

(2015) 09 KAR CK 0160
In the Karnataka High Court
Case No : RPFC No. 100089/2015

Meenakshi Basavraj Kadaganchi

APPELLANT

Vs

Basavaraj Sharanappa Kadaganchi

RESPONDENT

Date of Decision : 29-09-2015

Acts Referred:

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

Citation : (2015) 09 KAR CK 0160

Hon'ble Judges : K.N. Phaneendra, J.

Bench : Single Bench

Advocate : Naveen R. Melinamani for Jagadish Patil, Advocate, for the Appellant; Basavaraj Sharanappa, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

K.N. Phaneendra, J.—The petitioner, who is the wife of the respondent, called in question the order dated 03.06.2015 passed by the Judge, Family Court, Belagavi in CrI. Misc. No. 360/2013 dismissing the petition filed under Section 125 of Cr.P.C. by the petitioner.

2. I have heard the arguments of the learned counsel for the petitioner.

3. This Court has issued notice to the respondent through RPAD, which was served on him, but he remained absent and unrepresented.

4. The learned counsel for the petitioner provided to this Court the certified copy of the evidence of PW 1, RWs. 1 and 2 recorded before the trial Court and the documents marked on behalf of respondent.

5. I have carefully perused the evidence and the documents and also the judgment of the trial Court.

6. As could be seen from the pleadings of the parties, there is no dispute with regard to the marriage between the petitioner and the respondent solemnized on 08.07.2008. It is also not in dispute that as on the date of filing of the petition

the husband and wife are not living together. They are blessed with a female child and the child has been living with her father-respondent.

7. It is categorical statement of the petitioner in her petition and also in evidence before the trial Court that she was working in BHER INDIA LTD., at the time of her marriage and subsequently she was removed from the said job, on the ground there was no work in the company. Thereafter, she joined some other company, but at the time of filing of the petition she was not earning. The respondent during the course of cross-examination admits this fact. As she has no means for her maintenance, she filed a petition under Section 125 of Code of Criminal Procedure before the trial Court.

8. It is the specific case of the petitioner that, the husband and inmates of the house of her husband always used to ill-treat and harass her on the ground that she had no income as she has lost the job etc. They have also not taken care when she fell ill. They use to snatch the phone and never allowed her to talk with her parents. They used to assault her. Due to the injuries caused by them she has taken bed rest for two months. As she was ousted from the matrimonial home on 19.02.2012 she has taken shelter at her parents' house. Therefore, she filed a petition for maintenance. The respondent appeared before the trial Court and filed detailed objections. Afterwards there was conciliation between them and it was failed. The respondent has also made lot of allegations against the wife in his objection statement and also in the evidence.

9. It is the case of the respondent that the petitioner used to go to her parents' house often without informing him. When she was working in the company she used to leave to the company at 7.00 a.m. and come back at 7.00 p.m. She never engaged herself with household responsibilities. She never bothered about the members of the house of the respondent and she never gave respect to them. This disrespect to his family members and attitude of the petitioner developed attachment towards her parents and she voluntarily left the conjugal company of the husband and started living with her parents. Further, the petitioner is very short tempered and angered lady and she always even not taking care of the child and also used to assault the child. The petitioner is inhuman in nature and it is evident from her uncompassionate cruel attitude towards the child. It is stated that she voluntarily deserted the respondent in order to extract money and thereby trying to misuse the judicial provisions under Section 125 of Cr.P.C.

10. The trial Court after appreciating the oral and documentary evidence has come to the conclusion that the wife is at fault, she herself left the conjugal company of the husband without any reasonable cause and therefore, she is not entitled for maintenance, consequently dismissed the petition.

