(2000) 07 BOM CK 0113

Bombay High Court

Case No: Criminal Writ Petition No. 1417 of 1994

Suresh Channappa Shete		APPELLANT
	Vs	
Sou. Lata Suresh Shete and Another		RESPONDENT

Date of Decision: July 19, 2000

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 125(4)
- Hindu Marriage Act, 1955 - Section 13

Citation: (2001) BomCR(Cri) 227 : (2001) 3 BOMLR 251 : (2001) 1 CivCC 250 : (2001) 1 MhLj 307 : (2001) 3 RCR(Criminal) 53

Hon'ble Judges: Pratibha Upasani, J

Bench: Single Bench

Advocate: Mr. S.M. Kambli and S.M. Paranjape, for the Appellant; Mr. S.K. Patil and Mr. D.N. Salvi, Assistant Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

Dr. Pratibha Upasani, J.
This Criminal Writ Petition is filed by the Petitioner/husband Suresh Channappa Shete. being aggrieved by the Judgment and Order dated 16th August, 1994 passed by II Additional Sessions Judge. Satara in Criminal Revision Application No. 208 of 1990.

2. By the impugned Judgment and Order, the learned II Additional Sessions Judge. Satara, partly allowed the said Criminal Revision Application No. 208 of 1990 filed by the original applicant/wife Lata Suresh Shete. The said Revision was filed by the original applicant Lata. being aggrieved by the Judgment and Order dated 1st of September, 1990 passed by the Judicial Magistrate. First Class, Satara, whereby, though application for maintenance u/s 125 of the Code of Criminal Procedure, 1973 came to be allowed by the learned Judicial Magistrate. First Class, the amount of maintenance which the

husband was directed to pay to the wife, was only Fifty Rupees per month and that too from the date of the order i.e. from 1st September. 1990. It was this part of the order, whereby, the original applicant/wife Lata felt aggrieved and approached the Revisional Court by filing the Criminal Revision Application No. 208 of 1990. It also has to be stated here that the non-applicant/husband Suresh also had filed Criminal Revision Application No. 223 of 1990, being aggrieved by the said Judgment dated 1st September, 1990 passed by the Judicial Magistrate. First Class, Salara. However, by the impugned common Judgment dated 16th August, 1994. the II Additional Sessions Judge. Satara was pleased to dismiss the Criminal Revision filed by the husband.

3. Few facts which are required to be stated are as follows : Lata and Suresh, admittedly, were husband and wife and their marriage was solemnised on 22nd June, 1981 as per Hindu rites. It is the applicant''s case that after marriage, she was treated properly for a period of one year. However, thereafter, the opponent/husband and his family members started ill-treating applicant on the ground that she should bring four tolas of gold and Rs. 5,000/- from her parents. In order to satisfy these demands, the applicant had to send letters to her parents and to request them to give gold and money to the opponent and his parents. However, since the parents of the applicant were not able to give the gold and money, as demanded by the opponent and his parents, the opponent was disappointed and started assaulting the applicant. Attempts of mediation were made frequently. However, there was hardly any success. The ill-treatment of the applicant continued. Thereafter, the case of the applicant is that, by using force, the opponent obtained signature of the applicant on blank stamp paper. In fact, on 21st October, 1984, the applicant''s brother had given her two tolas of gold. The opponent took all the ornaments of the applicant and continued to assault the applicant. One Vithal Nethakar and Bhausaheb Patil. who were relatives of the opponent also were threatening her. The applicant was made to sit on motor cycle and she was taken to village Nagaon. On the next day, they brought her to Islampur S. T. Stand and made her sit in the S. T. bus and gave the bus fare to the conductor. Thereafter, these persons ran away from the bus stand. Applicant, after reaching her parents place, sent notices dated !7th April, 1985 and 3rd May, 1985 to the opponent. She wanted opponent to take her back to his place and to give her assurance that he would not ill-treat her. It ts also her case that on 19th May, 1985, the opponent got married with her niece at village Paluse.

4. It is further the case of the Applicant that she is not able to maintain herself, while the opponent owns landed property and gets income of Rs. 15,000/- per month, that he is having a business of stationery goods and is earning Rs. 40,000/- per year. In short, it is her case that financial condition of the opponent is very sound, while the applicant has sustained mental shock due to ill-treatment meted out to her at the hands of the opponent and she is often sick. She has therefore prayed that the opponent be directed to give her maintenance at the rate of Rs. 500/- per month.

