
(2015) 09 BOM CK 0297
In the Bombay High Court
Case No : Family Court Appeal No. 68/2014

Sukhdeo

APPELLANT

Vs

Jyoti

RESPONDENT

Date of Decision : 10-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Adoptions and Maintenance Act, 1956 — Section 18
Hindu Marriage Act, 1955 — Section 25, 25(1)

Citation : (2015) 09 BOM CK 0297

Hon'ble Judges : V.A. Naik and A.I.S. Cheema, JJ.

Bench : Division Bench

Advocate : D.M. Kale, Counsel, for the Appellant

Final Decision : Allowed

Judgement

V.A. Naik, J.—By this Family Court Appeal, the appellant-husband challenges the judgment of the Family Court, Nagpur dated 27.09.2006 as far as it directs the appellant to pay a sum of Rs. 1,500/- per month to the respondent-Wife towards permanent alimony, from the date of the judgment.

2. The marriage between the appellant-Husband and the respondent-Wife was solemnized at Nagpur on 19.11.1981 as per Hindu rites and customs. The parties reside together till 26.05.2003. It is the case of the appellant that the respondent deserted the appellant and started residing with one Ankush Pardhi and adopted Christianity. According to the appellant, the wife had sexual relationship with Ankush Pardhi and at the time of filing of the Hindu Marriage Petition, she had conceived a child from Ankush Pardhi. The appellant-Husband filed a petition for grant of a decree of divorce on the ground that the wife had illicit relationship with Ankush Pardhi and that she had converted to Christianity. Though the respondent had denied that she had illicit relationship with Ankush Pardhi, the Family Court found that the appellant had been successful in proving that the respondent had sexual intercourse with a person other than the husband

after the solemnization of the marriage with the appellant. In view of the said finding, the Family Court granted a decree of divorce by the judgment dated 27.09.2006. By the said judgment, the Family Court directed the appellant to pay a sum of Rs. 1,500/- per month to the respondent towards permanent alimony. The respondent had challenged the judgment and decree of divorce in a Family Court Appeal. This Court had dismissed the appeal filed by the respondent. In the present appeal, the appellant has challenged the judgment of the Family Court as far as it directs the appellant to pay monthly maintenance to the respondent as permanent alimony.

3. Shri Kale, the learned counsel for the appellant, submitted that after the Family Court recorded a finding that the respondent had voluntary sexual intercourse with a person other than the appellant after the solemnization of the marriage, the Family Court should not have granted permanent alimony in favour of the respondent. It is stated that it is well settled that an adulterous wife would not be entitled to maintenance. It is submitted that the Family Court has recorded a finding that the respondent had sexual relationship with a person other than her husband and that she had conceived a child through him. It is submitted that the judgment of the Family Court was challenged by the respondent-wife in an appeal, bearing First appeal No. 26 of 2007 but, the appeal was dismissed by the judgment dated 23.04.2007 and the decree of divorce was confirmed. It is stated that this Court reiterated in the judgment in first appeal that the Family Court had rightly found that the respondent had sexual intercourse with a person other than the appellant and that she had delivered a female child through that person on 17.09.2004. It is submitted that in the circumstances of the case, the Family Court was not justified in directing the appellant to pay a sum of Rs. 1,500/- per month to the respondent as permanent alimony.

4. On hearing the learned counsel for the appellant and on a perusal of the Record & Proceedings, it appears that the following points arise for determination in this appeal.

i) Whether the Family Court could have directed the appellant to pay permanent alimony to the respondent in the circumstances of the case?

ii) What order?

5. To answer the aforesaid points for determination, it would not be necessary to consider the pleadings of the parties or the evidence tendered by them. The same has been considered by the Family Court. The Family Court has recorded a finding that the appellant-Husband had been successful in proving that the wife had voluntary sexual intercourse with a person other than the appellant and she had conceived a child through him. It is apparent from the finding recorded by the Family Court that the respondent was unchaste and had sexual relationship with a person other than the appellant despite her marriage with the appellant. The respondent had also conceived a child through the said person while the

marriage between the appellant and the respondent was subsisting. It is rightly submitted on behalf of the appellant that after the Family Court recorded a finding that the wife had voluntary sexual intercourse with a person other than her husband and that she had conceived a child through him, the Family Court could not have directed the appellant to pay permanent alimony to the respondent. Also, a claim for a permanent alimony was not made by the respondent in the pleadings. At the time of hearing the parties, a claim was orally made by the counsel for the respondent for grant of permanent alimony. On the oral prayer made by the counsel for the respondent, the Family Court granted permanent alimony in favour of the respondent. It is clear from a reading of the provisions of Section 125 of the Code of Criminal Procedure, Section 18 of the Hindu Adoptions and Maintenance Act and Section 25 of the Hindu Marriage Act that an unchaste wife or a wife leading an adulterous life would not be entitled to maintenance. The Family Court was not justified in granting permanent alimony and maintenance to the respondent under Section 25 of the Hindu Marriage Act. Under Section 25 of the Hindu Marriage Act, a Court exercising jurisdiction under the Act, at the time of passing of the decree or at any time subsequent thereto is empowered to direct the husband to pay certain amount to the wife for her maintenance. However, while exercising the power, the Court is obliged to consider the conduct of the parties and circumstances of the case. In the instant case, the conduct of the wife was such that she could not have been entitled to permanent alimony. Sub-section 3 of Section 25 makes it clear that an unchaste wife would not be entitled to permanent alimony. Sub-section 3 of Section 25 provides that the Court is entitled to modify or rescind an order granting permanent alimony under Section 25(1) of the Hindu Marriage Act, if a Court is satisfied that a wife has not remained chaste. If the maintenance granted to a wife is liable to be rescinded if she has not remained chaste, it is difficult to accept that an unchaste wife would be entitled to permanent alimony or maintenance, in the first place. It is apparent on a reading of the provisions for maintenance under various enactments that an unchaste wife or a wife living in adultery would not be entitled to permanent alimony. In the instant case, the Family Court had found that the wife was unchaste inasmuch as she had voluntary sexual intercourse with a person other than the appellant during the subsistence of the marriage and had also conceived a child through him. The Family Court was not justified in granting maintenance to the respondent, in the circumstances of the case. It is rightly submitted on behalf of the appellant that after having recorded a finding that the wife had voluntary sexual intercourse with a person other than her husband during the subsistence of the marriage and had conceived a child through him, the Family Court was not justified in directing the appellant to pay an amount of Rs. 1,500/- to the respondent-Wife towards permanent alimony. Having answered the first point of determination against the respondent and in the negative, we proceed to allow the appeal filed by the appellant.

6. The Family Court Appeal is allowed. The judgment of the Family Court dated

27.09.2006 is modified. The part of the judgment and order directing the appellant to pay permanent alimony to the respondent-Wife is hereby set aside. In the circumstances of the case, there would be no order as to costs.