
(2015) 02 BOM CK 0320

In the Bombay High Court

Case No : Criminal Writ Petition No. 521 of 2002

Sangita Sudhir Mhaske

APPELLANT

Vs

Sudhir Bhausahab Mhaske and Others

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2015) ALLMR(Cri) 2570

Hon'ble Judges : V.M. Deshpande, J

Bench : Single Bench

Advocate : Madhuri Kakade, for the Appellant; S.L. Bhapkar, Advocates for the Respondent

Final Decision : Allowed

Judgement

V.M. Deshpande, J—The present petition is filed against the orders passed by the learned Judicial Magistrate, First Class, Ahmednagar, dated 13.10.1999 in Criminal Miscellaneous Application No. 61 of 1999, together with the judgment and order passed by the learned Additional Sessions Judge, Ahmednagar in Criminal Revision Application No. 23 of 2002 dated 29.6.2002, whereby both the courts below dismissed the application for grant of maintenance filed on behalf of the present petitioner under Section 125 of the Code of Criminal Procedure. The parties will be referred as the husband and the wife in the present judgment for the sake of convenience.

2. I have heard Ms. Madhuri Kakade, learned counsel for the petitioner/wife and Shri S.L. Bhapkar, learned counsel for respondent No. 1/husband in extenso. With their able assistance, I have gone through the record and proceedings which are made available for perusal.

3. On 12.2.1999, an application was presented by the wife in the court of Judicial Magistrate, First Class at Ahmednagar under Section 125 of the Criminal Procedure Code for grant of maintenance. The said application was registered as

Criminal Application No. 61 of 1999.

The wife has asserted in the said application that her marriage was solemnized on 30.4.1998. Since then, the relations between them remained as husband and wife. It was further asserted that the husband gave good treatment to the wife for a period of two months only. Thereafter the wife was subjected to all sorts of physical abuses. A demand was made for Rs. 50,000/-. She was abused by the husband that she is insane. It was further asserted in the application that the husband used to disclose his intention that he does not want to cohabit with her and he demanded divorce from her. With a hope that the circumstances and the situation will improve, the wife continued to suffer such atrocious acts upon her, however, ultimately she was driven out of her matrimonial house by the husband.

The wife asserted in the application that the husband is having 30 acres of both the irrigated and unirrigated land and is having sufficient means to provide the maintenance. With these assertions, a prayer for monthly maintenance of Rs. 1,500/- was made.

4. On being summoned, husband appeared and filed his written statement. The said written statement is at Exh. 9. In the said written statement, the husband asserted:--

5. The parties entered into witness box in order to substantiate their respective pleadings.

6. The learned trial Magistrate vide judgment and order, dated 13.10.1999 dismissed the application filed on behalf of the wife on the ground that the wife on her own left her matrimonial house and thereby she cannot claim maintenance from the husband.

The said order of dismissal was carried by the wife before the Revisional Court, however, revision of wife suffered the same date and it was dismissed on 29.6.2002.

7. The short question, that is posed to this court, is as to whether the wife is disentitled to claim maintenance from the husband, as she has left her matrimonial house on her own as claimed by the husband.

8. In the application, the wife has specifically asserted that the husband used to call her as mad and insane.

Learned counsel Shri Bhapkar submitted that much weightage cannot be given to this assertion, because in common parlance in between the husband and the wife such words are uttered in the nature of teasing. Therefore, the learned counsel tried to mould the accusation as teasing in between husband to wife.

In the preceding paragraph of this judgment, the relevant portion of the written statement is already reproduced. From the said portion it shows that the tenor of the words used in the written statement cannot be termed as teasing as suggested by the learned counsel.

9. When serious accusations are made by the husband against the wife, then unless those serious accusations are duly proved, the said accusations by themselves will be mental cruelty.

In the present case, though the accusations were so serious, the husband did not produce any record to prove his accusations about the ill-health of wife. On the contrary, in cross-examination the husband has admitted as under:--

"Applicant has disease to her right ear. I have no any certificate of disease to ear of applicant. I had tried to give her medical treatment in hospital but she refused to take it. I have no certificate to show that the applicant is insane. I had tried to show her in mental hospital but she refused."

10. Now, from the afore said evidence, it appears, if one has to believe the husband that he has taken necessary steps for providing medical treatment, what prevented the husband to file all those documents on record? If really, the wife was taken for medical treatment to the doctor, then the medical papers in that respect could have easily been procured by the husband and he could have filed the same on record to substantiate his allegations/accusations. In absence of any proof against such serious allegations, the accusations made by the husband remained uncorroborated. Not only that the allegations remained uncorroborated, but the assertions on the part of the husband is ill-founded and those allegations are made only to deprive and deny the just claim of the wife to get the maintenance.

11. All these aspects were not at all considered by the learned courts below. Therefore, it is evident that miscarriage of justice has been done at the hands of both the courts below.

12. When the application for maintenance was pending, on 18.9.1999 the wife carried amendment in her application and claimed monthly maintenance at the rate of Rs. 1,500/- instead of Rs. 500/- per month and said amendment was granted by the learned Magistrate. The said order was not challenged by the husband. Looking to the fact that the petitioner is member of a joint family and family holds 30 acres of irrigated land, an amount of Rs. 1,500/- per month in favour of the wife will be just the amount for her maintenance.

Further it is not the case of the husband that the wife on her own could have maintained herself. In absence of anything on record, it is clear that the wife was dependent on her parents. In that view of the matter, the present Revision needs to be allowed. Hence, I pass the following order.

ORDER

(i) Criminal Writ Petition is allowed.

(ii) The order passed by the Judicial Magistrate, First Class, Ahmednagar, dated 13.10.1999 in Criminal Miscellaneous Application No. 61 of 1999, together with the judgment and order, passed by the Additional Sessions Judge, Ahmednagar

in Criminal Revision Application No. 23 of 2002, dated 29.6.2002 are hereby quashed and set aside.

(iii) Criminal Miscellaneous Application No. 61 of 1999 filed by wife is hereby allowed.

(iv) The husband/respondent is directed to pay maintenance of Rs. 1,500/- per month from the date of filing of the application i.e. from 12.2.1999.

(v) The arrears of maintenance shall be paid by the husband within a period of two months from today.

(vi) Rule is made absolute in the above terms.