

(1988) 10 BOM CK 0011

In the Bombay High Court

Case No : Criminal Writ Petition No. 96 of 1986

Sou. Malan

APPELLANT

Vs

Balasaheb Bhimrao Gawade and another

RESPONDENT

Date of Decision : 11-10-1988

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 125, 127

Citation : (1988) 3 BomCR 666 : (1988) MhLj 1135

Hon'ble Judges : H.H. Kantharia, J

Bench : Single Bench

Judgement

1. The petitioner filed criminal miscellaneous application No. 62 of 1982 in the court of the learned Judicial Magistrate. First Class, Jaysingpur, under S. 125 of the Cr.P.C. 1973, for maintenance against the first respondent. Her case was that the first respondent married her on 16th June, 1977 which was a love marriage but the said marriage was not approved by the parents of the first respondent and, therefore, right from the first day of the marriage, the first respondent failed and refused to maintain her. She claimed that the first respondent was having irrigated land and earned about Rs. 5,000/- to 6,000/- per year and, therefore, she should be granted Rs. 300/- per month as separate maintenance for herself.

2. The application was resisted by the first respondent. It was his case that on 16th June, 1977 when he was proceeding towards a temple called "Muchundi Daryappa" he was accosted by some of the relations of the petitioner and was caught hold of and forcibly got married against his wishes with the petitioner. Thus, he pleaded that the contract of marriage between him and the petitioner was null and void as it was not entered into out of his free and genuine consent.

3. The learned trial Magistrate recorded the evidence adduced by both sides and on appreciation of the same came to the conclusion that the marriage between the petitioner and the first respondent was not legal as the first respondent was

forced to marry the petitioner and as such the petitioner was not the legally wedded wife of the first respondent and hence she was not entitled to maintenance under S. 125 of the Cr.P.C. He accordingly dismissed the petitioner's application for maintenance by his judgment and order dt. 16th October, 1984.

4. The petitioner, therefore, filed criminal revision application No. 141 of 1984 in the Sessions Court at Kolhapur challenging the judgment and order passed by the learned trial Magistrate. The learned Sessions Judge, Kolhapur, by his judgment and order dt. 4th December, 1985 dismissed the said revision application with cost of Rs. 100/- by the petitioner to the first respondent which has been impugned by the petitioner in this petition under Art. 227 of the Constitution.

5. The learned Counsel appearing on behalf of both sides and Mr. Kothari, learned Additional Public Prosecutor, took me through the relevant evidence and the judgments recorded by the courts below. On hearing them and perusing the record. I am of the view that the judgments recorded by both the courts below are not in accordance with law and suffer from errors apparent on the face of the record. It is pertinent to note that his marriage with the petitioner was admitted by the first respondent and the record shows that all the ceremonies of a marriage between two Hindus were performed. However, his case was that he was got married with the petitioner against his will and by use of force, coercion and compulsion against him. Now, proceedings under S. 125 of the Cr.P.C. are in the nature of the summary proceedings. By providing a simple and speedy remedy the legislature has provided for a limited relief for the neglected wives, children and parents. S. 125 of the Cr.P.C. is not intended to provide for a full and final determination of the status and personal rights of the parties. It is true that a woman whose marriage is void cannot get the status of a legally wedded wife and is not entitled to maintenance under this Section. But it is important to bear in mind that in such proceedings all that the wife has to prove is the performance of certain marriage ceremonies and it is immaterial whether the same satisfy all the requirements of a valid marriage. The party who challenges the validity of the marriage has to establish it in a competent civil court. Therefore, it was for the first respondent here to have gone to a competent civil court and get his marriage annulled. Not having done that, it was not for the courts below to go to his rescue and declare that the marriage between him and the petitioner was not legal. That was not the function of the courts dealing with an application under S. 125 of the Cr.P.C. In the absence of a declaration by competent civil court about the legality or otherwise of the marriage between the petitioner and the first respondent, the lower courts should have presumed that the said marriage was legal. In my opinion, therefore, both the Courts below gravely erred in rejecting the maintenance application of the petitioner. It was and it is for the first respondent to go to a competent civil Court and get his marriage declared null and void and if that is done, he may have a remedy under S. 127 of the Cr.P.C. 1973 for appropriate relief.

6. I am surprised and shocked to find that the learned Sessions Judge awarded cost of Rs. 100/- by the wife to the husband. A judicial Officer who is conscious of the constitutional mandate of social justice will not pass such an order of awarding cost by a wife to a husband.

7. Admittedly, the first respondent whose father owns agricultural land earns about Rs. 5,000/- to Rs. 6,000/- per year. He has some members of the family to support. In that case, in my judgment, maintenance allowance for the petitioner at the rate of Rs. 100/- per month would serve the ends of justice.

8. In the result, the petition succeeds and the same is allowed. The impugned judgments and orders passed by both the courts below are quashed and set aside. The maintenance application of the petitioner filed under S. 125 of the Cr.P.C. is allowed. The first respondent is directed to pay monthly allowance at the rate of Rs. 100/- to the petitioner from the date of the application filed in the trial Court. Rule is accordingly made absolute with cost of Rs. 500/- by the first respondent to the petitioner.

9. Petition allowed.