

(1997) 02 BOM CK 0053

In the Bombay High Court

Case No : Criminal Writ Petitin No. 630 of 1995

Sai Sudha @ Ranjana R. Patil

APPELLANT

Vs

Shri Rajkumar Deoganda Patil and another

RESPONDENT

Date of Decision : 03-02-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (1998) BomCR(Cri) 33 : (1998) 2 DMC 417 : (1997) 2 MhLj 250 : (1997) 4 RCR(Criminal) 419

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Advocate : D.S. Mhaispurkar, app, S.V. Marwadi and A.P. Mundargi, for the Appellant; Vineet Naik, for the Respondent

Judgement

D.G. Deshpande, J.—Heard Mr. A.P Mundargi, Advocate for the petitioner. Nobody is present for respondent No. 1

2. The petition is filed by the wife against the order of the IInd Additional Sessions Judge, Kolhapur dt. 17-2-1995 by which the Revision filed by the respondent-husband was allowed and order of the Magistrate dt. 15-10-94 granting maintenance of Rs. 150/- to the petitioner wife was set-aside.

2. Mr. Mundargi argued the matter at 3 O'clock and waited for Mr. Naik to come in the Court but till 4 O'clock nobody appeared for respondent No. 1 and, therefore, i am passing this order on merits.

3. The Judicial Magistrate, First Class has accepted the case of the wife and granted maintenance at Rs. 150/- per month from 5-1-1993. The Additional Sessions Judge set-aside this order only on the ground that respondent was admittedly a blind person and was not able bodily and as such was not capable of maintaining his wife and children.

4. On the face of it this finding is wrong because section 125 of Cr.P.C. nowhere lays down that only an able bodied husband will be bound to maintain his wife.

Section 125 speaks of the inability of the wife to maintain herself and does not speak about physical capacity or earning capacity of the husband to maintain himself or his wife or children.

5. Secondly, even though respondent is blind his entering into marriage with the petitioner is itself indication that he has undertaken to maintain the petitioner-wife. It is the first responsibility of a Hindu husband to maintain his wife and has nothing to do with his capacity, physical disability and therefore even though it is proved that the husband has no apparent source of income he can be made liable to pay maintenance to his wife who is unable to maintain herself and to whom the husband has refused or neglected to maintain.

6. Considering this legal provision the Judicial Magistrate, First Class was justified in granting maintenance to the wife. The Magistrate also took note of the fact that the respondent-husband had immovable property in his name but he transferred the same in the name of his father just before the wife filed the petition for maintenance. This fact clearly shows that the respondent-husband though blind is clever enough to take steps to protect his property from the legal crutches. May be that wife has failed to prove that building was fetching rent of Rs. 1,000/- per month but it will be a fact that before the property was transferred by the respondent it was fetching some rent to the respondent.

7. For all these reasons both the findings of the Additional Sessions Judge are liable to be set-aside, consequently the impugned order is liable to be quashed.

8. Mr. Mundargi urged that amount of maintenance of Rs. 150/- was not at all a reasonable maintenance considering the initial liability of the husband to maintain his wife and considering the property that was standing in the name of respondent. He, therefore, prayed that atleast an amount of Rs. 300/- be given to the wife towards the maintenance. I do not find that this is an unreasonable demand by wife in the background of the sky-high prices of index and cost of living. I, therefore, pass the following order :--

ORDER

The impugned order of the Additional Sessions Judge, Kolhapur dated 17-2-1995 is set-aside. The order of maintenance passed by the Judicial Magistrate, First Class, Kolhapur dated 15-10-1994 is upheld subject to modification that the respondent-husband will pay maintenance of Rs. 150/- from 5-1-1993 till 31st December, 1996 and will pay Rs. 300/- per month from 1st January, 1997 regularly and continuously. The respondent is given three months time to pay all the arrears.

Respondent to pay Rs. 500/- towards costs.

9. Appeal allowed.