

Bench: V Kingaonkar

Sanjay Sudhakar Bhosale vs Khristina W/O Sanjay Bhosale on 8/4/2008

JUDGMENT

V.R. Kingaonkar, J.

1. By this revision petition, petitioner seeks immunity from liability to pay maintenance allowance as per Judgment rendered in Criminal Revision Petition No. 60 of 2000, by learned Additional Sessions Judge, Shrirampur, to respondent. He challenges the said Judgment reversing order of dismissal of the respondents application for maintenance passed by learned Judicial Magistrate (First Class), Shrirampur.

2. It would be useful to first note the admitted facts. The spouses belong to Christian community. Their marriage was performed on 14.5.1998 in accordance with tenets of Christian religion. The petitioner is employed as Wardboy in Yerwada Mental Hospital, at Pune. He resides in one of the Government quarters, out of nine such quarters, which are in one row, situated at back side of the mental hospital. He was a divorcee when he performed marriage with the respondent. She went to reside with him after the marriage. His parents and two brothers reside with him in the same residential quarter. The marriage was shortlived. The spouses are incompatible.

3. The respondent (wife) filed application under Section 125 of the Cr.P.C. for separate maintenance allowance. She asserted that for about six months, she was somehow treated alright in the matrimonial home. Thereafter, the husband started mental and physical harassment to her at instigation of his parents and brothers. Her in-laws used to express dissatisfaction regarding gifts given in the marriage. They used to abuse her. The husband (petitioner) used to beat her in drunken condition. He used to make unlawful demand of gold locket weighing 15 gms., a T.V. set and a mixer, which she was asked to bring from the parents. Her parents attempted to convince and plead with her husband. Still, however, he and his relatives continued the unlawful demand, which her parents were unable to meet out. He used to suspect her fidelity. She apprehended danger to her life in the matrimonial home. He mercilessly beaten up her on 21.2.1999 and drove her out of the matrimonial home. She lodged a complaint at the Police Station. She is unable to maintain herself. The husband (petitioner) has got sufficient means to provide separate maintenance. Consequently, she demanded separate maintenance allowance at rate of Rs. 1,500/- (Rs. One thousand five hundred) from him.

4. By filing written statement (Exh. 14), the husband (present petitioner) denied truth into all the material allegations made by the wife. He denied that she was being ill-treated or harassed in the matrimonial house. He submitted that on 5th October, 1998, maternal uncle of the respondent (wife) visited his house and pretended that her another maternal uncle, who is inhabitant of Ahmednagar, was seriously ill. Later on she went with her brother. She did not return home after 2/3 days as per the assurance and hence, he visited her parents house on 25th October 1998. They assured him to send her after the "Natal" festival. Thereafter, they avoided to send her and she refused to accompany him. He was ready and willing to maintain her. She deserted him without any substantial reason. He denied that she was neglected by him. He urged, therefore, to dismiss the application.

5. The parties went to the trial before the learned Judicial Magistrate (F.C.), Shrirampur in the proceedings (Criminal M.A. No. 85 of 1999). The respondent examined herself in support of her application. The present petitioner also examined himself and adduced evidence of two neighbours in support of his defence. On appreciation of their evidence, the learned Magistrate came to the conclusion that the respondent (wife) failed to prove that she was neglected and refused to be maintained by the husband. The learned

Magistrate held that within a short span of five months of the marriage, she left his company, probably because she wanted separate residence without domestic chore in respect of his parents and the brothers. The learned Magistrate held that allegations of matrimonial cruelty are invented by the respondent (wife) and were unacceptable. In keeping with such findings, her application was dismissed.

6. Feeling aggrieved, the wife preferred revision application (Cri. Revision Petition No. 60 of 2000), which was allowed under the impugned order. The revisional Court reversed findings of the learned Magistrate and came to the conclusion that the version of the wife could not be discarded in the set of circumstances. The revisional Court awarded maintenance allowance at rate of Rs. 700/- (Rs. Seven hundred) p.m. in her favour from date of the application. The husband impugns Judgment rendered by the learned Sessions Judge in the revisional jurisdiction whereby the criminal revision petition No. 60 of 2000 was allowed.

7. Clinching question is as to whether the findings of the learned Judicial Magistrate could be regarded as perverse, arbitrary and patently erroneous so as to warrant interference by the learned Sessions Judge in the exercise of revisional jurisdiction. It is well settled that, normally, the revisional Court will not reappreciate the evidence. The impugned Judgment does not show that the learned Sessions Judge recorded finding that the appreciation of the evidence, as done by the learned Magistrate suffered from vice of arbitrariness, perversity or capriciousness.

8. In the above background, I would briefly take survey of the evidence tendered by the parties. PW-1 Khristina (wife) testified that after six months of the marriage, the husband and his relatives started giving cruel treatment to her on account of demand of money. This part of her statement is discrepant with allegations in the pleadings. In her application, she alleged that a gold locket, weighing 15 gms, a T.V. set and a mixer were demanded by the husband from her parents. There is no whisper of any such demand throughout her oral statement before the learned Magistrate. She stated that on 21st February 1999, the husband beaten up her and drove her out of the house. She lodged a complaint at the Yerwada Police Station, Pune. Her version shows that she had written two letters and narrated her plight in the matrimonial home to her father. Her brother used to visit her matrimonial home. Neither of them entered the witness box nor the letters sent by her or copy of Police complaint lodged by her, have been placed on record. Her real married sister, by name, Archana resides in Yerwada locality at Pune. Her maternal uncle resides at Akurdi, Pune. She admits that she never informed her sister or any other relative about the ill-treatment meted out to her at hands of the husband and his relatives, except and save to her father. This conduct of the respondent was duly noticed by the learned Magistrate. She admitted that on 5th October 1998, her brother and maternal uncle visited the house of her husband to inform that her another maternal uncle, who is inhabitant of Ahmednagar, was suffering from illness. This admission corroborates contention of the husband that she was allowed to go to Ahmednagar to meet her ailing maternal uncle.

