

(2015) 03 BOM CK 0059

In the Bombay High Court

Case No : Criminal Revision Application No. 3 of 2015 and Criminal Writ Petition No. 14 of 2015

Rajan Sagun Wadkar

APPELLANT

Vs

Roshani Rajan Wadkar and Others

RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2015) ALLMR(Cri) 4762

Hon'ble Judges : C.V. Bhadang, J.

Bench : Single Bench

Advocate : Ashwin D. Bhobe, for the Appellant; Smita Gawas, Advocates for the Respondent

Judgement

C.V. Bhadang, J.—Rule. Rule made returnable forthwith. Heard finally with the consent of the parties. Both these cases are between the same parties. They involve common and connected questions. As such, they are being disposed of by this common judgment.

2. Mrs. Roshani Wadkar, the petitioner in Criminal Writ Petition No. 14/2015 has filed an application for maintenance under Section 125 of the Code of Criminal Procedure (Cr.P.C., for short), which is pending before the learned Judicial Magistrate First Class, Bicholim. The petitioner, Mrs. Roshani Wadkar has claimed maintenance of Rs. 15,000/- per month for herself and for her two minor children, who are Petitioners No. 2 and 3. The maintenance is claimed against the respondent, Mr. Rajan Wadkar. It is the case of the petitioner-wife that she was married with the respondent on 27.10.1994 and thereafter the marriage was solemnized as per the Hindu Religious Rites and Customs on 16.04.1995. After her marriage, she went to reside with the respondent and stayed for 15 days. According to her, during this period, she was ill-treated by her in laws, which compelled the applicant-wife to leave the matrimonial house. She thereafter started residing in a rented house in the same locality. The original applicants no.

2 and 3 are born out of the wedlock and they are taking education. The respondent-husband is working in Canara Bank as a Peon and is drawing a salary of Rs.35,000/- per month. According to the petitioner, she has been deserted by the respondent-husband and she has no means to maintain herself and the minor children. On the contrary, the respondent has liability to maintain them and has means to do so. It was also mentioned that he has no other dependents and in such circumstances, maintenance of Rs.15,000/- per month was claimed.

3. It appears that the original applicants filed an application for interim maintenance. The learned Magistrate by order dated 30.08.2013 granted interim maintenance of Rs. 1,870/- per month, to all the three applicants. The applicant-wife challenged the order dated 30.08.2013 before the learned Additional Sessions Judge, Mapusa being Criminal Revision Application No. 110/2013. The learned Additional Sessions Judge, by judgment and order dated 05.11.2014, has partly allowed the revision application directing the respondent-husband to pay maintenance of Rs. 4,500/- (Rs. 1,500/- each) per month to the original applicants from 23.11.2012 until further orders alongwith costs of Rs.500/-. The learned Additional Sessions Judge has taken into consideration the salary certificate of the respondent-husband produced on record and after considering the various deductions found that the gross salary was Rs.18,577.67 and on mandatory deduction of Rs.945/- towards provident fund, the respondent is said to be earning Rs.15,000/- per month. The learned Sessions Judge also placed reliance on the decision in the Case of "Anita Anand Tambe and Another Vs. State of Maharashtra and Another", 2007 (2) Bombay CR (Cri.) 227, in order to hold that normally one third of the net salary could be awarded as maintenance to the destitute wife. Feeling aggrieved, the respondent-husband has filed Criminal Revision Application No. 3/2015. Criminal Writ Petition No. 14/2015, is filed by the original applicants claiming enhancement in the maintenance amount.

4. I have heard the learned Counsel for the parties. With the assistance of the learned Counsel for the parties, I have perused the records and the impugned judgment and order passed.

5. It is submitted by Ms. Gawas, learned Counsel for the original applicants that the respondent is serving in a Nationalized Bank as Peon and he is a permanent employee. It is submitted that there are no dependents on him except the applicants. It is submitted that the respondent-husband has deserted the applicant-wife and she is compelled to stay separate alongwith the minor children, who are taking education. It is submitted that looking to the rising prices, it is difficult for the applicants to meet the day to day expenses and the necessary expenses of education and welfare of the minor children. The learned Counsel for the original applicants has also disputed the correctness of the salary certificate produced on record. It is submitted that the salary certificate does not depict the correct salary and the respondent-husband is earning Rs.35,000/-. It is submitted that even otherwise, the various deductions cannot be said to be mandatory deductions, inasmuch as these deductions are made towards various

loans/advances obtained by the respondent-husband including the housing loan and the welfare loans etc. It is submitted that being an able bodied person, the respondent is under legal obligation to maintain the applicants and the quantum of maintenance should be such, so as to enable the parties to lead a life of the standard commensurate with the respondent. It is submitted that maintenance be enhanced.

