

(2015) 08 BOM CK 0015

In the Bombay High Court

Case No : Criminal Application (APL) No. 157 of 2011

Usha Uddhav Chanphane

APPELLANT

Vs

Uddhav Chirkut Chanphane

RESPONDENT

Date of Decision : 06-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 397, 482

Citation : (2015) 4 BomCR(Cri) 273

Hon'ble Judges : I.K. Jain, J.

Bench : Single Bench

Advocate : V.N. Morande, Advocate, for the Appellant; A.S. Ambatkar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

I.K. Jain, J.—Rule. Rule made returnable forthwith. Heard finally with the consent of respective parties. This application under section 482 of the Code of Criminal Procedure (Cr.P.C.) is filed by wife against the judgment and order dated 30.12.2010 passed by learned Additional Sessions Judge, Chandrapur in Criminal Revision Application No. 114/2010 under which the learned Additional Sessions Judge quashed and set aside the judgment and order dated 15.7.2010 passed by learned Judicial Magistrate, First Class, Nagbhid in Misc. Criminal Application No. 38/2008 granting maintenance @ of Rs. 1000/- per month to the extent of applicant No. 1 wife.

2. Facts giving rise to the present application may be stated in brief as under:

(i) Applicant was married to non-applicant on 14.4.2005. After marriage, applicant started residing at her matrimonial house at Ratnapur in Taluka Sindewahi, District Chandrapur along with her husband and mother-in-law.

(ii) It is the contention of applicant that immediately after marriage, non-applicant expressed that he did not like applicant still he was required to marry her. Thereafter, non-applicant and his mother started raising frequent quarrels

with the applicant on trivial issues. When she was carrying pregnancy, she was compelled to do heavy work. She was not keeping good health still non-applicant neglected and did not take her to the hospital.

(iii) Applicant submitted that during advance stage of pregnancy, she had pains in her stomach. Non-applicant instead of taking her to the hospital, on his own, forced her to consume some pills, as a result of which she had reaction to her body. Then, with the intervention of villagers, applicant was allowed to go with her father. She was admitted to the hospital at Bramhapuri. Thereafter, she gave birth to a girl child on 11.5.2006. She was hospitalized for fifteen days. On both the occasions, non-applicant did not bother to see the applicant and daughter Shreya for about four months.

(iv) On 1.3.2007 non-applicant called a meeting and insisted for divorce. According to applicant, in that meeting, Panchas persuaded husband and wife and then a stamp paper was reduced to writing.

(v) Thereafter on 12.5.2007 non-applicant and his mother threatened the applicant to leave the house and go to her maternal place else she would be killed. As threats were given applicant went to the house of Police Patil and stayed there for the whole day. Police Patil called her father. Her father came and took her to his house.

(vi) On 6.11.2007, non-applicant alongwith 7/8 persons visited the house of father of applicant. That time, non-applicant started putting unreasonable condition to give in writing not to hold him responsible if applicant dies. Non-applicant and his companions did not talk to applicant that time. Since father of applicant refused to give such writing, non-applicant did not take her back.

(vii) Then, on 23.6.2008, applicant issued notice through her Counsel. To counterblast the said notice, non-applicant filed proceeding for restitution of conjugal rights. In the said proceeding, maintenance @ Rs. 6000/- per month was granted to applicant. Non-applicant did not pay the maintenance and had withdrawn the Hindu Marriage petition.

(viii) On 7.11.2008 proceeding under section 125 of the Cr.P.C. for grant of maintenance came to be filed by applicant for herself and daughter Shreya. She claimed maintenance @ Rs. 1500/- per month for herself and Rs. 1000/- per month for her the daughter. Non-applicant contested the Application. On hearing the parties, trial Court allowed the Application and granted maintenance @ Rs. 1,000/- per month to the applicant and Rs. 500/- per month to the daughter, from the date of application.

3. Being aggrieved by the said order, non-applicant filed Criminal Revision Application No. 114/2010 before the Sessions Court, Chandrapur. The revisional Court, on hearing the parties partly allowed the application thereby setting aside judgment and order to the extent of grant of maintenance @ of Rs. 1,000/- per month to the wife and rejecting her Application under section 125 of the Cr.P.C.

The order in respect of grant of maintenance to the daughter was maintained by the revisional Court. In the instant Application wife has challenged the order of revisional Court denying her maintenance.

