
(2015) 07 BOM CK 0083

In the Bombay High Court

Case No : Criminal Writ Petition No. 243 of 2015

Bhagwan Nanaji Lonare and Others

APPELLANT

Vs

Minakshi Bhagwan Lonare

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Protection of Women From Domestic Violence Act, 2005 — Section 12, 18, 19, 2(f), 20

Citation : (2015) 07 BOM CK 0083

Hon'ble Judges : P.B. Varale, J

Bench : Single Bench

Advocate : H.S. Chitale, for the Appellant; Sunita D. Paul, Advocates for the Respondent

Final Decision : Allowed

Judgement

P.B. Varale, J—Heard.

2. RULE. Rule returnable forthwith.

3. By the present criminal writ petition, the petitioners are challenging the proceedings initiated by the respondent-wife before the learned Judicial Magistrate, First Class, Karanja Ghadge by way of a complaint under the provisions of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the Act of 2005" for the sake of brevity) bearing Misc. Criminal Application No. 20 of 2013 and the order passed by the learned Judicial Magistrate First Class, Karanja, Ghadge on an application Exh.11, granting interim maintenance to the respondent-wife, dated 05.03.2014. The petitioners are also challenging the order dated 18.02.2015 passed by the learned Sessions Judge, Wardha in Criminal Appeal No. 11 of 2014, thereby dismissing the appeal filed against the order granting interim maintenance.

4. Brief facts giving rise to the present petition can be summarized as follows :

A Misc. Criminal Application No. 20/2013 was filed by the respondent-Smt.

Minakshi Lonare before the Learned Magistrate. It is stated in the complaint that the marriage between the petitioner no.1 and the respondent was solemnized at Adasa on 11.07.2012. It is stated that earlier the petitioner no.1 had married twice and by giving divorce to the earlier wives, he married to the respondent. The respondent was also earlier married to one Prakash Kshirsagar, R/o Ramtek, but as Prakash was causing physical and mental ill-treatment, the respondent-wife obtained divorce from Prakash. It is stated in the complaint that the marriage of the petitioner no.1 and the respondent was performed as per the rites and it was a ""Gandharv vivah"". The petitioners and the respondent were residing together and the respondent observed her marital life with the petitioner no.1 and other matrimonial relations for six months. It is further stated that the mother-in-law of the respondent was picking up quarrels with the respondent and was abusing her on petty reasons. The petitioner no.1 was also causing ill-treatment to the respondent and was insisting for bringing an amount of Rs. 50,000/- from her father and as the respondent failed to do so, the petitioner beat her. The respondent also alleges ill- treatment and ill-behaviour at the instance of her father-in-law, the respondent no.2 herein. The respondent then stated that due to the constant ill-treatment, she left with no choice, but to leave the matrimonial house on or about 13.02.2013 and since then, she is residing with her parents. She further stated that the petitioner no.1 earns nearly Rs. 25,000/- per month. It is alleged in the complaint that the petitioner no.1 forcibly snatched the gold ornaments and ""stridhan"" of the respondent worth Rs. One lac. On these grievances, the respondent-wife filed the complaint under Section 12 read with Sections 18, 19, 20 and 22 of the Act of 2005 and prayed for the reliefs in the nature of protection, separate residence, maintenance and compensation, along with an application (Exh.11) for grant of interim maintenance.

5. The petitioners resisted the claim of the respondent by filing reply to the complaint/application. The learned Magistrate, by the order dated 05.03.2014 partly allowed the application (Exh.11) and directed the petitioner No. 1 to pay interim maintenance of Rs. 1,200/- per month to the respondent from the date of application and further prohibited the petitioners from causing any act of domestic violence till the decision of the case. Being aggrieved by the said order, the petitioners approached the learned Sessions Judge by preferring Appeal No. 11/2014. The learned Sessions Judge found no favour with the petitioners and dismissed the appeal with costs of Rs. 2,000/-, by order dated 18.02.2015. The petitioners are before this Court challenging the aforesaid orders in the instant petition. This Court, on the backdrop of the submissions of the learned counsel for the petitioners, passed the order dated 20.03.2015 and granted ad-interim relief in terms of prayer clause (E) of the petition.

