
(2012) 04 BOM CK 0165

In the Bombay High Court

Case No : Criminal Writ Petition No. 16 of 2012

Kamal Durganand Pagi and Others

APPELLANT

Vs

Durganand alias Guru Pagi

RESPONDENT

Date of Decision : 26-04-2012

Acts Referred:

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

Citation : (2012) 04 BOM CK 0165

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : A.F. Diniz, for the Appellant; Shivan Dessai, Advocate for Respondent No. 1 and Shri C.A. Ferreira, Public Prosecutor, for the Respondent

Judgement

F.M. Reis, J.—Heard Shri A.F. Diniz, the learned Counsel appearing for the petitioner, Shri Shivan Dessai, the learned Counsel appearing for respondent no.1 and Shri S. Loran holding for Shri C.A. Ferreira, the learned Public Prosecutor for respondent no. 2. Rule. Heard forthwith with the consent of the learned Counsel. The learned Counsel appearing for the respondents waive service.

2. The above petition challenges an order passed by the learned Additional Sessions Judge, South Goa at Margao in Criminal Revision Application No.56/2010 dated 24/01/2012 whereby the revision preferred by the petitioner came to be dismissed.

3. Upon hearing the learned Counsel appearing for the respective parties, the short point for consideration is whether whilst deciding the application for interim maintenance u/s 125 of the Criminal Procedure Code, the Magistrate has powers to consider the defence raised by respondent no.1 to the effect that the marriage is void or voidable or any other reasons vitiating the marriage. The Courts below whilst passing the impugned order have come to the conclusion that on account of such aspects the petitioner was not entitled for interim maintenance. The point involved in the above petition is no longer res integra in view of the judgment of the learned Single Judge of this Court reported in 1988 (4) Bom.C.R. 177 in the

case of Malan w/o. Balasaheb Gawade v/s. Balasaheb Bhimrao Gawade & Anr. wherein at para 5 this Court has held thus:

5. The learned Counsel appearing on behalf of both sides and Mr. Kothari, learned Additional Public Prosecutor, took me through the relevant evidence and the judgments recorded by the Courts below. On hearing them and perusing the record, I am of the view that the judgments recorded by both the Courts below are not in accordance with law and suffer from errors apparent on the face of the record. It is pertinent to note that his marriage with the petitioner was admitted by the first respondent and the record shows that all the ceremonies of a marriage between two Hindus were performed. However, his case was that he was got married with the petitioner against his will and by use of force, coercion and compulsion against him. Now, proceedings u/s 125 of the Criminal Procedure Code are in the nature of summary proceedings. By providing a simple and speedy remedy the legislature has provided for a limited relief for the neglected wives, children and parents. Section 125 of the Criminal Procedure Code is not intended to provide for a full and final determination of the status and personal rights of the parties. It is true that a woman whose marriage is void cannot get the status of a legally wedded wife and is not entitled to maintenance under this section. But it is important to bear in mind that in such proceedings all that the wife has to prove is the performance of certain marriage ceremonies and it is immaterial whether the same satisfy all the requirements of a valid marriage. The party who challenges the validity of the marriage has to establish it in a competent Civil Court. Therefore, it was for the first respondent here to have gone to a competent Civil Court and get his marriage annulled. Not having done that, it was not for the Courts below to go to his rescue and declare that the marriage between him and the petitioner was not legal. That was not the function of the Courts dealing with an application u/s 125 of the Criminal Procedure Code. In the absence of a declaration by a competent Civil Court about the legality or otherwise of the marriage between the petitioner and the first respondent, the lower Courts should have presumed that the said marriage was legal. In my opinion, therefore, both the Courts below gravely erred in rejecting the maintenance application of the petitioner. It was and it is for the first respondent to go to a competent Civil Court and get his marriage declared null and void and if that is done, he may have a remedy u/s 127 of the Criminal Procedure Code, 1973 for appropriate relief.

4. Considering that both the Courts below have passed the impugned order on the wrong assumption which is otherwise well settled by this Court, I find it appropriate that the impugned orders passed by the learned Additional Sessions Judge as well as the judgment passed by the Judicial Magistrate First Class, Canacona be quashed and set aside and the matter be remanded to the learned Judge to decide an application for interim maintenance afresh after hearing the parties on merits. In view of the above, I pass the following order:

ORDER

(i) The impugned judgment dated 24/01/2012 passed by the learned Additional Sessions Judge in Criminal Revision Application No.56 of 2010 and the order dated 14/05/2010 passed by the learned Judicial Magistrate First Class in Maintenance Application No.1/M/2010 is quashed and set aside.

(ii) The learned Judicial Magistrate First Class, Canacona is directed to decide the aspect of interim maintenance as prayed for in the application dated 27/01/2010 afresh after hearing the parties in accordance with law.

(iii) Rule is absolute in the above terms.

(iv) Petition stands disposed of accordingly with no order as to costs.