5. The opponent filed his say and resisted the claim of the applicant. He denied the allegations of ill-treatment made by the applicant. It was his contention that applicant

never behaved as a good wife and never shouldered any responsibilities, that she often used to run away to her parents place from the house, and that, on two-three occasions, she returned home late in the night and when she was questioned about this, she did not give explanation. It is the case of the opponent that every time she ran away to her parents'' place, he had brought her back and tried to make compromise . with the help of the mediator Bhausaheb Pawar and Vithal Nagare. He has further averred that he is working as an agricultural labourer while the applicant''s mother owned a landed property at village Saspade. It is further his contention that there was nobody in the family of the applicant to look after the said lands and parents of the applicant desired that the opponent Suresh should dispose of his properties at village Bagani and should settle at Village Saspade to look after the properties of the applicant''s mother and that, this proposal was not acceptable to him, as he had to look after his own mother. He stated that applicant was not happy with him and that, on 1st February, 1985, she herself, willingly gave divorce to him, as per the custom, and that, since that time, they were residing separately. It is further the contention of the opponent that in the said divorce document, the applicant had given up her claim for maintenance. He has stated that he had only 29 gunthas of Jirayat land and was not having any trade or business and that, his income is very meagre and therefore, he was not in a position to provide separate maintenance to the applicant. He has further averred that the applicant was doing tailoring work and was earning Rs. 400/- per month. He has therefore prayed that the application for maintenance made by the applicant Lata be dismissed.

6. The learned Judicial Magistrate, First Class. Satara, after recording evidence, and after going through the other material on record, especially Exhibit 30, which was the alleged document for divorce by mutual consent, and after hearing both the sides, came to the conclusion that the applicant/ wife had successfully proved that the opponent/husband had refused and neglected to maintain her. The learned Judicial Magistrate, First Class, further held that the applicant, however, could not prove that she was ill-treated by the opponent. The learned Judicial Magistrate, First Class, further held that the applicant did not prove that the opponent had forcibly obtained her signature on the blank stamp paper. Exhibit 30-divorce deed. However, after discussing the entire material on record, especially Exhibit 30, the learned Judicial Magistrate, First Class, came to the conclusion that though the divorce deed was properly proved and that, the custom of divorce between the parties was also proved, the said divorce deed did not contain the clause which stated that the said Lata had given up her right to future maintenance. The learned Judicial Magistrate. First Class, there-fore, held that in view of Explanation (b) to the proviso to Section 125 of the Code of Criminal Procedure, 1973, she was entitled to maintenance, as she was a divorcee and had not remarried. Holding this, the learned Judicial Magistrate, First Class, allowed the Petition and the application of Lata that she was entitled to maintenance allowance of Rs. 50/- per month from the date of the order from the opponent Suresh.

7. Being aggrieved by the said Judgment and order dated 1st September, 1990, both the parties filed Revision Applications in the Court of Sessions. While the husband''s revision came to be dismissed by the common Judgment and Order dated 16th August, 1994 by the II Additional Sessions Judge. Satara, the revision filed by Lata for enhancement of the maintenance allowance on the ground of inadequacy of the quantum of maintenance, was partly allowed. Lata had stated that the Lower Court did not properly appreciate the financial resources of Suresh and the needs of the Applicant. According to her, the amount awarded by the Trial Court was grossly inadequate and unreasonable. She had therefore, prayed that she be granted maintenance of Rs. 500/- per month.

8. The learned II Additional Sessions Judge, Satara, after hearing both the sides, and after discussing the observations made by the Trial Court, came to the conclusion that the amount of Rs. 50/- per month, awarded by the Lower Court was too meagre and that, the Trial Court had failed to appreciate that the opponent had specifically stated in his evidence that he has got some income from his agricultural land. The Revisional Court, therefore, enhanced the amount of maintenance from Rs. 50/- per month to Rs. 100/- per month from the date of application of Lata.