6. Mr. Chitale, the learned counsel for the petitioner vehemently submitted that on very substantial grounds the petitioners have resisted the complaint filed by the respondent and both the Courts below i.e. the learned Magistrate and the learned Sessions Judge have failed to appreciate the legal and substantial

grounds raised by the petitioners and arrived at an erroneous conclusion and passed the orders, which are impugned in this petition. The learned counsel submitted that the marriage between the petitioner no.1 and the respondent was solemnized at Adasa and they were living together for some time. The thrust of the submissions of the learned counsel was the respondent by suppressing the material facts filed the complaint before the learned Magistrate under the Act of 2005. The learned counsel submitted that the fact of marriage of the respondent with Prakash Kshirsagar was never disclosed by her to the petitioners and for the first time the respondent stated before the Magistrate about her marriage with Prakash Kshirsagar. The learned counsel then submitted that the respondent stated in the complaint that she obtained divorce from Prakash on 30.12.2012. He then submitted that though the respondent stated in the complaint that she obtained divorce from Prakash, no document to that effect was ever shown to the petitioners and for the first time she is placing some affidavit in this Court along with the reply to submit that there is a custom prevailing of mutual divorce in the community of the respondent, namely "Dhoba" community. Mr. Chitale, the learned counsel submitted that the petitioners in the reply to the complaint denied all the allegations of ill-treatment and domestic violence and raised a specific ground that as the respondent was and is in marital relationship with Prakash Kshirsagar, there cannot be a relationship between the petitioner and the respondent to claim the reliefs as sought by the respondent in the proceedings initiated under the Act of 2005. The learned counsel submitted that the so called mutual divorce cannot be accepted as a legal document as no sanctity is attached to the said document. The submission is the respondent was duty bound to establish that she obtained the customary mutual divorce from Prakash Kshirsagar by following the legal formalities such as proving the said custom of mutual divorce and proving the document i.e. Deed of Mutual Divorce. The learned counsel for the petitioners submitted that both the Courts below have failed to appreciate the crux of the matter that the petitioner no.1 and the respondent have no domestic relationship between them and the Courts ought to have rejected the claim of the respondent. The learned counsel for the petitioners submitted that recently the view is taken by this Court in the case of Narayan Jangluji Thool and Others Vs. Sou. Mala AIR 2015 Bom 36 : (2015) ALLMR(Cri) 1558 : (2015) 2 BomCR(Cri) 213 : (2015) CriLJ 2353 . The learned counsel, in support of his submissions, placed reliance on the following judgments :

1] Subramani and Others Vs. M. Chandralekha, AIR 2005 SC 485 : (2004) 5 CTC 540 : (2005) 1 DMC 98 : (2004) 9 SCALE 599 : (2005) 9 SCC 407 : (2004) AIRSCW 7099 : (2004) 8 Supreme 318

2] Yamanaji H. Jadhav Vs. Nirmala, AIR 2002 SC 971 : (2002) 1 DMC 321 : (2002) 1 JT 478 : (2002) 1 SCALE 534 : (2002) 2 SCC 637 : (2002) 1 UJ 348 : (2002) AIRSCW 674 : (2002) 1 Supreme 473

3] In Re: Mittal Ramesh Panchal and Manoj Dayalal Panchal, (2014) 2 ABR 329 :

AIR 2014 Bom 80 : (2014) 3 ALLMR 60 : (2014) 1 DMC 20 : (2014) 3 MhLj 755

4] Indra Sarma Vs. V.K.V. Sarma, (2014) 1 ABR 615 : (2014) 2 AD 447 : AIR 2014 SC 309 : (2013) 3 DMC 830 : (2013) 15 JT 70 : (2014) 1 RCR(Civil) 263 : (2014) 1 RCR(Criminal) 179 : (2013) 14 SCALE 448

5] 2014 (1) ABR (Cri.) 339 (Durgesh Yuvraj Rahangadale vs. Rajni Krishnadatta Ukey)

7. Per contra, Ms. Paul, the learned counsel appointed for the respondent-wife supported the orders passed by the learned Magistrate and the learned Sessions Judge. It is submitted by the learned counsel for the respondent that as the petitioners and the respondent were residing together and even though the petitioners have raised the ground of domestic relationship between the petitioner no.1 and the respondent on the backdrop of earlier marriage of the respondent with Prakash Kshirsagar, the issue of domestic relationship can certainly be considered at a later stage of entertaining the complaint and for granting interim orders, the learned Magistrate has rightly considered the relationship between the parties and the view taken by the learned Magistrate has been rightly upheld by the learned Sessions Judge. The learned counsel appointed for the respondent submitted that as the complaint filed by the respondent clearly spells out that the respondent was subjected to mental and physical ill-treatment and as the said ill-treatment is covered under the term ""domestic violence"", the learned Magistrate has passed the proper order by treating the respondent as an aggrieved person. The learned counsel in support of her submissions, placed reliance on the following judgments :

