

(1984) 04 BOM CK 0014

In the Bombay High Court

Case No : Criminal Application No. 843 of 1983

Jayprakash Sumantrao Kale

APPELLANT

Vs

Smt. Chandrakala Jayprakash Kale and others

RESPONDENT

Date of Decision : 04-04-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 126, 127, 128, 482

Citation : (1985) 2 BomCR 271

Hon'ble Judges : Kurdukar, J

Bench : Single Bench

Judgement

1. The Petitioner-husband has filed this Criminal Application under S. 482 of the Code of Criminal Procedure, 1973, challenging the legality and correctness of the orders passed by the Courts below. The First Respondent claims to be the wife of the Petitioner and Second Respondent is the son born out of the said wedlock. The Third Respondent is the State of Maharashtra. The Respondents Nos. 1 and 2 filed an application under S. 125 of the Code of Criminal Procedure bearing Maintenance Application No. 1190/81 in the Court of Judicial Magistrate First Class, Pune, claiming the maintenance for herself and for her minor child. It is alleged by the Respondents in their Application that the Petitioner husband has failed and neglected to maintain them. This application was filed on or about in September 1981. After service of the summons of the said maintenance application, the Petitioner filed his written statement on or about March 15, 1981 denying the allegations. The maintenance application is pending for final hearing. During the pendency of this application, the First Respondent came to know that the Petitioner has taken a second wife viz., Pushpa Niwruetti Kund and the said marriage came to be performed on or about April 1982. After coming to know of this second marriage of the petitioner with Pushpa, the First Respondent on November 10, 1982, preferred an application to the trial Court praying for an amendment of the original application. The amendment sought was "that the Petitioner has married with Pushpa some time in the month of April 1982 and the said marriage is illegal" The petitioner opposed this amendment application on

various grounds. Firstly it was contended that such an amendment application cannot be entertained as the same is beyond the powers of the trial Court inasmuch as there is no provisions under the Code permitting such amendment. He also denied the second marriage. The application for amendment is illegal and the same be dismissed.

2. The trial Court after hearing both the parties by its Order dated February 16, 1983 granted the said amendment application filed by the First Respondent. The amendment was accordingly incorporated in the application at the end of paragraph 2 of the maintenance application. Aggrieved by this Order, the petitioner preferred a Revision Application to the Sessions Court and the learned Sessions Judge, Pune, after hearing both the parties, by his order dated July 21, 1983 dismissed the said Revision Application and confirmed the order passed by the Court below. It is against the concurrent orders passed by the Courts below, the Petitioner has preferred this Criminal Application under S. 482 of the Code of Criminal Procedure.

3. Shri Anturkar, the learned Counsel appearing in support of this Application vehemently urged that the provisions in connection with the maintenance contained in Sections 125 to 128 of the Code of Criminal Procedure being self-contained Code and since the framers of the said provisions have not made any provision in connection with the amendment, it must be held that the Legislature never intended to permit either party to amend the maintenance application which is filed under S. 125 of the Code. Shri Anturkar then urged that in the absence of any provision permitting such amendment, the Courts below have committed jurisdictional error while granting such an amendment. The impugned orders are thus without jurisdiction and must be quashed and set aside. He also submitted that the Courts below while granting the amendment purported to take recourse to the S. 482 of the Code of Criminal Procedure which could be availed of only by the High Court and not by the Courts below. The impugned orders are thus illegal and deserve to be quashed and set aside.

4. The trial Magistrate while granting amendment application has observed that since the fact of second marriage of the Petitioner with Pushpa came to her knowledge after the filing of the Application, the First Respondent was justified in making an application for amendment and taking up the new ground of second marriage. The trial Magistrate also permitted the petitioner to amend his written statement so that no prejudice would be caused to him. The Sessions Court substantially confirmed the same reasoning and dismissed the Revision Application filed by the Petitioner. It is against these two concurrent Orders passed by the Courts below, the Petitioner has preferred this Application under S. 482 of the Code of Criminal Procedure.

5. Since I am called upon to exercise the powers under S. 482 of the Code of Criminal Procedure, I may refer to the said provision. Section 482 of the Code of Criminal Procedure reads as under :

"482. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of process of any Court or otherwise to secure the ends of justice."

From the bare reading of this section, it is clear that the provisions of S. 482 of the Code of Criminal Procedure can be invoked by an aggrieved party requesting this Court to pass such orders as may be necessary to give effect to any order under this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice. In the present case, having regard to the facts and circumstances of the case the Courts below granted the amendment sought by the First Respondent and while granting such amendment also afforded an opportunity to the Petitioner to file his say to the said amendment. The Courts below were right in holding that no prejudice whatsoever would be caused to the petitioner if the amendment sought by the First Respondent is granted. It is also material to note that the additional ground of second marriage of the petitioner with Pushpa has become available to the First Respondent after the filing of the Application. It would be too technical to direct the First Respondent to file another application taking up this ground separately and then go for trial in these applications. This would lead to multiplicity of proceedings. The orders passed by the learned Judges of the Courts below are at the interlocutory stage and therefore, I would not be justified while exercising powers under S. 482 of the Code of Criminal Procedure to interfere with such discretionary orders. The petitioner may take up such contentions if permissible under the law at the time of final hearing.

6. In the result, the Petition fails. Rule is discharged.

7. Petition dismissed.