11. After re-evaluation of the evidence on record it clearly establishes that there was no compatibility between husband and wife. It cannot be said that the husband is right in allowing the wife to live separately in her parental house. The

Court has to look to the allegations and counter allegations made against each other. Refusal to grant maintenance considering the evidence of respondent only is not justified. In order to ascertain whether there is any neglect or refusal by the respondent, the totality of the circumstances have to be taken in to consideration by the Courts. It is not that the fault of one person has to be appreciated and fault of other persons should be neglected for the purpose of convenience. Of course, there are certain drawbacks on the part of the wife. Wife has also made lot of allegations against her husband with regard to the ill-treatment and harassment given by him and his family members. Though the husband denied it, he has also made some reckless allegations against the wife. The respondent alleges that even prior to the marriage, she insisted him for separate house and he affectionately explained and convinced her for living together with his parents and after marriage brought her to the matrimonial home. It is alleged that, after marriage the wife has not shown respect to his family members and also she has not taken care of her husband. Further, added to that it is specific allegation against wife by the husband that the petitioner and her parents have suppressed the difference of nine years of age between petitioner and respondent, in order to grab the properties of the respondent and his father. It goes to show that after the marriage the husband and wife were not happy with each other and the compatibility was not so good between the couple. It is also there in the pleadings and the evidence of the husband that the wife even prior to the marriage has expressed her unwillingness to marry the respondent and to live in the matrimonial home. In spite of such incompatibility even prior to the marriage and after the marriage it appears, they pulled on as husband and wife for some period and they were blessed with a female child. It is the allegations by the husband that even the wife has not taken care of the child properly as she was always assaulting the child on many occasions without any reason and the child has suffered a lot at the hands of the mother. It is very strange allegations and difficult to accept such allegations as no mother will have such harsh attitude against the small kid, unless, there is strong reason to behave like that. The Court has to appreciate why she started behaving like that and why such attitude was shown towards the child, husband and his family members. If at all there was absolute no response from the family members and they passively received the attitude of the wife, the wife unilaterally could not have behaved like that. Therefore, it can be said that nobody can clap with one hand, the clap will complete only if two hands come together. Therefore, the respondent and his family members are also to some extent responsible for the misbehavior of the wife. All these facts available in the evidence disclose that there was no compatibility between the husband and wife. The certified copy of evidence placed before the Court shows that the respondent has filed 11 pages of evidence on oath making allegation against the wife with regard to the behavior and attitude of the wife. It clearly establishes that the husband has also been making allegations regarding the behavior of the wife in their day-to-day life. Therefore, the allegations made against the wife by the husband and also misbehavior of the wife towards the husband have to be equally taken in to

consideration by the Court. Nobody will behave recklessly unless there is something attributed to the other side. These facts have not been taken into consideration by the trial Court. When the husband has alleged about wife's greed and that, the marriage was performed by her parents only to grab the properties of him and his parents, it shows how they could have looked after the petitioner after the marriage. It further shows that all was not well between each other. The incompatibility comes into picture only when husband wife both could not able to pull on the life. One is making allegations against another, though they failed to prove the same against each other. But the allegations are sufficient to draw inference that the husband and wife cannot pull on the life against each other. In this context, the Court has to analyze the neglect and the refusal by the husband.

12. It is the case that on sufficient occasions there was compromise between the parties at the instance of the elders and in that context the respondent husband has taken an undertaking from the wife as per Ex. R1 to the effect that she will behave properly henceforth with the husband and his family members according to the customs and tradition and she will listen to him henceforth. This document alleged to have been executed by the wife on 31.03.2011. In this four lines letter produced by the husband nothing is there under what context and for what purpose he has taken this document. The trial Court exclusively mainly relied upon the said letter. The said document has to be appreciated properly along with other material on record. It is there in the cross-examination of the husband that the wife has not given any complaint against him and his family members and further when it was suggested to him that if he gives assurance that he will take all care of his wife and look after her with all love and affection, she can come and live with him, he assured to take back her to his home. But he denied the suggestion that on his assurance the wife on two occasions went to the house of the husband he did not take care of her. Therefore, she went out from the matrimonial home. It is also denied in the cross-examination that he and his family members themselves by their conduct throw away the wife from the matrimonial home. Therefore the admissions and the counter admissions and the allegations and counter allegations clearly establish that the husband and wife were not happy with each other and they are in the habit of making allegations against each other. When the allegations and counter allegations are equal and opposite, the trial Court should not be given much importance to the allegations made against one another, so as to come to the conclusion that the wife has left the conjugal company without any reasonable cause. The entire materials available on record have to be looked into when it cannot be in all certainty and definiteness be said that the wife has absolutely no reason to live apart from the husband, in view of the attitude and meticulous allegations made by the husband, then no adverse inference can be drawn against the wife alone.