1] Aradhana Walkade Vs. Chandrashekar Vaidya, (2014) ALLMR(Cri) 1658 : (2014) 2 BomCR(Cri) 588 : (2014) 3 DMC 5

2] Bharati Naik Vs. Ravi Ramnath Halarnkar and Another, (2011) 3 DMC 747

3] Inderjit Singh Grewal Vs. State of Punjab and Another, (2012) CriLJ 309 : (2011) 3 DMC 7 : (2011) 4 RCR(Civil) 129 : (2011) 9 SCALE 295 : (2011) 12 SCC 588 : (2011) 10 SCR 557

8. In view of the submissions of the learned counsel appearing for the parties referred to above, in my opinion, in the present petition, the controversy revolves around the issue whether there is "domestic relationship" between the petitioner no.1 and the respondent as provided under Section 2(f) of the Act of 2005. On a perusal of the material placed on record, it reveals that the respondent herself has stated in her complaint that prior to her marriage with the petitioner no.1, she was married to one Prakash Kshirsagar and she obtained divorce from said Prakash on 30.10.2012. A document was placed on record i.e. a notarized Deed named and styled as ""Mutual Divorce Deed"" (Aapsi Sodchitthicha Lekh). The respondent stated in the complaint that the marriage between the petitioner no.1 and herself was solemnized as ""Gandharva vivah"" on 11.07.2012 and the respondent resided with the petitioners till 13.02.2013. It

is the case of the petitioners that the respondent suppressed the fact of her earlier marriage with Prakash Kshirsagar and the mutual divorce by her from Prakash. It is admitted by the petitioners in the reply filed to the complaint that the marriage between the petitioner no.1 and the respondent was solemnized on 11.07.2012. The petitioners also admitted that petitioner no.1 was married twice earlier to the marriage with the respondent, but the earlier marriages were dissolved by obtaining decree of mutual divorce from a competent Court. It was stated by the petitioners in the reply that the respondent had never shown the said divorce deed to them either before the marriage or even after the marriage. The petitioners denied all the allegations of ill-treatment and domestic violence and also of possessing any ornaments as alleged by the respondent. The petitioners have further stated in the reply to the complaint that the respondent on her own accord left the home of the petitioners and started residing with her parents. The learned Magistrate, though observed that the legality of the marriage is challenged by the petitioner, on account of admission of marriage by the petitioners and living of the petitioner no.1 and the respondent together, observed that the issue of legitimacy of the marriage can be kept aside and the relationship between the parties is a relationship in the nature of marriage. The learned Magistrate thus passed the order dated 05.03.2014, thereby allowing the application (Exh.11) partly and directing the petitioner no.1 to pay an amount of Rs. 1,200/- per month to the respondent. The learned Sessions Judge, though referred to the judgment of this Court in Narayan Thool vs. Mala Wani (supra), relied on by the petitioners and though, referred to the objection raised by the petitioners that the so called divorce deed cannot be of any help to the respondent-wife as the divorce is not obtained from the Court of law, found that as the petitioner no.1 and the respondent were in relationship in the nature of marriage, dismissed the appeal filed by the petitioners.

9. On a perusal of the documents placed on record on the backdrop of the view expressed by this Court in Narayan Thool vs. Mala Wani's case as well as the various judgments of the Apex Court relied on by the learned counsel for the petitioners, in my opinion, the orders passed by the learned Magistrate and the learned Sessions Judge are unsustainable. The respondent herself has stated in the complaint that prior to the marriage with the petitioner no.1, she was married to one Prakash Kshirsagar and she had obtained mutual divorce. Before the Magistrate the said document of mutual divorce was placed on record, which is a notarized document. Though, it is referred in the said document that there is a custom prevailing, it will be interesting to note that in the said document nowhere the community of the parties is stated nor it is stated that in that particular community, there is a custom prevailing of mutual divorce. It is again interesting to note that the respondent, for the first time, has placed an affidavit before this Court of one Ajabrao Mogarkar, dated 09.07.2015. It is stated by said Ajabrao that he knows respondent -Minakshi Prakash Kshirsagar, who belongs to ""Dhoba"" community. He further stated that he also belongs to ""Dhoba"" community and there is a custom prevailing of mutual divorce in the said

