
(2013) 02 BOM CK 0049

In the Bombay High Court

Case No : Criminal Writ Petition No. 36 of 2008

Vatsalabai

APPELLANT

Vs

Dilip

RESPONDENT

Date of Decision : 12-02-2013

Acts Referred:

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

Citation : (2013) ALLMR(Cri) 2675

Hon'ble Judges : K.U. Chandiwal, J

Bench : Single Bench

Advocate : Vinod P. Patil, for the Appellant; Mukul Kulkarni, for the Respondent

Final Decision : Allowed

Judgement

K.U. Chandiwal, J.—Heard. The infirm mother at her advanced age of 80 years, oscillating between life and death, has urged for maintenance from her another son Dilip.

2. An application u/s 125 of the Code of Criminal Procedure, 1973, was moved by the mother. By judgment dated 1st August 2005, maintenance allowance at the rate of Rs. 500/-, effective from 5th February 2002 was extended to the mother. A revision was preferred by Dilip before learned Additional Sessions Judge, Jalgaon, and by order dated 30-11-2007, the award of maintenance was declined. Hence, the Criminal Writ Petition.

3. Rule was issued on 17-7-2008. The respondent, Dilip, was directed to continue maintenance at the rate of Rs. 500/- orders are complied.

4. Basically, learned Additional Sessions Judge, sitting in revision, in terms of Section 397 of the Code of Criminal Procedure, 1973, was not expected to re-assess the evidence when there is no new fact emerging, taking altogether contrary view than what learned Judicial Magistrate (F.C.) has observed. Mother staying with one of the son, Ravindra, may be correct, but she has disputed that Ravindra paid maintenance to her. Certain agricultural properties, to which

reference is given, are held by Ravindra and certain properties which are barren in its character, are mutated in the name of Dilip.

5. Passingly, an affidavit is filed by Dilip, stating that he is ready to maintain his mother and additionally he will continue to pay maintenance allowance at the rate of Rs. 500/- per month.

6. Learned Counsel for the petitioner, mother, says, it is an eye wash, may be correct, but the voluntariness demonstrated has to be reasonably accepted. The income source of Dilip or his son is vibrantly demonstrated to show his potentiality to release Rs. 500/- per month.

7. Considering these features, the best wishes to prevail between the parties, to resolve the controversy, the mother may think to join company of his son Dilip, at least, for few days. If she is not satisfied/happy, she has prerogative to return to Ravindra. Maintenance at the rate Rs. 500/- per month from the date of application i.e. 5-12-2002 does not deserve any disturbance. Criminal Writ Petition is allowed. The order dated 30th November 2007, passed by the learned Ad hoc Addl. Sessions Judge, Jalgaon, in Criminal Revision Application No. 311 of 2005, set aside, and the order dated 1-8-2005, passed by the learned Judicial Magistrate (F.C), Erandol, in Cri. Misc. Application No. 186 of 2002, is restored. Rule made absolute to that extent.