered to be a decree passed on merits. *It is undoubtedly a decree which is passed without contest; but it is only after the merits of the claim of the plaintiff have been proved to the satisfaction of the trial court, that an occasion to pass an ex parte decree can arise.*”

(emphasis supplied)

The aforesaid passage was approved by this Court in *Saroja v. Chinnusamy* [(2007) 8 SCC 329]. The purpose of citing the said authority is that though an ex parte decree is



CRR No-1965-2018

8

passed without contest but it is passed only after the merits of the claim of the plaintiff have been proved to the satisfaction of the trial court.”

14. In the case of *Saroja v. Chinnusamy (Dead) by L.Rs and Anr., (2007) 8 SCC 329*, the Hon’ble Supreme court held as under:

“9. Keeping the aforesaid facts in our mind, let us now proceed to deal with the question of res judicata as raised in this appeal. **In our view, the ex parte decree passed in the former suit during the pendency of the subsequent suit of the appellant operates as res judicata in the subsequent suit.** It may be reiterated that the appellant had alleged to have acquired title to the suit property by purchase from Kuppusamy who had lost his title, even if there be any, by the ex parte decree passed in the former suit.”

15. Since the Family Court has not taken into consideration the effect of the previous order passed on the application under Section 125 Cr.P.C. as well as the decree of divorce passed on the ground of adultery, in real perspective, therefore, the matter deserves to be and is hereby **remanded** for reconsideration with the further direction to the Family Court to restore the application under Section 125 Cr.P.C. to its original number and to decide afresh, in accordance with law.

16. The parties are directed to remain present before the Family Court on 17.08.2026. It is made clear that if the parties do not appear on the given date, the Family Court shall issue fresh notice/summons to the parties with a view to secure their presence before the Court.



CRR No-1965-2018

9

17. It is also made clear that till the decision of application under Section 125 Cr.P.C. afresh, the petitioner/husband shall continue to pay an amount of Rs.4000/- p.m., as directed by this Court vide interim order dated 26.10.2018, including dues, if any.

18. Accordingly, this criminal revision succeeds and is hereby **allowed** partly.

19. Pending application(s), if any, shall stand disposed of.

(DWARKA DHISH BANSAL)
JUDGE

KPS