community. The learned counsel for the petitioners was justified in placing reliance on the judgments of the Apex Court in the case of Subramani and others vs. M. Chandralekha, and Yamanaji Jadhav vs. Nirmala. In Yamanaji Jadhav's case, the Apex Court observed that customary divorce being an exception to the general law of divorce ought to have been established by the parties by necessary pleadings and evidence. In Subramani vs. M. Chandralekha's case, the Apex Court by referring the judgment in Yamanaji Jadhav's case, reiterated the observations in respect of the customary divorce. Thus, the learned counsel for the petitioners was justified in submitting that as the earlier marriage between the respondent and Prakash Kshirsagar was not dissolved by way of legal proceedings, nor the respondent proved the custom of mutual divorce prevailing in her community, the relationship between the petitioner no.1 and the respondent cannot be termed as a domestic relationship. The learned counsel for the petitioners was also justified in placing heavy reliance on the judgment of this Court in Narayan Thool vs. Mala Wani's case. This Court by referring to the judgments of the Division Bench of this Court in the matter of Durgesh Yuvraj Rahangadale vs. Rajani Krushnadatta Ukey and the judgments of the Apex Court, observed that -"7..... to attract the provisions under the Act of 2005, the applicant must not only show existence of a live-in-relationship with the non-applicant, which is akin to a marriage, which is visible from the fact that the applicant and the non-applicant are living together by holding out as husband and wife, and should also show that they are otherwise legally qualified to marry". (emphasis supplied). In the Narayan Thool's case the respondent, a married woman, who had not obtained legal divorce from her earlier husband Chandan, had initiated the proceedings under the D.V. Act against the petitioner-husband. This Court observed that -"living together with another person in a shared household is an essential ingredient of the domestic relationship as contemplated under Section 2(f) of the Act of 2005. That apart, the applicant should also have lived in a shared household with a man in a relationship which is akin to a marriage, if she is herself to be wife or marriage partner."

10. In Narayan Thool's case, a ground was raised on behalf of the respondent that Section 2(f) of the Act of 2005 does not require that a woman should be a wife and it is enough that she is living with a man in relationship, which is similar that of a marriage and this Court observed that though, the learned counsel was right in submitting that Section 2(f) does not required that women should be a wife and it is enough that she is living with a man in relationship, which is similar that of a marriage, there is a rider to this proposition. This Court further observed that she should be unmarried and be otherwise qualified to marry. This Court further observed that the respondent is a married woman, whose marriage with her husband is still subsisting. Her relationship whatever it might be with the petitioner, cannot be termed as a domestic relationship under Section 2(f) of the Act of 2005. The present matter is squarely covered by the judgment of this Court in Narayan Thool vs. Mala Wani's case. In the present matter, the respondent wife herself submitted that prior to marriage with the petitioner, she

was married to one Prakash Kshirsagar and obtained a mutual divorce. Reliance is placed on a notarized document. As it is already dealt in detail that the notarized document styled as ""consent divorce"" cannot be of any help to the respondent, it will have to be treated that the respondent's earlier marriage with Prakash Kshirsagar is still subsisting and the relationship of the respondent with the petitioner no.1 cannot be termed as "domestic relationship" under Section 2(f) of the Act of 2005.

11. Though, the learned counsel for the respondent placed reliance on the judgments of this Court as well as the Apex Court and though, there cannot be any dispute on the proposition of law, in my opinion, the judgments relied on by the respondent cannot be made applicable in the facts of the present case. In view of the reasons aforesaid, learned counsel for the petitioner has made out a case. The orders passed by the learned Magistrate and the learned Sessions Judge are unsustainable. The petition deserves to be allowed and the orders passed by the learned Magistrate and the learned Sessions Judge deserve to be quashed and set aside.

12. In the result, the criminal writ petition is allowed.

It is made clear that the respondent will be at liberty to take recourse to the other remedies, if available under the provisions of law, if so advised.

The fees of the learned counsel appointed for the respondent is quantified at Rs. 2,000/-.

Rule is made absolute accordingly.