4. Shri V.N. Morande, learned Counsel for applicant vehemently submitted that after considering the evidence and material on record, learned Magistrate awarded maintenance to the wife. Learned Counsel submitted that the powers of the revisional Court were limited, still exceeding the limits of revisional jurisdiction, learned Additional Sessions Judge interfered with the finding of facts recorded by the trial Court and substituted its own findings, which are per se illegal and perverse. Learned Counsel submits that undue weightage was given by the revisional Court to the writing on stamp paper ignoring the circumstances under which applicant and her father were compelled to sign the same without even knowing the contents therein. It is submitted that the main grievance of the non-applicant was that applicant was speaking less and if it was so, the entire defence of the non-applicant that she was raising quarrels and often demanding divorce falls to the ground.

5. Learned Counsel for applicant relied upon (Manglabai Chhotulal Gaikwad Vs. Chhotulal Kashiram Gaikwad), 2009 (2) Bom. C.R. (Cri.) 20 (A.B.) : 2009 All. M.R. (Cri.) 1397 (Bom.) and submitted that even refusal or neglect to maintain wife during her ailment is enough for the wife to claim maintenance. He submitted that there is sufficient evidence to show neglect and refusal on the part of husband entitling the wife to claim maintenance.

6. According to the applicant, reappraisal of evidence as was done by the revisional Court was not at all permissible and there was no reason to interfere with the findings recorded by learned Magistrate on the disputed questions of facts after thorough consideration and appreciation of evidence on record.

7. Per contra, Shri A.S. Ambatkar, learned Counsel for respondent submitted that non-applicant, his mother and applicant were residing together at village Ratnapur. Mother of the non-applicant is a widow and an old lady. Except non-applicant there is no one to take her care. Applicant did not like the mother of non-applicant and she used to pick up quarrel with her on flimsy grounds. She was not properly behaving with the non-applicant. As peace in the family was disturbed, a meeting was called on 1.3.2007. In that meeting, applicant and her father gave an undertaking in writing on stamp paper that she would behave properly with non-applicant and his mother and would not give any chance to them for any complaint. Learned Counsel submitted that the undertaking on stamp paper speaks volumes about the behavior of applicant and the learned revisional Court has properly considered the same which was ignored by the learned Magistrate.

8. Another contention on behalf of non-applicant is that on 12.5.2007 applicant started quarrelling with non-applicant saying that she does not want to cohabit with him. Thereafter she immediately left the matrimonial house along with

daughter Shreya. Non-applicant took them to the house of Police Paul for reconciliation. That time, father of applicant was called by Police Paul. A meeting was held to settle the dispute amicably. In that meeting, she stated that she does not want to cohabit with non-applicant and wants divorce. Sarpanch, Police Patil and other villagers who attended the meeting tried to convince the applicant but she remained adamant throughout. Thereafter many times non-applicant had been to the house of father of applicant to fetch her but he was required to return back as applicant flatly refused to cohabit with him and insisted for divorce. Learned Counsel submitted that there was no sufficient cause for the applicant to stay away from the non-applicant and, therefore, findings recorded by the revisional Court are in consonance with the evidence on record.

9. In support of the contentions learned Counsel for non-applicant placed vehement reliance on-

(i) Deb Narayan Halder Vs. Smt. Anushree Halder,

(ii) Sanjay Sudhakar Bhosale Vs. Khristina Bhosale-->

(iii) Bheekha Ram Vs. Goma Devi and Others,

On going through these authorities, it is apparent that they reiterate well settled proposition of law under section 125 of the Cr.P.C. that where wife has no justifiable reasons to stay away from the matrimonial home, she is not entitled to maintenance and further it is for the wife to establish negligence on the part of husband to maintain her.

10. It can be seen from the record that in the proceedings under section 125 Cr.P.C. applicant examined herself and one more witness Suresh Borkar. Non-applicant adduced evidence of Police Patil Narendra Gahane, Pramod Gabhane, Marotrao Lodhe, in addition to his own evidence.

11. Applicant deposed in her evidence that immediately after marriage, non-applicant and his mother started ill-treating her. She was denied medical treatment during advance stage of pregnancy. She stated that though she was not keeping well non-applicant insisted her to do heavy work i.e. to tie the cattle by dragging them from place to place and lift heavy bundles of grass for cattle. She also stated that when she told non-applicant about the difficulty being faced by her, he asked her to go to her parents house. She deposed that non-applicant compelled her to take the pills without consulting the doctor resulting in reaction to her body. Regarding undertaking on stamp paper, applicant deposed that she and her father were compelled to give in writing and with a hope that non-applicant would improve his behavior they were required to sign.

