

(2009) 01 BOM CK 0055

In the Bombay High Court

Case No : Criminal Writ Petition No. 305 of 2008 and Criminal Application No's. 209 and 210 of 2008

Ranjeeta Balsekar, Raj Balsekar and Deepti

APPELLANT

Vs

Deepak Balsekar and The State of Maharashtra

Deepak Balsekar Vs Ranjeeta Balsekar

RESPONDENT

Date of Decision : 30-01-2009

Acts Referred:

Constitution of India, 1950 — Article 15(3), 39

Criminal Procedure Code, 1973 (CrPC) — Section 125, 397

Citation : (2009) 111 BOMLR 823

Hon'ble Judges : V.R. Kingaonkar, J

Bench : Single Bench

Advocate : U.S. Malte, in Criminal Writ Petition No. 305 of 2008 and Ram. B. Deshpande, in Criminal application Nos. 209 and 210 of 2008, for the Appellant; Ram. B. Deshpande and S.S. Autade, APP in Criminal Writ Petition No. 305 of 2008 and U.S. Malte in Criminal Application Nos. 209 and 210 of 2008, for the Respondent

Judgement

V.R. Kingaonkar, J.—Both the applications and the above referred writ petition are being disposed of together inasmuch as they arise out of common judgment rendered by learned Sessions Judge, Nanded in Criminal Revision Petition Nos. 104/2007 and 138/2007 interse parties.

2. By the impugned judgment, the learned Sessions Judge partly allowed criminal revision Petition No. 104/2007 filed by Ranjeeta and others. She was granted maintenance allowance @ Rs. 800/- per month from date of order of the learned Judicial Magistrate. Whereas, request for enhancement of maintenance allowance in respect of the children was turned down and the criminal revision petition No. 138/2007 filed by Deepak was dismissed.

3. Admittedly, Ranjeeta and Deepak entered wedlock on 17th June 1997. It was a registered marriage under provisions of the Special Marriage Act. The couple resided together at residential house of Deepak after the marriage. They were

blessed with twins, namely, Raj and Deepti, on 01.08.1998. The marriage still subsists though the spouses have fallen apart. Both the minor children are with their mother - Ranjeeta. The husband - Deepak is an advocate. He practices in civil and criminal courts at Parbhani. Mother and foster father of Ranjeeta are residents of Nanded.

4. The wife and children filed application u/s 125 of the Criminal Procedure Code for separate maintenance allowance. They asserted that Deepak and his family members started ill-treatment to the wife on account of non payment of dowry. She was ill-treated by her husband. He had beaten her up and lastly, on 12th June 2005, attempted to kill her. He drove her out of the matrimonial home. She complained to police but could not get protection. His family members and Deepak too do not like the children. He has refused to maintain them. He is having a posh residential house in Shivaji Nagar locality, Parbhani. He earns Rs. 25,000/- per month, as a practicing lawyer. She and the minor children are, however, unable to maintain themselves. Consequently, they sought separate maintenance allowance @ Rs. 1,500/- per month.

5. By filing his written statement (Exhibit-6), the husband resisted the application. According to him, he never ill-treated or neglected the wife and children. He asserted that she left his house on her own accord in the morning of April 29th, 2000, along with gold ornaments and her personal effects. She insisted that he shall reside with her mother at Nanded. He was not ready to do so. He contended that the wife is employed in a spinning mill as well as in a cooperative bank. He also contended that she is able to maintain herself because she gets emoluments of Rs. 10,000/- per month. Her foster father, by name Kishanrao Varkhinde is a politician and director of Raigad Nagari Cooperative Credit Society Ltd., Nanded. She and her mother are also directors of the said cooperative credit society. It is for such reason that they wanted him to migrate to Nanded and to start practicing in the courts at Nanded. He did not agree to the proposal for such migration. Therefore, she left his company without any substantial reason. He denied the averments that he earns monthly income of Rs. 25,000/- from his legal practice. He submitted that his monthly income is approximately Rs. 2,500/- to Rs. 3,000/-. He was ready and willing to maintain the wife and children, yet they filed false proceedings against him. On these premises, he denied liability to pay maintenance allowance to them.