13. The other circumstances have to be taken into consideration by the Court. In this background it is seen that prior to the marriage there was some discomfort between the petitioner and respondent, which continued even after the marriage

making allegations against each other saying that they are not able to pull on the life together. Therefore, it might have made the wife to live separately. Further added to that the husband has not made any attempts for restitution of conjugal rights. That also shows that he does not want to live with the petitioner. Further added to that, after the wife left the conjugal company there is no material to show that as a dutiful husband the respondent has made any arrangement for her maintenance. When the husband and wife are separated by means of judicial separation or by means of divorce the responsibility lies on the husband to make arrangement for minimum expenditure of the wife. If it is not done, it amounts neglect and refusal to maintain the wife. When reckless allegations are made against each other and not proved before the Court and the wife and husband have misbehaved against each other the Court should consider both, coupled with the husband not filing any petition for restitution of conjugal rights and not making any arrangement for maintenance and then only the Court has to come to the conclusion that there was any neglect and refusal by the husband.

14. Under Criminal procedures, particularly under Section 125 of Cr.P.C., refusal and neglect need not be proved beyond reasonable doubt. But if there are prima facie materials available to show that there was refusal and neglect on the part of the husband the Court has to lean in favour of the wife to avoid vagrancy and driving the wife to lead lawful life or illicit life, that is the main object behind the provision under Section 125 of Cr.P.C.

15. The main object of the provision is to see that vagrancy is avoided and the wife at least leave happily even though she resides separately from the husband when there are no allegation regarding the chastity of the wife. Therefore, in my opinion when some materials are placed before the Court coupled with the object of avoiding the vagrancy and also other unpleasant circumstances occurred to the wife the Court should lean in favour of the wife for the purpose of granting maintenance. The material placed before the Court shows that the wife was not earning as on the date of filing of the petition as it is admitted in the cross-examination by the husband (respondent) and he has categorically stated that the petitioner was removed from the company at Poona and she was not well. At the time of filing of the petition she was not having any income. On the other hand it is admitted that the husband has studied up to PUC and he has also done his Mechanical Diploma and from 1995-1996 he was working as Engineer at Poona and drawing salary of Rs. 1,200/- to Rs. 1,500/- per month at that particular point of time. He has also admitted that 10 to 15 persons were also working under him in his company. It was suggested to him that in the year 2000 he was drawing an amount of Rs. 15,000/- per month, but he denied the same and says that there was deduction of Rs. 3,500/- per month from his salary. He has produced Ex. R4-Salary Certificate before the trial Court, which shows his total earning is Rs. 5,000/- per month and his net pay Rs. 4,309/-. Contrary to that the petitioner has not produced any material to show before the Court what exactly the income of her husband and where actually he is working and that now he is getting income of Rs. 30,000/- per month as alleged by her.

Under the above said circumstances in the absence of any material to show what exactly the income of the husband, but admittedly he is drawing an income of Rs. 5,000/- per month, in my opinion if an amount of Rs. 2,000/- is awarded as maintenance to the wife, at this stage it would suffice considering all the above circumstances and capacity of the wife to do some work and earning some money. However it is tentative amount fixed by the Court. If the wife got any material to show that the husband is earning more than Rs. 5,000/- per month, she is at liberty to move the trial Court under Section 127 of Cr.P.C. for enhancement of the maintenance.

16. Therefore, under the above circumstances, in my opinion, the trial Court has committed serious error in totally discarding evidence of wife and solely relying upon the evidence of the respondent for the purpose of holding that there was no neglect and refusal by the husband and the wife herself has left the conjugal company of the husband voluntary without any reasonable cause. Hence, the order deserves to be set aside. Hence, I proceed to pass the following:

The petition is partly allowed.

The order passed by the trial Court in Crl. Case No. 360/2013 dated 03.06.2015 is hereby set aside. The petition filed by the wife under Section 125 of Cr.P.C. before the trial Court is partly allowed granting maintenance at Rs. 2,000/- per month from the date of filing of the petition before the trial Court, giving liberty to her to approach the trial Court for enhancement on changed circumstances.