9. The learned Magistrate also noticed that the two neighbours, namely, DW-2 Shubhangi and DW-3 Bashid corroborated version of the husband. The version of DW-1 Sanjay (husband) would show that there was no ill-treatment given to the wife. He states that on 5th October 1998, brother of the wife and her maternal uncle visited his house and informed that her another maternal uncle, who is inhabitant of Ahmednagar, was suffering from illness and they requested him to send her with them. His version shows that he allowed them to take her away after 2/3 days. Thereafter, on 11th October 1998, her brother took her to Ahmednagar. His version shows that he made attempts to fetch her back but it was invain. The version of DW-Shubhangi reveals that the petitioner and his wife were never seen quarrelling with each other. Her version reveals that the respondent (wife) resided with the petitioner only for five months after the

marriage and he is not addicted to any vice. There is only a middle wall between the residential quarter of the petitioner and DW-Shubhangi. She has no reason to speak lie nor any tangible material is gathered during her cross-examination. Similarly, DW-3 Bashid deposed that after five months of the marriage, the wife left house of the petitioner - Sanjay. In other words, the version of petitioner -Sanjay stands corroborated by the versions of two neighbours.

10. There is solitary and interested version of PW-Khristina in support of her application for separate maintenance allowance. Her version gives inconsistent account about so-called unlawful demand. She deviated from her pleadings. The findings of the learned Magistrate are based on due appreciation of the evidence. The further development may be noticed. The petitioner filed an application for restitution of conjugal rights in the Family Court at Pune. His application (P.A. No. 500 of 2002) is allowed by the Family Court on 21st July 2003. So far, the respondent (wife) has not challenged the Judgment of the Family Court. The Family Court raised a specific issue as follows:

Whether the petitioner proves that the respondent without any reasonable excuse has withdrawn from the society?

The learned Judge of the Family Court recorded an affirmative finding on the said issue. It is manifest, therefore, that not only the learned Judicial Magistrate, on appreciation of the evidence tendered by the spouses, came to the conclusion that she left his house, probably under burden of the domestic chores, but the civil Court also found that she is guilty of deserting him without any reasonable excuse.

11. The impugned Judgment reveals that the learned Sessions Judge undertook reassessment of the entire evidence though he was supposed to exercise the revisional jurisdiction. The learned Sessions Judge did not find any particular fault in the process of appreciation of evidence, as done by the learned Magistrate. The relevant observations of the learned Sessions Judge may be reproduced as follows:

14. On carefully scrutinising the evidence of the applicant and opponent it will reveal that the matrimonial life of the applicant was not smoothly going on due to some quarrel and ultimately, it was resulted into leaving the house of opponent, by the applicant. Observations made by the lower Court that the applicant had stayed for short period in the house of the opponent and therefore, there is no possibility of ill-treatment, does not appear to be proper and legal in the circumstances of the case. When the applicant has positively stated that she was subjected to ill-treatment not only that but she has lodged complaint in Yerwada Police Station, this will prima-facie give rise that she was ill-treated and, therefore, she has left the house of the opponent. Provisions of Section 125 of Code of Criminal Procedure need not require that there must be a strict proof of cruelty.

The above observations of the learned Sessions Judge would indicate that he accepted version of the wife only because she gave positive statement that she was subjected to ill-treatment and had lodged the complaint at Yerwada Police Station. As stated before, there is no scintilla of evidence to show that really she had lodged a complaint about the matrimonial cruelty. Nor her so-called positive statement finds support from her pleadings. In this view of the matter, it is difficult to countenance the findings of the learned Sessions Judge. Her mere statement could not have been taken as gospel truth as regards neglect and refusal of the husband to maintain her. It is overlooked by the learned Sessions Judge that within a short span of the marriage, the wife left his company and no notice was given within a reasonable time by her, seeking restitution of the conjugal rights.

12. The Apex Court, in Deb Narayan Halder v. Smt. Anushree Halder 2003 (3) B Cr C 286, held that the appellate Court or revisional Court while setting aside

findings recorded by Court below must notice those findings and where the findings are of facts, evidence on record must be discussed, which should justify reversal of findings recorded by the Court below. The Apex Court held that when the maintenance application of the wife was rejected by the learned Magistrate, holding that she had on her own left the matrimonial home, the High Court was not justified in reversing such findings recorded by the trial Court and to grant maintenance to the wife.

13. In view of foregoing discussion, it will have to be said that the findings of the learned Magistrate should not have been interfered with by the revisional Court and for the reasons, which are recorded by it. The inferences drawn by the learned Sessions Judge are improper and incorrect. There is misinterpretation of the evidence by the learned Sessions Judge. Under these circumstances, the impugned Judgment is unsustainable and liable to be interfered with.

14. In the result, the petition is allowed. The impugned Judgment is set aside and the Judgment rendered by the learned Magistrate in Criminal Misc. Application No. 85 of 1999 is restored. The wifes application under Section 125 of the Cr.P.C. is dismissed. However, the payment of maintenance allowance, if any, during the intervening period, is not refundable by her. No costs.