
(2016) 09 BOM CK 0181

In the Bombay High Court

Case No : Criminal Application No. 3241 of 2005

Dilip s/o Marotrao Sonkamble

APPELLANT

Vs

Sow. Indubai w/o Dilip Sonkamble

RESPONDENT

Date of Decision : 22-09-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2017) ALLMRCri 658

Hon'ble Judges : V.K. Jadhav, J.

Bench : Single Bench

Advocate : Mr. Sachin S. Bhise h/f Mr. S.B. Bhapkar and Mr. D.B. Rakhunde, Advocates, for the Applicant; Mr. S.S. Bora, Advocate, for the Respondents Nos.1, 3 to 5

Final Decision : Dismissed

Judgement

V.K. Jadhav, J.—Being aggrieved by the judgment and order dated 26.7.2005 passed by the Ist Adhoc Additional Sessions Judge, Parbhani in criminal revision No. 141 of 2004 the original opponents have filed present criminal application.

2. Brief facts giving rise to the present criminal application are as follows :-

(a) The respondent wife had filed an application bearing Cri. M.A. No. 80 of 2003 for grant of maintenance to her and her children at the rate of Rs.1500/- p.m. It is stated in the said application that she married with the present applicant 25 years back. However, two years prior to filing of proceeding under Section 125 of Cr.P.C. the applicant husband has started giving ill treatment to the wife on account of non fulfilment of unlawful demand of Rs.25,000/- for purchase of car. The wife has expressed her inability to fetch the amount from her father because of his poor financial condition. Thus, she was subjected to ill treatment and beating on that count. The respondent wife and her father tried their level best to find out the solution and even one document also came to be executed in

terms of certain settlement. However, the applicant husband again continued with the said demand and subjected her to cruelty on account of non fulfilment of the said demand. He refused to maintain all the respondents in spite of having sufficient means. The petitioner husband is working as gang man in Railway department on monthly salary. The respondents original applicants accordingly prayed for maintenance of Rs.1500/- each p.m.

(b) The petitioner husband strongly resisted the application by filing his say at Exh.11. It has contended that the father of the petitioner husband was serving in the Railway department and after his retirement he got retirement benefits. The respondent wife was insisting to invest some amount in the name of her children for which the petitioner husband was not ready. On the count of said quarrel, respondent wife started residing separately. Even she had also filed false case against him. It has also stated that the respondent wife along with her children in fact driven the husband out of their house. It has also stated that he is getting only Rs.2978/- p.m. as salary and he has to maintain entire family. According to the petitioner husband the respondent wife has no just cause to reside separately and claim maintenance.

(c) Learned Magistrate by his judgment and order dismissed the application of the original petitioner Nos. 1 to 3 on the ground that the petitioner No.3 is major and petitioner No.2 got married and that husband did not neglect and refuse to maintain the wife. Being aggrieved by the same, the wife had preferred criminal revision bearing No. 141 of 2004 before the Sessions Court, Parbhani and the learned Ist Adhoc Additional Sessions Judge, Parbhani on 26.7.2005 allowed the said revision and granted maintenance to the respondent wife at the rate of Rs.600/- p.m. and further granted maintenance at the rate of Rs.500/- p.m. each to original petitioner Nos. 2 and 3. Hence, this writ petition.

3. Learned counsel for the applicant husband submits that the respondent wife has no just cause to reside separately and claim maintenance. It is submitted that father of the petitioner husband got retiral benefits and respondent wife started insisting to invest certain amount in the names of her children. In fact, she had driven the petitioner husband out of the house. Learned counsel submits that learned Sessions Judge has not correctly appreciated the evidence on record. Learned counsel for the petitioner submits that during pendency of this criminal application respondent Nos. 2 and 3 have attained majority and they are not entitled for maintenance. Thus, the impugned judgment and order passed by the Adhoc Additional Sessions, Parbhani is thus liable to be quashed and set aside.

4. Learned counsel for the respondent wife submits that even though the marriage took place 25 years prior to filing of proceedings for grant of maintenance, the wife subjected to cruelty and beating at the hands the petitioner husband on account of non fulfilment of unlawful demands of Rs.25,000/- for purchase of car. Learned counsel submits that considering the same, learned Adhoc Additional Sessions Judge held that wife has just cause to

reside separate and claim maintenance. Furthermore, the petitioner husband though having fixed salary, refused and neglected to maintain the respondent wife and children. Learned counsel for the respondent however, admits that respondent Nos. 2 and 3 have attained majority during pendency of present criminal application.

5. The learned Adhoc Additional Sessions Judge, Parbhani after going through the evidence led by the parties minutely observed that even for the sake of arguments, it is accepted that the respondent wife wanted her father-in-law to deposit the amount in the name of children, the said request could not have been said to be excessive. Furthermore, the respondent wife has deposed before the court about ill treatment being extended to her on account of non fulfilment of unlawful demands made by the petitioner husband. Even she has deposed that the petitioner husband executed a bond and assured before Mahila Takrar Nivaran Kendra to maintain respondent wife well and not to harass her in future. In view of this, I find that the respondent wife has just and sufficient cause to live separate and claim maintenance. The petitioner husband is having sufficient means to pay her separate maintenance. So far as the maintenance granted to respondent Nos. 2 and 3, who now attained majority, the petitioner husband may file an application under section 127 of Cr.P.C. before the Magistrate for cancellation of order of maintenance in their favour.

6. In view of the above discussion, I do not find any substance in the writ petition. The writ petition deserves to be dismissed and the same is accordingly dismissed. Rue discharged. No costs.