
(1981) 06 BOM CK 0006

In the Bombay High Court

Case No : Criminal Revision Application No. 749 of 1980

Padmanna Malkari Mali

APPELLANT

Vs

Bhourawwa Padmanna Mali (Sou.) and Another

RESPONDENT

Date of Decision : 18-06-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (1982) 1 BomCR 438

Hon'ble Judges : S.K. Desai, J

Bench : Single Bench

Advocate : V.B. Rajure and A.B. Nair, for the Appellant; Ajit P. Shah,, B.Y. Deshmukh, Public Prosecutor, for the Respondent

Judgement

S.K. Desai, J.

1.This revision is preferred against the order of the Additional Sessions Judge, Sangli directing the revision petitioner-husband to pay maintenance of Rs. 75/- per month to the 1st respondent-wife from the date of her application u/s 125 of the Criminal Procedure Code i.e. with effect from 29th July, 1975. The petitioner was also required to pay Rs. 200/- as cost of the litigation.

2. Originally, Criminal Case No. 19 of 1975 was filed in the Court of the Judicial Magistrate, First Class, Jath by the wife. The said Judicial Magistrate by his order dated 25th September, 1979 dismissed the application for maintenance. The Magistrate in his order refers to an act by the husband of branding the wife but dismissed it from consideration on the ground that the act was subsequent to the date of the application. With such a husband present before the Court, the Magistrate should have been quick in accepting the other allegations of ill-treatment but on the contrary and rather surprisingly the Magistrate held the allegations of ill-treatment as not proved. The husband was a person who almost in the face of the Court had got the wife to admit his good behaviour by branding her. Such reprehensible conduct makes it extremely likely that this person must have ill-treated the wife earlier.

3. The aggrieved wife carried the matter to the Sessions Court at Sangli and the Criminal Revision Application No. 159 of 1979 was heard by the Additional Sessions Judge, Sangli. He considered whether it was necessary to remand the case but in his opinion, on the evidence, the wife has made out a case in respect of the necessary particulars and hence it was not necessary to direct a remand. I have gone carefully through the two judgments and as already indicated, the approach and the conclusion of the learned Judicial Magistrate, First Class, Jath are superficial, unsatisfactory and unacceptable. As contrasted with this approach, the approach of the Additional Sessions Judge, Sangli is a more satisfactory one. He has discussed the evidence in depth although, it was a criminal revision application, he was entitled to discuss the evidence in depth because of the very curious and cursory approach adopted by the Judicial Magistrate which required the conclusions of the Judicial Magistrate to be totally ignored.

4. It has been submitted before me that there was no evidence to warrant the conclusions of the Additional Session Judge. It has not to be forgotten while dealing with this argument that this is a second revision application. The High Court is not entitled although, it often falls into this error-to deal with it as a first appeal and to reappraise or reappraise the evidence. What is has to see is whether there is any material irregularity or error of law requiring correction. There appears to be none.

5. Finally, it has been submitted that the wife in her application had not averred that she was not able to maintain herself and that this disentitles the Court from awarding any maintenance. In this connection, it may be mentioned that the wife had given evidence before the trial Court i.e., the Judicial Magistrate. The learned Additional Sessions judge in para 11 of his judgment has considered this evidence and accepted the same. There is no warrant for holding the view that the statements given by the parties on oath do not constitute evidence. Further, the wife had submitted herself to cross-examination. When she gave evidence, it was open to the husband through cross-examination to prove that she was capable of maintaining herself. Obviously, the husband has failed to substantiate this.

6. My attention was drawn to a judgement of a Single Judge of this Court in Smt. Kamlabai v. Keshav Pandharinath, 1979 Bom.C.R. 169. The head note on which the reliance was placed reads as follows :

"If the petitioner has failed to aver and then has failed to prove that she is unable to maintain herself, it was not permissible to award maintenance to her."

If para 3 of the said judgement is properly perused, it is clear that in that case there was a dual default, namely, a failure to make the necessary averment and additionally a failure to depose by the wife or her witnesses about her inability to maintain herself. Certainly, where there is no averment nor any evidence altogether on this point , the award of maintenance will be required to be

quashed. In our case, however, even assuming that there is a failure to make the necessary averment in the application, the wife has stepped at the witness box and given evidence. Her evidence has been duly considered by the Additional Session Judge in para 11 of his order earlier adverted to and be accepted the same. The husband failed to dislodge this evidence by cross-examination or by the other evidence. In this circumstances, the decision in Kamlabai's case has no application. I find, no substantial point. Hence rule is discharged and stay granted is directed to stand vacated.