

(2015) 01 BOM CK 0227

In the Bombay High Court

Case No : Criminal Revision Application No. 155 of 2002 and Criminal Writ
Petition No. 236 of 2002

Sanjay Pulsing Sisodia

APPELLANT

Vs

Sangita and Others

RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Adoptions and Maintenance Act, 1956 — Section 18

Citation : (2015) ALLMR(Cri) 1296 : (2015) 3 DMC 783

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

Bench : Single Bench

Advocate : K.C. Sant, for the Appellant; J.K. Bansod, h/for S.P. Brahme,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.M. Deshpande, J.

1. Since Criminal Revision Application as well as Writ Petition arises out of the common judgment of the learned revisional court and between the same parties, therefore, they are decided by this common judgment. Both the Criminal Revision Application as well as Writ Petition are filed by Sanjay Pulsing Sisodia - husband against Sangita W/o. Sanjay Sisodia - wife and Kum. Priyanka and Kum. Pooja - daughters. Hereinafter parties will be referred as husband, wife and daughters for the sake of convenience.

2. Heard Mr. K.C. Sant, learned counsel for the husband and Mr. J.K. Bansode, learned counsel for the wife and daughters, in extenso.

3. Wife and daughter were required to approach the court of the learned Magistrate by filing an application under Section 125 of the Code of Criminal Procedure, seeking maintenance allowance from the husband. Their application was registered as Cri. M.A. No. 72/1997 on the file of the Judicial Magistrate,

First Class, Sindhkheda, Dhule. The application discloses that marriage between the couple was solemnized prior to six years of filing of the application under Section 125 of the Code of Criminal Procedure. From the wedlock, two daughters were born. The daughters are residing with the wife. It was stated in the application that though for initial period, there was good treatment to the wife, subsequently, she was subjected to cruelty. However, the wife with the hope to change the situation and circumstances continued to reside with the husband. Ultimately, on 3rd March, 1996 the husband and his family members, against the wish of wife, drove her away alongwith the daughters from the matrimonial house. Attempt to reconcile from father of the wife was failed.

4. On 30th June, 1996 father of the wife tried to reach the wife and daughters in the matrimonial house however, they were not allowed to take entry. On 7th July, 1996 husband published false notice against the wife. Said notice was replied by the wife that she is ready to cohabit with the husband however, no attempts were made on behalf of the husband for taking her back to matrimonial house for cohabitation. It was further pointed out that no provision is made by the husband for their maintenance.

5. On being summoned husband appeared and filed his written Say. The allegations were denied. It was stated that it is the wife who is responsible for separation and, therefore, she is not entitled for maintenance allowance. The wife examined in all three witnesses; where-as husband alone entered into the witness-box.

6. The learned Magistrate found that the husband filed Petition for divorce in the court of the Civil Judge, Senior Division, Dhule vide Hindu Marriage Petition No. 33 of 1997 however, said Petition for divorce was dismissed for want of prosecution. Filing of the Petition for divorce at the behest of the husband clearly shows that the husband was not ready to join the company of the wife. Once the husband disclosed his intention to claim divorce on certain set of allegations against the wife and approached to the court for obtaining decree then certainly the wife is justified in claiming the maintenance allowance because it is clear that the husband is not ready to cohabit with the wife.

7. The learned Magistrate correctly reached to the conclusion that the wife has proved that she was neglected and refused by the husband without there being any reasonable cause or excuse. Further, it was not case of the husband that wife was able to maintain herself or her daughters. Therefore, no fault can be found in recording the findings by the learned Magistrate that the wife has proved that she is unable to maintain herself. Further the husband cannot escape from his liability of maintaining his wife. Wife is entitled to have the same standard of living as that of the husband. Further it is boundant duty of the father to provide best possible amenities, education to his son/daughter.

8. In the present case, in view of the fact that it is an admitted position of the relationship, husband was under obligation to provide sufficient amount of

maintenance for his daughter since the daughters are residing with their mother because of the act of her husband.

