
(1972) 03 BOM CK 0013

In the Bombay High Court

Case No : Criminal Revision Application No. 43 of 1972

Jalandar Gorakh Kirtikar

APPELLANT

Vs

Shobha J. Kirtikar

RESPONDENT

Date of Decision : 23-03-1972

Acts Referred:

Penal Code, 1860 (IPC) — Section 494, 495, 497, 498

Citation : (1972) 74 BOMLR 755

Hon'ble Judges : Bhole, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bhole, J.—The petitioner is the husband of respondent No. 1 who had filed an application for maintenance on the ground of ill-treatment, assault and desertion. The petitioner contested the claim by his wife stating that she is not his legally wedded wife and that, therefore, she is not entitled to maintenance. The respondent-wife had also claimed maintenance for the two children. The learned Presidency Magistrate, Dadar before whom the case was tried considered the question of legality of marriage and found that respondent No. 1 had established that she is the legally wedded wife of the petitioner. After considering the version as regards the income of the petitioner the learned Magistrate came to the conclusion that he would be able to pay to the respondent Rs. 60 per month as maintenance and Rs. 30 per month to each of the two sons who are now with the respondent. This order is challenged here by the petitioner. The point, therefore, that arises here for consideration is whether the order passed by the learned Presidency Magistrate is legal and proper.

2. At the outset Mr. Kadam, the learned advocate for the petitioner, requested that he wants to file as additional evidence a letter written by the respondent to the petitioner after the present petition was filed in this Court. According to him in that letter the respondent admits that she was not married to the petitioner. There is another document which he wants to file and that is an affidavit sworn

by the respondent calling herself by the name of her father and not that of her husband. He has also filed an application. It would be difficult for me to accept these documents firstly because the affidavit sworn by the respondent was in the possession of the petitioner and it was possible for him to file the same during the course of the maintenance proceedings. Calling oneself by maiden name is also quite usual when one goes to school. The letter which is said to have been written by the respondent is vague. It is neither addressed to any person in particular nor is signed. The contents also do not in terms show that the respondent had admitted that she was not married to the petitioner. I cannot, therefore, allow Mr. Kadam to have the additional evidence. I have, therefore, rejected his application.

3. Mr. Kadam has vehemently argued that the respondent has not been able to establish valid marriage between her and her husband. She is a Nav Buddha. Her claim is that her marriage with her husband was performed according to Buddhist rites. She has also recited during the course of her evidence what exactly had taken place. According to her two Bhikkus who had come there had performed the marriage. The custom is that Panchsheel is recited and the husband and wife garland each other in the presence of the Bhikkus who gather there and the Bhikkus perform the marriage. The petitioner also has admitted during the course of the evidence that he had attended other marriages of Buddhists and the marriages take place as recited by the respondent. It is true that the respondent has neither examined any of the Buddhists nor any of the persons who had attended the marriage. It is, therefore, contended by Mr. Kadam that the respondent had not established that there was a valid marriage between the two. This would be specially so, according to Mr. Kadam, because the petitioner says that he is a Hindu and not a Buddhist. Mr. Kadam contends that even if it is true that the marriage was performed as was stated by the respondent, such a marriage would not be a valid marriage when the petitioner is a Hindu. It is, however, significant to remember that the petitioner had not suggested in the cross-examination of the respondent that he is a Hindu and not a Buddhist. For the first time he has stated during the course of his evidence in these proceedings that he is a Hindu. Evidently, therefore this statement appears to be an afterthought. Besides the evidence of the respondent on the factum of the rites that took place at the time of the wedding, there are also other circumstances which establish that there must have been a marriage between the two.

4. It is admitted that the parents of the respondent as well as the parents of the petitioner live in the same chawl. The petitioner was a teacher and the respondent was a student in the same school. Because of this contact both appear to have fallen in love with each other. The parents of the girl, however, were not happy about this. In the beginning they were against the marriage between the two but later they were reconciled and even attended the marriage of the couple. The important circumstance, however, is that after the wedding the respondent stayed with the parents of the petitioner in the same chawl. In

the ordinary course if there was no wedding between the couple the parents of the girl would not have allowed her to stay in the same chawl with another person. The fact, therefore, that they allowed her to stay in the petitioner's house shows that there must have been a marriage between the two.

5. There is another circumstance which also leads to this conclusion .Her parents come from a village in Satara district. When she was pregnant she was taken for delivery to the village of her parents. Admittedly the parents were against this marriage in the beginning. If she had not married the petitioner in the ordinary course of natural conduct they would not have taken her for delivery to their native village. This circumstance also in my view speaks loudly of the fact that both the respondents as well as the petitioner must have been married. Besides this there is also another circumstance and that can be found in the notice given by the petitioner to his wife. The notice is addressed by him as "Mrs. Jalandar Gorakh Kirtikar". He has also mentioned that she should return to him and stay as his wife. Besides this notice there are other letters written by the respondent to the petitioner who addresses him as her husband. All these circumstances clearly in my view show that they must have been married.

6. We have seen that the parents of not only the petitioner but also the respondent live in the same chawl. She was living with the parents of the petitioner. She has also two children one of whom is 7 years old and the other is younger. She could not have had children and she could not have lived in the same chawl where the parents of both the parties stay, with the parents of the petitioner unless she was married. Both are respectable parties. In the ordinary course therefore such things could never have happened if there was no marriage. All the circumstances, therefore, in my view clearly show that the petitioner had married the respondent. Now it may be that the evidence led by her is not as adequate as it should be for a prosecution under Sections 494, 495, 497 or 498, Indian Penal Code or for a proceeding under the Indian Divorce Act. In a proceeding u/s 488, Criminal Procedure Code the standard of proof need not be so high as in other proceeding. It appears looking from this point of view that the evidence led by the respondent is adequate.

7. So far as the quantum of maintenance is concerned, there is evidence to show that the petitioner gets a salary of Rs. 277.62 P. He has not to maintain his parents or anybody else. They seem to be quite independent and earning their own bread. The order passed by the learned Presidency Magistrate directing the petitioner to pay maintenance allowance at the rate of Rs. 60 per month and Rs. 30 per month to each of the two sons is quite reasonable.

8. It appears that at the time of admission of this petition the order was passed that the petitioner should deposit a sum of Rs. 500 within three weeks from the date when the petition was admitted. The said sum was deposited. But he has still to pay Rs. 965 after deducting Rs. 500.

9. I, therefore, confirm the order of the trial Court granting maintenance to the

respondent at the rate of Rs. 60 per month and to the two children at the rate of Rs. 30 each per month. I further direct that the petitioner shall pay Rs. 50 per month towards the past arrears of maintenance until all the arrears are paid in addition to the abovesaid maintenance allowance in the first week of every month. I also direct that the sum of Rs. 500 deposited in the office be transferred to the Court of the Presidency Magistrate, 7th Court, Dadar, Bombay and the respondent shall be allowed to withdraw the same. I quantify the costs of this petition at Rs. 35 and direct the petitioner to pay the same to the respondent.

10. Rule discharged.