

(2006) 04 BOM CK 0122

Bombay High Court (Aurangabad Bench)

Case No: Criminal Revision Application No. 156 of 1998

Nirmaldas Alhat

APPELLANT

Vs

Sunita Alhat and Others

RESPONDENT

Date of Decision: April 7, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125(4)

Citation: (2006) 3 CivCC 154 : (2006) CriLJ 2635 : (2006) 3 MhLJ 549 : (2006) 3 RCR(Civil) 579 : (2006) 3 RCR(Criminal) 580

Hon'ble Judges: S.P. Kukday, J

Bench: Single Bench

Advocate: S.D. Kotkar, for the Appellant; N.J. Pahune Patil, for Respondent Nos. 1 to 3 and S.P. Dound, APP, for the Respondent

Final Decision: Dismissed

Judgement

S.P. Kukday, J.

The petitioner impugns the order dated 23rd April, 1998 passed by the learned Principal Judge, Family Court, Aurangabad in Maintenance Petition No. E. 1180/1997, awarding maintenance to the respondents 1 to 3.

2. Briefly stated, petitioner and respondents are inter-related. Respondent No. 1 is the daughter of maternal uncle of the petitioner. Their marriage was solemnized in the month of May 1991. Respondent No. 2 Sonali and respondent No. 3 Nitin are born within the wedlock. Respondent No. 1 was subjected to ill-treatment as demand for Rs. 10,000/- for development of the agricultural land, was not met by her parents. About 2 months prior to filing of the petition on 5th October, 1997, respondent No. 1 was subjected to severe beating and was driven out from the house. Furthermore, she was threatened not to return. The petitioner did not make any provision for the maintenance of the respondents. Therefore, respondent No. 1 filed a petition in the Family Court for maintenance.

3. The petition for maintenance was resisted by the present petitioner on the ground that his wife was living in adultery. According to petitioner, his nephew had given him information about adulterous conduct of respondent No. 1, Respondent No. 1 left the house on 10-6-1997. On 12-6-1997 she was brought to matrimonial house by her parents. On that occasion, respondent No. 1 admitted her adulterous conduct and sought forgiveness. However, she was not forgiven. Since then she had not returned to her matrimonial house. According to the husband, in view of adulterous conduct, the respondent No. 1 is not entitled to separate maintenance.

4. At the conclusion of trial, learned trial Judge, Family Court, Aurangabad found that the allegation of adultery is not proved. The petitioner has sufficient means to maintain respondents. He, therefore, allowed the petition awarding maintenance of Rs. 300/- for respondent No. 1 and Rs. 200/- each for respondents 2 and 3, by his order dated 23-4-1998. This order has been impugned in the present Revision.

5. I have gone through the entire evidence with the assistance of learned Counsel for respective parties. The petitioner has adopted only one ground i.e. adulterous conduct of his wife for claiming that she is not entitled to separate maintenance. The onus to prove that the wife is living in adultery is on the petitioner. The wife is not entitled to claim separate maintenance on three grounds : (a) if she is living in adultery (b) if she has left the matrimonial house without sufficient reason : (3) refused to live with her husband or if they are separated by mutual consent. For this purpose, it would be pertinent to refer to Sub-section (4) of Section 125 of the Criminal Procedure Code, 1973. Sub-section (4) of Section 125 reads thus :

125(4) : No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

6. The section makes a reference to wife living in adultery. For the purpose of divorce on the ground of adultery under the provisions of Hindu Marriage Act, even a single act of adultery might be sufficient, however, for disentitling her from separate maintenance, what is required to be shown is that she is living in adultery. The expression "living in adultery" is purposefully used to indicate that an isolated act is not sufficient. A consistent conduct and living in permanent and quasi-permanent adulterous relationship with the paramour has to be proved. Similar view is taken by this Court in the matter of Chandrakant Gangaram Gawade Vs. Sulochana Chandrakant Gawade and others. After referring to various judgments in para 8 it is observed that "in view of the law explained above, a mere stray or single lapse on the part of the wife is not sufficient to bring her conduct within the meaning of "living in provided in Section 125(4) of the Code of Criminal Procedure. It should be a continuous course of adulterous conduct". The onus of proof in such cases would be on the husband who asserts that wife is leading adulterous life.

7. In the present case, for the first time in his examination-in-chief, the petitioner disclosed the name of paramour as Dnyandeo Bhika Birud. According to him, this information was given to him by his nephew, however, the said nephew is not examined. The other mode of proof in this case is the theory set up that on 12-6-1997, respondent No. 1 was brought to her matrimonial house by her parents and in the presence of witnesses, including real brother of her father, the petitioner admitted that she is living adulterous life. Suggestions in this behalf are denied by respondent No. 1 and her witnesses. Witness No. 3 for respondent No. 1-Dattu Ranpise has testified that it was the father of the petitioner who was responsible for severance of the marital tie. He also speaks about fraud practiced by the respondent on the Government for obtaining land. Dattu, has referred to writing of respondent No. 1 claiming that he signed it blindly at the instance of the Bishop. Witnesses Sitaram and Anton are brothers of respondent No. 1's father. Both of them testified that respondent No. 1 had committed a lapse and sought forgiveness as was done for Megdalena by Christ. The evidence of both these witnesses does not inspire confidence. Suggestions are given to them that they are on inimical terms with father of respondent No. 1. Learned Judge of the Family Court has rightly pointed out that even if the evidence of these witnesses is accepted, their evidence does not prove that respondent No. 1 was "living in adultery". The period of adultery was said to be somewhere in the year 1995-96, however, no action is taken till 12-6-1997. Learned trial Judge has considered all these aspects before coming to the conclusion that the petitioner has failed to prove that respondent No. 1 was living in adultery. The finding recorded by learned judge is based on proper analysis of evidence on record; thus, the contention that finding recorded by the learned Judge is perverse cannot be sustained.

8. In the present case, the petitioner has failed to establish even a single lapse from virtue. Therefore, the wife who is unable to maintain herself and the children are entitled to separate maintenance.

9. Learned Judge of the Family Court has considered the evidence regarding the source of income of the husband. The petitioner owns three and a half acres of agricultural land. In addition, he runs a flour mill. Considering probable income, maintenance is awarded at the rate of Rs. 300/- to the wife and Rs. 200/- each to the children. The quantum of maintenance appears to be on the lower side. In the light of this, no case is made out for interference. In this view of the matter. Revision is dismissed. Rule discharged.