9. It is clear from the evidence that husband works in Maharashtra State Electricity Board. His salary certificates are produced on record at Exhibit Nos. 40 and 41 which shows that salary of the husband is more than Rs. 6000/- per month. Further Exhibit Nos. 58, 61, 62 and 63 show that agricultural field and plots are standing in the name of the husband. Considering the income of husband, the learned Magistrate ordered that wife will be entitled for the maintenance allowance @ Rs. 1000/- per month where-as daughters were granted maintenance allowance @ Rs. 400/- per month to each of them. That maintenance allowance was granted in their favour by the learned Judicial Magistrate, First Class vide order dated 31st January, 2001 from the date of the order.

10. Against the said order of granting of maintenance allowance, two different Criminal Revision Applications were filed before the revisional court. Criminal Revision Application No. 37 Of 2001 was filed by the wife and daughters; whereas Criminal Revision Application No. 44/01 was filed by the husband. The Criminal Revision Application filed by the husband was for dismissal of Application filed under Section 125 of the Code of Criminal Procedure; where-as Criminal Revision Application filed on behalf of the wife and daughters was for enhancement in the maintenance allowance from the date of filing of the application.

11. Both the Criminal Revision Applications were heard by the learned Additional Sessions Judge, Dhule on 28th March, 2002. The learned Additional Sessions Judge dismissed the Criminal Revision Application filed on behalf of the husband; whereas in so far as the maintenance allowance to the wife and daughters, operative portion of the revisional courts order reads as under:--

"the opponent do pay amount of Rs. 500/- per month each to the applicant Nos. 2 and 3 from the date of application i.e. 27.3.1997 onwards. Similarly he shall pay maintenance allowance at the rate of Rs. 500/- per month to applicant No. 1 from the date of filing of the application i.e. from 27.3.1997 till the amendment of the appreciation i.e. upto 7.7.2000 and from 7.7.2000 onwards he shall pay the maintenance allowance to the applicant No. 1 at the rate of Rs. 1000/- per month."

12. The only argument of Mr. K.C. Sant, learned counsel for the husband was that since it was the case of the husband that it is the wife, who has left the company requiring him to file proceeding for divorce, instead of filing an application under Section 125 of the Code of Criminal Procedure, it was obligatory on the part of the wife to file suit for maintenance before the Civil Court under Section 18 of the Hindu Adoptions and Maintenance Act, 1956.

13. Aforesaid submission of the learned counsel is devoid of any substance. Section 125 of the Code of Criminal Procedure provides speedy remedy to the

destitute. Said provisions is benevolent one. The legislature has introduced said speedy remedy to save the wife and other dependents, as mentioned in section 125 of the Code of Criminal Procedure, for their just survival. It is to be noted that even during the pendency of the application under Section 125 of the Code of Criminal Procedure, right is given to the applicant to apply for the interim maintenance and the Magistrate is empowered to grant such interim maintenance.

14. In that view of the matter, it is really hard to digest the argument of the learned counsel that instead of approaching the court under the speedy remedy under Section 125 of the Code of Criminal Procedure, such person should have taken recourse of filing of Civil Suit under Section 18 of the Hindu Adoptions and Maintenance Act, 1956. In fact, Section 125 of the Code of Criminal Procedure is a measure of social justice and specially enacted to protect the women and children.

15. In the present case, since relationship between the parties is admitted position, there is nothing on record to show that, it is the wife who has left the company of the husband. On the contrary, both the courts below have recorded the concurrent findings of facts that it is the husband who refused and neglected to maintain his wife and daughter and did not provide any maintenance allowance to them. The learned counsel for the husband is unable to point out any perversity in any of the Judgments passed by the court below. In that view of the matter, surely, this court will not upset the findings of fact. Resultantly, both the Criminal Revision Application and Writ Petition are dismissed and order passed by the courts below in favour of wife and daughters are confirmed.