9. I have heard Mr. Kambli, appearing for the Petitioner/husband, so also, the learned A. P. P. Mr. Salvi, appearing for Respondent No. 2/Slate. Mr. A. K. Patil, appearing for Respondent No. 1/Lata is absent. I have also gone through the proceedings, and in my opinion, no interference in the impugned order Is called for. The learned II Additional Sessions Judge has correctly appreciated that the term "wife" as per the Explanation (b) to the proviso to Section 125 of the Code of Criminal Procedure, 1973 includes a woman, who has been divorced by or has obtained a divorce from the husband, and has not remarried. He has rightly appreciated the fact that in the divorce deed Exhibit 30, there is no mention that the wife Lata has relinquished her right to future maintenance. Even if a divorce is obtained by mutual consent, such divorced wife, who has not remarried, is entitled to maintenance under the Explanation (b) to the proviso to Section 125 of the Code of Criminal Procedure, 1973, and cannot be debarred by invoking Section 125{4) of the Code of Criminal Procedure. 1973. Section 125(4) reads as under :

"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".

Here, we are concerned with the last situation, namely, "if they are living separately by mutual consent".

10. The Supreme Court had occasion to deal with a similar situation in Vanamala v. H. M. Rangnatha Bhatta,''. The question that arose in this case was whether a divorcee whose marriage has been dissolved by mutual consent u/s 13B of the Hindu Marriage Act, 1955 was entitled to file an application u/s 125 of the Code of Criminal Procedure. 1973. seeking maintenance from the Respondent/husband when there was no order in regard

to maintenance or alimony payable to her while granting divorce by mutual consent. In this case, the learned Magistrate in whose Court, the said Petitioner Vanamala had filed application for maintenance, dismissed the same, holding that a divorcee woman was not entitled to maintenance, once it was found that the divorce was by mutual consent. Against that order, the appellant Vanamala filed Revision Application in the Sessions Court, who came to the conclusion that the appellant was entitled to maintenance notwithstanding the divorce by mutual consent, and remanded the matter back to the Trial Court for determining the quantum of maintenance. Against this order of the Sessions Judge, the Respondent/ husband preferred a Revision Application before the Karnataka High Court, and the High Court by its judgment and order, set aside the order of the Sessions Judge, upholding the view taken by the Magistrate, and dismissed the application. Vanamala approached the Apex Court by filing appeal, and the Apex Court held that the contentions raised by the husband were unsustainable and that, the High Court was wrong in reversing the order passed by the Sessions Judge and while setting aside the order of the High Court, restored the Sessions Judge''s order.

10. In the above mentioned Judgment in Vanamala v. H. M. Rangnatha Bhatta, the Supreme Court has discussed the position of a woman who is a divorcee, whose marriage has been dissolved by mutual consent vis-a-vis her right to make application u/s 125 of the Code of Criminal Procedure. 1973, and it has been held by the Supreme Court categorically as follows :

"On a plain reading of this Section (Section 125(4) of the Cr. P. C.). it seems fairly clear that the expression wife in the said sub-section does not have the extended meaning of including a woman who has been divorced. This is for the obvious reason that unless there is a relationship of husband and wife there can be no question of a divorcee woman living in adultery or without sufficient reason refusing to live with her husband. After divorce where is the occasion for the woman to live with her husband? Similarly, there would be no question of the husband and wife living separately by mutual consent because after divorce there is no need for consent to live separately. In the context, therefore, sub-section (4) of Section 125 does not apply to the case of a woman who has been divorced or who has obtained a decree for divorce in our view, therefore, this contention is not well founded".

11. In the present case at hand also, though it is proved that indeed there was a customary divorce between the parties, that Itself does not mean that the wife is not entitled to seek maintenance u/s 125 of the Code of Criminal Procedure, 1973. Moreover, as rightly observed by both the Courts, there was no specific mention in the said divorce deed Exhibit 30 that Lata was relinquishing her claim for future maintenance. Thus, her case was squarely covered by Explanation (b) to proviso to Section 125 of the Code of Criminal Procedure, 1973. She was therefore rightfully held to be entitled to claim maintenance from Suresh.

12. As far as enhancement of the amount of maintenance from Rs. 50/ - per month to Rs. 100/- per month is concerned. It cannot be said to be unreasonable at all, considering the financial position of Suresh and the needs of Lata. Thus, I find no infirmity in the impugned Judgment. No interference is, therefore, called for. Hence, the following order :

13. Criminal Writ Petition No. 1417 of 1994 is dismissed. Rule discharged.