6. At the trial, the wife entered witness box in support of the application. The husband also entered witness box along with his brother's wife - DW-2 Pooja in support of his defence. On merits, the learned Judicial Magistrate came to the conclusion that the wife left company of the husband without any substantial reason. She was able to maintain herself. The learned Magistrate, therefore, dismissed the application to the extent of the claim of the wife - Ranjeeta. The application was partly allowed and both the minor children were awarded separate maintenance allowance @ Rs. 800/- per month.

7. Feeling aggrieved, the spouses preferred the two revision applications. The

wife and children sought revision of the order in respect of dismissal of the wife's application and about quantum of maintenance allowance awarded to the children. According to them, the application should have been fully allowed and each of them was entitled to get Rs. 1500/- per month by way of maintenance allowance. The husband - Deepak sought revision of the order of learned Magistrate in respect of quantum of maintenance allowance granted in favour of the minor children.

8. Both the revision petitions were heard together by the learned Sessions Judge. The learned Sessions Judge came to the conclusion that the wife duly proved the fact that she was neglected by the husband and further he refused to maintain her. The learned Sessions Judge further held that the wife was entitled to claim separate maintenance allowance from the husband @ Rs. 800/- per month likewise the children. The learned Sessions Judge held that quantum of maintenance allowance awarded to the children was proper and fair. The version of the husband was discarded by the learned Sessions Judge.

9. Challenging the above judgment, the husband has filed criminal applications No. 209/2008 and 210/2008 whereas the wife and children have filed writ petition No. 305/2008.

10. Heard learned Counsel for the parties.

11. Before I proceed to examine the relevant issues involved in the matter, it may be mentioned that an attempt was made for reconciliation but the same fizzled out. The ground reality in such cases is that the spouses often attempt to exaggerate their cases in all respects. The attempt of the wife is to exaggerate actual income of the husband. His attempt, on the other hand, is to conceal the real income and to show it as low as possible. It is well settled that the proceedings u/s 125 of the Code of Criminal Procedure are of quasi civil and quasi criminal nature. The order passed in an application u/s 125 of the Code of Criminal Procedure does not finally determine the rights and obligations of the parties. The relevant provision is enacted with a view to provide summary remedy for enabling the deserted wife and children to claim separate maintenance allowance. The object of Section 125 of Criminal Procedure Code is to ensure social justice. The Apex Court in Savitaben Somabhai Bhatiya Vs. State of Gujarat and Others, succinctly illustrated the intention of the Parliament while enacting Section 125 of the Criminal Procedure Code. It is observed:

The provision is enacted for social justice and specially to protect women and children as also old and infirm poor parents and falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution. The provision gives effect to the natural and fundamental duty of a man to maintain his wife, children and parents so long as they are unable to maintain themselves.

12. There cannot be duality of opinion that ordinarily the revisional court will not reappreciate the evidence of the parties. The Revisional Court, however, would be justified to interfere in the Magistrate's order when a good case is made out

to show that there is element of perversity in appreciation of evidence or the learned Magistrate recorded certain finding without any material or misinterpreted the evidence. I have gone through the judgment of both the courts below. The learned Judicial Magistrate relied upon copy of a certificate (Exhibit-43) which indicated that Ranjeeta was in employment of Raigad Nagari Sahakari Patsanstha, Nanded till 31.08.2003. The letter disclosed that she was a temporary servant and was being paid salary of Rs. 700/- per month. It was on basis of such document (Exhibit-43) that the learned Magistrate held that she was able to maintain herself. Nextly, the learned Magistrate considered that her name was enrolled in the voters list (Exhibit-49) pertaining to Nanded Constituency for the year 2002. She had registered herself on 15.02.2003 at employment exchange, Nanded. The learned Magistrate also noted that on a Calender of the year 2000, she had written words "Man Kyu Baheka" (_____) which indicated that in April 2000 she was inclined to leave house of the husband. On the basis of such evidence, the learned Magistrate came to the conclusion that she must have left house of the husband on 29.04.2000, as stated by him. Hence, she was found not entitled to claim separate maintenance allowance from the husband.

13. The learned Sessions Judge noticed the fact that there is no tangible evidence on record to show that the wife was duly employed after 31st August 2003. He noticed that she is educated only up to 12th Standard. He further noticed that no attempt was made by the husband to take back the wife and children. Nor he gave any maintenance allowance to them. Mere fact that some words were scribbled on the Calender of 2000 against month of April by itself could not be indicative of her intention to abandon the matrimonial home. The learned Sessions Judge came to the conclusion that she had no reason to reside separately when the twins were quite minors and she was not gainfully employed.

