
(2015) 08 BOM CK 0233

In the Bombay High Court

Case No : Criminal Writ Petition Nos. 12 and 14 of 2014

Hauserao Sudam Gaikwad

APPELLANT

Vs

Lata Hsuserao Gaikwad and Others

RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2015) 08 BOM CK 0233

Hon'ble Judges : V.M. Deshpande, J

Bench : Single Bench

Advocate : S.S. Jadhavar, for the Appellant; S.K. Doke and Kishor Doke, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.M. Deshpande, J—Rule in both these Writ Petitions. Rule is made returnable forthwith by consent of the parties. Heard finally.

2. Both the Writ Petitions can be disposed of by this common Judgment.

Parties in these Writ Petitions will be called as husband, wife, daughter and son, for the sake of brevity and convenience.

3. Heard Mr. S.S. Jadhavar, Advocate for the husband in both the Writ Petitions, Mrs. S.K. Doke, Advocate for wife, daughter and son and Mr. D.V. Tele, Additional Public Prosecutor represented the State - Respondent No. 4, in both the Writ Petitions.

All the learned counsel made their respective submissions in claim of their respective prayers. With the assistance of learned counsel, I have gone through the Record & Proceedings, which was called by this Court.

4. Application under Section 125 of the Code of Criminal Procedure for grant of maintenance allowance was filed before the learned Judicial Magistrate, First Class, Bhoom, Dist. - Osmanabad by the wife, daughter and son against the

husband. Said Application was registered as Criminal M.A. No. 177 of 2008.

Sum and substance of the Application for maintenance discloses that, wife was originally married with one Vijay Kamble, in the year 1993. In view of the frequent dispute between them, wife filed Application for maintenance against him. In the meanwhile, said Vijay filed Regular Criminal Case No. 94 of 1997 against the husband for having illicit relations with the wife. It was also stated in the Application for maintenance that divorce by mutual consent took place between the wife and the first husband - Vijay Kamble.

Thereafter, marriage between wife and husband took place at Ghat-Pimpri in the month of May, 2000. Thus there exists relations of husband and wife in between them. Daughter and son were begotten to the wife from the husband. According to the Application, thereafter husband started giving ill treatment to the wife and started demand of money and gold ornaments. Therefore, wife was required to file a case with Police Station, Bhoom. Thereafter, husband left the wife, daughter and son and failed to maintain them. According to the Application, husband is a driver in M.S.R.T.C. and having monthly salary of Rs. 10,000.00 and also owns 16 acres agricultural land at village Saram Kundi, Taluka - Washi, District - Osmanabd. It is also stated that wife is not having any other means to maintain herself and her daughter and son.

Notice was sent to the husband, which was replied by giving false reply.

On being summoned, the husband appeared before the court and filed his Written Statement. According to the Written Statement, wife is married with Vijay. Wife is having illicit relations with many persons and has given birth to daughter and son from such extra marital relations. According to him, husband was already married with one Nanda in the year 1995 and he is residing with her and therefore, he prayed for dismissal of Application.

Both the parties entered into the witness box. Also adduced their other respective evidence.

The learned Magistrate vide his Judgment and Order dated 12th September, 2011 partly allowed Criminal M.A. No. 177 of 2008. He dismissed the claim of wife for maintenance. However, the learned Magistrate has awarded maintenance allowance @ Rs. 500/- [Rs. Five Hundred] each in favour of daughter and son, from the date of Application.

5. Husband has filed Criminal Revision Application No. 129 of 2011 before the revisional court challenging the grant of monthly maintenance allowance in favour of daughter and son.

Wife, daughter and son also preferred Criminal Revision Application No. 137 of 2011 for rejection of claim of wife and for enhancement of maintenance allowance for daughter and son.

6. Both these Criminal Revision Applications were heard and disposed of by

common judgment by the learned Additional Sessions Judge, Osmanabad by common judgment dated 11th November, 2013.

By the said Judgment and Order, Criminal Revision Application filed by the husband bearing Criminal Revision Application No. 129/11 was dismissed. Criminal Revision Application filed by wife, daughter and son i.e. Criminal Revision Application No. 137/11 was partly allowed.

By the said judgment and order, learned revisional court directed that, wife is entitled to get maintenance allowance @ Rs. 1500.00 [Rs. One Thousand Five Hundred] from the date of Application; where-as the revisional court has enhanced the maintenance allowance of Rs. 500.00 to Rs. 1000.00 [Rs. One Thousand] each in favour of daughter and son.

These two Writ Petitions challenges the said Judgment and Order.

7. The scope of Writ Petition is limited. This court will not ordinarily interfere with the findings of fact recorded by the court below unless it is shown that perversity is crept in, in the impugned order. This court will exercise writ jurisdiction, if there is error apparent on the face of record.

8. In order to prove the marriage, wife has examined Sangoba Ahire, as her witness. This witness has attended the marriage between husband and wife. The learned Magistrate has believed the version of this witness. According to the learned trial court, witness - Sangoba is a independent witness. Even before this court his character as independent witness cannot be demolished by the learned counsel for husband.

Thus, before the learned trial court, it was established that marriage took place between husband and the wife i.e. Hauserao and Lata - present Petitioner and Respondent No. 1.

The said fact is also affirmed by the learned revisional court on appreciation of evidence. Thus, there is concurrent findings of fact on record that marriage took place in the year 2000 between the husband and wife - Respondent No. 1.

9. What was in the mind of the learned Magistrate not to grant maintenance in favour of the wife was that according to the learned Magistrate husband was already married with Nanda in the year 1995 and during the subsistence of marriage, in the year 2000 he remarried with Lata, present wife. He, therefore, discard the evidence of Lata that she was kept in dark about his first marriage.

10. The learned revisional court found that nothing can be brought on record by the husband to establish the fact that wife was knowing that he is already married with Nanda. In my view, the learned revisional court was right in reaching to the conclusion that the wife was kept in dark about his first marriage, by the husband.

Therefore, her claim cannot be denied. In this context, it would be useful to refer the authoritative pronouncement of the Hon"ble Apex Court in case of Badshah

Vs. Sou. Urmila Badshah Godse and Another, (2013) 11 AD 9 : AIR 2014 SC 869 : (2014) CriLJ 1076 : (2013) 3 DMC 518 : (2013) 4 JCC 2765 : (2013) 13 JT 570 : (2013) 4 RCR(Civil) 830 : (2013) 4 RCR(Criminal) 764 : (2013) 12 SCALE 681 : (2014) 1 SCC 188 : (2014) 2 SCJ 779 . The facts in the present case and facts in the reported case of the Hon"ble Apex Court are similar of great extent.

11. There is nothing available on record to show that the husband and wife were not residing together. On the contrary there is ample evidence in respect of their cohabitation. Further the learned revisional court has rightly observed that it was open for the husband to undergo DNA test, since he was denying paternity.

12. In view of the concurrent findings of fact in respect of marriage in the year 2000 and in view of the fact that husband has not disclosed about his marital status to the wife, I see no reason to disturb the said findings of fact recorded by the revisional court. Hence, the order:-

ORDER

(i) Both the Writ Petitions are dismissed with no costs.

(ii) Rule is discharged.