12. The evidence of Suresh Borkar throws light on the circumstances under which writing on stamp paper was signed by applicant and her father. He stated that after few days of the birth of daughter to Usha, he alongwith her father had been to the house of non-applicant. He stated that non-applicant insulted and threatened them to leave the house. It is apparent from the testimony of Suresh

Borkar that on 1.3.2007 non-applicant called the meeting and in that meeting he asked for divorce. He was pacified and then a stamp paper was prepared on which both had given an under-taking to behave properly with each other. Witness Suresh Borkar further stated that applicant was under mental pressure and she was not keeping well when she signed the stamp paper.

13. During the course of arguments learned Counsel for applicant submitted that non-applicant was constantly threatening the applicant to give divorce and due to unreasonable threats she had no option but to sign the stamp paper at the insistence of non-applicant without knowing its contents. The learned Counsel relied upon *Mst. Khatoon Vs. Mohd. Yamin*, and submitted that maintenance in such a situation cannot be denied to her.

In this case before the Hon''ble Supreme Court, husband wrote a letter to the wife asking her to come back otherwise the letter would be treated as a divorce. The Hon''ble Apex Court held that such an unreasonable threat constitutes a sufficient reason for the wife to refuse to live with husband and she was entitled for maintenance. Learned Counsel for applicant submitted that it is the responsibility of the husband to maintain his wife and she has a right to claim maintenance so long as she stays away from the matrimonial home under compelling circumstances. In support thereof, reliance is placed on *Laxmi Bai Patel Vs. Shyam Kumar Patel*, .

14. It would not be out of place to mention here that the learned revisional Court was swayed away by the undertaking given on stamp paper and drew several inferences regarding indifferent behavior of the applicant with her husband. The learned revisional Court observed that though stamp paper is not exhibited it is marked as Article "D1", as the contents and signature on stamp paper were admitted by applicant and her witness. From the evidence of applicant it can be seen that she has emphatically denied that she and her father assured in the meeting that applicant would behave properly. Even otherwise, nothing substantial could be elicited in the cross-examination of applicant and her witness to disbelieve their evidence in respect to the circumstances under which undertaking on stamp paper was signed by the applicant and her father. Taking into consideration those circumstances and also the evidence of non-applicant's witnesses trial Court did not find it appropriate to rely upon the same.

15. Besides the undertaking on stamp paper, applicant's testimony regarding ill-treatment on trivial issues, neglect to take medical care during her advance stage of pregnancy, repeated demand of divorce by non-applicant and his conduct viz. not to see her for about 4 months after the birth of daughter, could not be shaken in piercing cross-examination. The learned Magistrate observed that as incidents took place in the village of non-applicant, independent corroboration to her testimony cannot be insisted upon. The trial Court has also recorded sound, cogent and convincing reasons for discarding the evidence of non-applicant and his witnesses.

16. On the powers of revisional Court under section 397 of the Cr.P.C. learned Counsel for applicant submitted that the scope of revision being limited, revisional Court would not have substituted its own findings and upset the maintenance order passed by the learned Magistrate without there being reason to infer perversity in such a finding. In this connection, reliance is placed on (Pushpa @ Chahabai Bhausahab Gade & another Vs. Bhausahab Ranuji Gade), 2009 (1) Bom. C.R. (Cri.) 421 (A.B.) : 2008 All. M.R. (Cri.) 3144 (Bom). Relying upon the decision of the Hon"ble Apex Court in (Bulakibai Vs. Gangaram), 1988) 1 S.C.C. 437 in which the Hon"ble Apex Court succinctly illustrated scope of revisional jurisdiction, it was held that findings of the Magistrate on the disputed question recorded after full consideration of evidence could not be disturbed in revision. At the behest of the learned Counsel for the parties, this Court has gone through the evidence and finds no illegality or perversity in the approach or findings recorded by the learned Magistrate. There is ample evidence on record to come to the conclusion that applicant is entitled to maintenance. No extraordinary circumstances are brought to the notice of this Court to show that the trial Court had committed any error of law apparent on the face of the record or had adopted an unreasonable or perverse approach while appreciating the evidence. In such a situation, revisional Court was in error in placing reliance on the so called undertaking not even duly and legally proved and holding that applicant was not entitled for maintenance. By interfering in the findings of fact recorded on proper appreciation of evidence, revisional Court has clearly exceeded its jurisdiction and so impugned order does not sustain in law. Accordingly, the following order:

(i) Criminal Application No. 157/2011 is allowed.

(ii) The impugned judgment and order dated 30.12.2010 passed by learned Addl. Sessions Judge, Chandrapur in Criminal Revision Application No. 114/2010 to the extent of applicant wife stands quashed and set aside.

(iii) In consequence thereof, judgment and order dated 15.7.2010 passed by the learned Judicial Magistrate, First Class, Nagbhid in Misc. Criminal Case No. 38/2008 is restored. Rule is made absolute in the aforesaid terms.