14. Coming to the version of the parties, it may be gathered that practically, there is oath against oath. Though DW-2 Pooja was examined in support of defence of the husband, yet her version is of no avail. I mean to say, her version has no probative value. She is his brother's wife. Her interest in his defence is writ large from her version. She admitted, unequivocally, that she and her husband used to reside at Kolhapur from 1992 till the year 2000 and thereafter they are residing at Pune. It is obvious that she could not have much personal knowledge about the matrimonial relations between the spouses.

15. At this juncture, it may be noticed that the version of DW-1 Deepak is to the effect that on 28.04.2000 the wife quarrelled with him, abused him and told him that she was unable to maintain the children. He states that on next day she left his home, leaving back the minor children with him. He relied upon the endorsement on the Calender of 2000 and asserted that she had scribbled the words "Man Kyu Baheka" (_____). The so called endorsement on the Calender (Exhibit-47) is of no much significance. It is explicit that the husband attempted to make mountain out of a molehill. He could not explain the reason

for such kind of quarrel, which resulted into serious consequence of her leaving the matrimonial home. It has come on record that subsequently foster father of the wife- Ranjeeta was required to get back custody of the minors with intervention of some workers of Maratha Mahasangh. Had she not desired to maintain the minors, then she would not have made serious attempt to get back custody of the minor children.

16. The fact that name of Ranjeeta was shown in electoral roll of 2002 for Nanded Constituency is also of not much significance. The version of Deepak is to the effect that Ranjeeta is employed in a spinning mill at Nanded. He deposed further that she owns house property and has let out the same. There is no iota of evidence on record to show that she is owner of a house property at Nanded or that she is employed in Sambhaji Maharaj Spinning Mill.

17. Cross examination of DW-Deepak would unmistakably show that he resides in a spacious house situated in Shivaji Nagar locality at Parbhani. His brother is also a practicing lawyer. He did not specify the reason why the newly married girl could have taken such a drastic step to leave the matrimonial home without much reason. In the cross-examination of PW-Ranjeeta, it was suggested to her that sister of Deepak was married in the year 2002 and thereafter she use to reside with him, his brother and mother. She admitted this fact as suggested to her. The tenor of such suggestion would make it manifest that even after 2002 she was residing with the husband, his brother and mother in the common house. The record shows that one brother of Deepak is residing at Pune. He and another brother, who too is a lawyer, are residing in the common house along with their mother. The above referred suggestion during cross-examination of PW-Ranjeeta would blow up the allegation that she had left his house in April 2000. What transpires from the record is that she could secure some temporary job and use to commute to Nanded from Parbhani for attending the job. Judicial notice can be taken of the fact that Nanded and Parbhani are on railway track and there are trains which facilitate the commuters to daily up-down from either station. Considering these facts, the appreciation of evidence as done by the learned Judicial Magistrate was irrational and, therefore, the learned Sessions Judge was justified while interfering with the findings about cause of leaving of the matrimonial home by Ranjeeta. Her evidence purports to show that Deepak had started making unlawful demand. She deposed that she was mal-treated by him and was driven out of the matrimonial home. The learned Sessions Judge is right in holding that such a young woman would not have left the matrimonial home without compelling circumstances.

18. On behalf of the husband - Deepak, learned advocate Mr. Ram Deshpande invited my attention to judgments of Single Benches of this Court in "Sindhubai w/o Ravindra Magar v. Ravindra s/o Vishwanath Magar" 2002 (1) B.Cr.C 103, "Sayyed Jabbar Ali s/o Sayyed Ahmed Ali v. Saheba Fatima w/o Sayyed Jabbar Ali" 2002 Bom C.R. 425 and "Sanjay Sudhakar Bhosale v. Khristina w/o Sanjay Bhosale" (Cri. Rev. Application No. 226/2002). He also invited my attention to