6. Mr. Bhobe, the learned Counsel for the respondent-husband submitted that the salary certificate is from a Nationalized Bank and in the absence of any material to the contrary, at this stage, it cannot be discarded. It is submitted that after various deductions, the net salary comes to Rs. 5,670/- only. It is submitted that in such circumstances, the learned Additional Sessions Judge was not justified in enhancing the amount of interim maintenance to Rs.4,500/- per month. The learned Counsel submitted that no distinction could be made between mandatory/statutory deductions and deductions towards the loan amounts. It is submitted that net salary of the respondent-husband at present would not be sufficient to pay the maintenance as awarded. It is also submitted that the various loans are taken by the respondent for the betterment of the property.

7. I have considered the rival circumstances and the submissions made. At the outset, it needs to be mentioned that the application for maintenance filed by the applicant-wife is still pending before the learned Magistrate. The present Criminal Writ Petition is arising out of an interim order. It was also stated by the learned Counsel for the applicant-wife, that the matter before the learned Magistrate is pending at the stage of recording the evidence. As such, it would be appropriate, that the parties get an opportunity to lead oral as well as documentary evidence in support of their respective stand so that they get an opportunity to establish their case before the learned Magistrate. Prima facie, at this stage, it appears that the respondent-husband is serving in a Nationalized Bank and the certificate which is produced at page 101 in Criminal Revision Application No. 3/2015 shows that apart from the housing loans there are other deductions including towards LIC, SWF and SPF loans and the net income is shown as Rs.5,670/-. However, at this stage it appears that the salary certificate is dated 27.06.2013 and thereafter the respondent is bound to have obtained certain increments. It is difficult to express any final and binding opinion inasmuch as the application for maintenance is still pending before the learned Magistrate. It is suffice to mention that the applicant-wife would get an opportunity to contest the correctness of the salary certificate by leading appropriate evidence before the learned Magistrate and at the same time, the respondent-husband could establish his defence, if any and then, the learned Magistrate can pass appropriate orders in the light of the evidence led by the parties.

8. Insofar as the quantum of the interim maintenance to be granted is concerned, the learned Additional Sessions Judge in paragraph 21 of the impugned judgment dated 05.11.2014 has reproduced various deductions as set

out in the salary certificate. However, the learned Additional Sessions Judge has only taken into consideration the deduction of Rs.945/- towards provident fund on the ground that it is the mandatory deduction and has come to the conclusion that the respondent-husband is earning Rs.15,000/- per month. The learned Sessions Judge has relied upon the case of "Anita Anand Tambe" (supra) and awarded maintenance of a little less than one third of Rs. 15,000/- i.e. Rs. 4,500/- per month. At this stage, prima facie it appears that the major deductions are on account of SWF loan and festival advance apart from the housing loan. An amount of Rs. 1,500/- is also shown as deduction under miscellaneous head. It is not clear at this stage as to what is the nature of the head under which the said deductions are to be made. It is submitted by the learned Counsel for respondent-husband that the respondent is claiming that his mother is also dependent on him.

9. In the result, I find that it would be appropriate that the respondent-husband is directed to pay the maintenance at the rate of Rs.4,000/- per month to the original applicants by way of interim maintenance during the pendency of the main application. The impugned order is modified to that extent. In the result, the following order is passed:

- (a) The Criminal Revision Application No. 3/2015 is partly allowed.
- (b) The impugned judgment and order dated 05.11.2014 is modified.
- (c) The respondent-husband shall pay the interim maintenance of Rs.4,000/- per month to the original applicants from 23.11.2012, during the pendency of the application before the learned Magistrate.
- (d) The learned Magistrate shall decide the Maintenance Application No. 05/2012/ B as expeditiously as possible and preferably within a period of six months from today.
- (e) The respondent-husband is directed to clear the arrears as awarded.
- (f) Parties shall appear before the learned Magistrate on 26.03.2015.
- (g) The Criminal Writ Petition No. 14/2015 is accordingly dismissed.
- (h) Rule is made absolute in the aforesaid terms with no order as to costs.