
(2001) 03 BOM CK 0026

In the Bombay High Court

Case No : Criminal Writ Petition No. 405 of 2000

Deepa Zade (Smt.) and Another

APPELLANT

Vs

Nandkishore Zade

RESPONDENT

Date of Decision : 05-03-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2001) 5 BomCR 898 : (2001) 2 DMC 381

Hon'ble Judges : R.K. Batta, J

Bench : Single Bench

Advocate : M.W. Harsulkar, for the Appellant; P.G. Mirashe, for the Respondent

Final Decision : Allowed

Judgement

R.K. Batta, J.—Heard. Admit. With the consent of the learned Advocates for the parties, heard forthwith. Notices in fact were issued in this matter for disposal at the admission stage itself.

2. Learned Advocate for the petitioners has placed before me the judgment of the trial Court which shows that there was absolutely no discussion or reasoning as to why the maintenance has been awarded from the date of order and not from the date of application. The revisional Court found that there was no need to interfere on this question since the order in question was neither illegal nor perverse nor arbitrary.

3. The learned Advocate for the petitioners, after placing reliance on Nachhattar Singh Vs. Harjinder Kaur and Another, ; Kamalabai Khanderao Thete (Sou.) and Another Vs. Khanderao Murlidhar Thete and Another, ; Kedari s/o Shankarrao Shinde v. The State of Maharashtra, reported in 1992 (1) M. L.R. 359; and Gangabai v. Shivram, reported in 1989 Cri. L.J.154, has urged before me that the maintenance in the case under consideration should have been granted from the date of application and there was no reason whatsoever to deny the same to the petitioners.

4. On the other hand, the learned Advocate for the respondent urged before me that though the Magistrate had not given any reasons as to why the maintenance had not been granted from the date of application, yet the revisional Court has given sound reasoning for the same as a result of this Court in writ jurisdiction should not interfere with the order of the revisional Court. It was also urged by him that the matter may be remanded to the Judicial Magistrate so that the proper order will be passed by him in this respect. Thirdly, it was urged that the respondent has been regularly paying the maintenance awarded and has already paid Rs. 20,000/- and that in the circumstances, the order of payment of maintenance from the date of the order should not be interfered with.

5. In *Kamalabai Khanderao Thete and another v. Khanderao Murlidhar Thete* (supra), it has been laid down by learned Single Judge of this Court that the normal rule is to grant maintenance from date of application and not from date of order and it is only when there are very exceptional circumstances for valid reasons it is open to a Magistrate to grant maintenance from subsequent date. These observations are part of para 10 which reads as under :-

"This takes me to the other question whether the learned Magistrate was justified in not granting maintenance to the daughter from the date of the application. The learned Magistrate came to the conclusion that respondent No. 1 was not responsible for the delay in deciding the matter and that, therefore, by necessary implication, it means that he was not obliged to maintain her during the pendency of the application. The learned Magistrate forgot to take note of the fact that during this period when the proceeding was delayed respondent No. 1 did not pay anything to her. She was equally faultless, as she too was not responsible for the delay. The normal rule is to grant maintenance from the date of the application, and not from the date of the order. It is only when there are very exceptional circumstances, for valid reasons, it is open to a Magistrate to grant maintenance with effect from subsequent date."

6. In *Kedari Shankarrao Shinde v. The State of Maharashtra and another* (supra), a learned Single Judge of this Court has reiterated the position by stating that when a destitute wife comes to the Court and if it is held that she is entitled for separate maintenance, in normal circumstances, the order should be from the date of application, unless there are reasons for departing from this common practice. It is also pointed out that duration of the litigation is not within the powers of the litigant and, therefore, entitlement of the maintenance should not be left to the uncertain date of disposal of litigation.

7. In *Nachhattar Singh v. Harjinder Kaur and another* (supra), it has been observed that the jurisdiction is vested in the trial Court to award the maintenance from the date of the order or from the date of the application. It has to be exercised in a reasonable manner keeping in view the facts and circumstances of the case. It is further pointed out that that the special reasons need not to be recorded but reason for arriving at the conclusion have to be given since the provisions has been enacted to help the destitute wife or children

so as to prevent vagrancy by compelling a person to support his wife and child by providing cheap and speedy remedy. I have absolutely no reason to take a different view of the matter and I record my respectful concurrence with the views of the learned Judges in the above rulings.

8. Coming to the case under consideration, it is to be noticed that the Judicial Magistrate totally failed to exercise the jurisdiction vested in him and there is even no whisper in the order as to why the maintenance has been awarded from the date of the order except for the order in the operative portion. In revision, the revisional Court tried to justify that no interference is called for in the matter. As already pointed out the provisions of maintenance have been enacted for the benefit of destitute wife and children so as to prevent vagrancy. In the case under consideration, there are no circumstances on the strength of which the normal rule can be departed. The maintenance in this case should have been from the date of the application. Thus, the discretion was not at all exercised by the trial Court and the discretion of the Appellate Court is not sound in the circumstances.

9. In view of the above, the writ petition which is pressed only regarding the date of payment of maintenance is allowed. The maintenance payable to the applicants shall be from the date of application that is to say from 7-12-1992 instead of date of order as awarded by the two courts below.

10. The writ petition is allowed in aforesaid terms. In the facts and circumstances, there shall be no order as to costs.