judgment of the Apex Court in "Deb Narayan Halder v. Anushree Halder" 2004 (1) Bom. C.R. 949. In the peculiar fact situation obtained in the first three cases, this Court held that where the wife had left the matrimonial home without justifiable cause, she was not entitled to maintenance allowance and that scope of Section 397 of the Criminal Procedure Code was explained. In Deb Narayan Halder's case, the Apex Court came to the conclusion that after several years of happy stay in the matrimonial house, the wife had left that house and the learned Magistrate as well as the Sessions Judge had concurrently held that she was not entitled to separate maintenance allowance. It was held that the High Court erred in interfering with the finding on conjectures on basis of a case which was not pleaded and proved by the parties. These cases are distinguishable on facts. There are cases and cases. Herein, there is absolutely nothing on record, except and save bald version of Deepak that wife insisted him to reside with her mother and migrate to Nanded for his legal profession. It is highly improbable that she would have quarrelled with him for the reason that she was unable to look after the minor children. As pointed out before, he himself suggested to her that after the marriage of his sister in 2002, she was residing together with his mother and brother in the common house. It need not be reiterated that he tried to use scribbling on the Calender out of proportion, may be due to suspicion entertained by him. I am told that the words are borrowed from a Hindi song of some movie.

19. Even assuming for a moment that wife - Ranjeeta is employed still it cannot be said that she is disentitled to claim maintenance allowance. In "Chatrubhuj v. Sitabai" AIR 2007 SCW 7416 the Apex Court held that where the personal income of the wife is insufficient, she can claim maintenance u/s 125 of the Criminal Procedure Code. The expression "unable to maintain herself" would mean unable to maintain herself in the way she was living with her husband. A meagre amount of Rs. 700/- per month could not have been regarded by the learned Magistrate as sufficient means to infer that she was able to maintain herself. It is explicit that DW-Deepak (husband) attempted to suppress his real income. It may be gathered from the record that his income might be approximately Rs. 10,000/- per month. He states that he is required to maintain his mother and brother out of his own income. His brother is adult and legal professional. Therefore, his only legal liability is to maintain the mother.

20. The learned Sessions Judge seems to have committed patent error while refusing the claim for maintenance allowance from date of the application. The learned Sessions Judge observed that having regard to the object of Section 125 of the Criminal Procedure Code, the wife is entitled to claim maintenance allowance from date of order rendered by the Judicial Magistrate i.e. from 05.07.2007 though the application was filed on 25.01.2005. I find it difficult to appreciate such kind of reason assigned by the learned Sessions Judge. Ordinarily, maintenance allowance ought to be granted from date of the application. It is only in special circumstances and for sufficient reasons that the maintenance allowance may be granted from any subsequent date. The learned

Sessions Judge should not have deviated from the normal requirement of law to grant maintenance allowance from date of the application. Secondly, there is no justification as to why the maintenance allowance is awarded only @ Rs. 800/- per month. Needs of Ranjeeta must be much more than the needs of the minors. Even so, each of them is granted maintenance allowance at the same rate i.e. Rs. 800/- per month. In my opinion, even though she may be able to earn meagre income of about Rs. 700/- to Rs. 800/- per month then also she is entitled to receive at least Rs. 1,200/- per month by way of separate maintenance allowance. However, concurrent finding of both the courts below in respect of quantum of maintenance allowance awarded to the minor children does not call for any interference.

21. For the reasons aforesaid and having regard to the totality of the circumstances, I have no hesitation in holding that the criminal applications filed by Deepak (Criminal Applications No. 209/2008 and 210/2008) are without substance. However, the criminal writ petition No. 305/2008 filed by Ranjeeta and others will have to be partly allowed to the extent of quantum of maintenance allowance awarded to petitioner Ranjeeta. Hence, criminal applications No. 209/2008 and 210/2008 are dismissed whereas criminal writ petition No. 305/2008 is partly allowed. The impugned judgment is modified. Petitioner Ranjeeta is entitled to receive maintenance allowance @ Rs. 1,200/- per month from Deepak. The minor petitioners would be entitled to receive Rs. 800/- per month each as held by both the courts below. They all shall be entitled to receive such separate maintenance allowance from date of their application filed in the court of learned Judicial Magistrate (FC), Nanded i.e. w.e.f. 25th January 2005 onwards. The husband - Deepak shall pay costs of both the petitions to Ranjeeta and others which are cumulatively quantified at Rs. 7500/- and shall bear his own.