

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 919 OF 2012
WITH
CRIMINAL APPLICATION NO. 2222 OF 2014
WITH
CRIMINAL APPLICATION NO. 1311 OF 2015

Dinyar Jami Dadabhoy

....Petitioner.

Versus

Sau. Ujwala Dinyar Dadabhoy
and Ors.

....Respondents.

Mrs. Sabahat T. Kazi, Advocate for petitioner.

Mr. M.H. Patil, Advocate for respondent Nos. 1 and 2.

Mr. P.N. Mule, APP for State.

CORAM : T.V. NALAWADE, J.

DATED : 29th June, 2015.

ORDER :

1. The petition is filed to challenge the judgment and order of Sessions Court, Dhule in Criminal Revision Application No. 109/2007 and also the judgment and order of learned Judicial Magistrate, First Class, Dhule given in Misc. Criminal Application No. 341/2005. The J.M.F.C. had granted maintenance to the son of petitioner and maintenance was refused to the wife. This decision was challenged by the petitioner and also by the wife by filing two Criminal Revision Application Nos.

109/2007 and 141/2007. The Sessions Court allowed the revision of wife and granted maintenance in favour of wife also. Both the sides are heard.

2. It is the case of Smt. Ujwala, the wife that she is Hindu and present petitioner is Parsi. Their marriage took place on 23.5.2002 as per Hindu rites and customs. They have one son, respondent No. 2 - Shamak out of this marriage.

3. It appears that prior to this marriage, Smt. Ujwala had married with other person, but about seven years prior to the marriage with the petitioner, she has taken divorce from the first husband. Information was given to petitioner about the previous marriage and the divorce.

4. It is the case of wife that the petitioner has studied up to first year of the engineering degree course and he was doing some business in Bihar prior to the marriage. She cohabited with petitioner in Bihar for few days and then they returned to Maharashtra. It is contended that the petitioner has knowledge of Ayurvedic medicines and he can use acupressure technique for giving treatment and he knows marshal arts also. Wife has contended that after returning from Bihar, the

petitioner requested the parents of the wife to allow him to stay with them for few days till he starts the business. It is contended that the parents of the wife had allowed the petitioner to stay there.

5. It is the case of wife that during cohabitation, the petitioner never behaved well and he was always picking up quarrels with the wife and he was expressing suspicion about her character. It is her case that when she was carrying, the husband went to Pune without informing her. It is her case that after few days he returned and they lived separate from parents of wife for few days.

6. It is the case of wife that illtreatment was given to her even after birth of a son. It is her case that on 23.3.2004 petitioner reached her to her parents house and said that he will not allow her to cohabit with him. It is her case that when she and her relatives went to the relatives of petitioner, they said that unless some money was given, they will not accept the wife in the matrimonial house. It is contended that the petitioner made allegation that he was not the father of respondent No. 2.

7. It is the case of wife that she has no source of

income and she is unable to maintain herself. It is her case that the husband, father of husband and uncle of husband own a liquor shop and their monthly income from shop is more than Rs. one lakh and they distribute the income amongst themselves. Before the Magistrate, the wife and the son of the present petitioner had prayed for monthly maintenance of Rs. 1500/- each.

8. The application was opposed by the petitioner before the Magistrate. He took the defence that the wife left his company on her own by saying that she was making income and she had no intention to live with him. He also contended that the information about the first marriage of the wife was not given to him and he was deceived. It is his case that the wife was working as a teacher in R.P. Shinde School and she is able to maintain herself. It is the case of petitioner that he has no source of income and he is depending for livelihood on his parents. He has contended that he is educated up to 10th standard and he is not in a possession to give separate maintenance to the wife and son.

9. The learned J.M.F.C. refused the maintenance to wife by holding that she was already married with other man at the

time of her marriage with the present petitioner. The wife examined witnesses to prove the fact of marriage before J.M.F.C. Some record was produced by the wife to show that she had taken divorce from the first husband, but the J.M.F.C. did not rely on this record. The J.M.F.C. held that it was necessary for wife to get declaration that her marriage with the present petitioner was legal one and unless, there was such declaration from Civil Court, it was not possible to give maintenance to her.

10. On the point of income of the husband, the J.M.F.C. held that no record was produced in respect of liquor shop by the wife and there was no convincing evidence to show that the husband was making income by running the liquor shop. Considering the requirements of the son and the status of the parties, maintenance at the rate of Rs. 1500/- per month was granted to son only by the J.M.F.C.

11. The Sessions Court has believed in the evidence given by the wife about the divorce as copy of judgment delivered in H.M.P. No. 139/1997 was produced by the wife. Thus, the record of Court was produced to show that the petition filed for declaration of marriage of Ujwala with her first husband was void, was allowed and the marriage was declared as void by

the decision dated 10.8.1998. The marriage between the present petitioner and Ujwala took place on 23.5.2002. In view of these circumstances, the learned Additional Sessions Judge set aside the order of J.M.F.C. and allowed the maintenance in favour of the wife also. The factum of marriage is not disputed by the petitioner.

12. The learned Sessions Court has considered the evidence given by witnesses examined by the husband on the income of wife. It showed that only for two months appointment was given to the wife in a school. Thus, there was no evidence from the husband to show that the wife was able to maintain herself. The maintenance at the rate of Rs. 1500/- per month is granted in favour of the wife by the Sessions Court.

13. In the present proceeding, it was mainly submitted for the petitioner that under the provisions of Special Marriage Act, the relief of declaration was claimed by present petitioner against respondent Ujwala and such declaration is given in his favour. Submissions made show that this decision is challenged by the wife in appeal and stay is given by this Court to the relief given by the Trial Court. Sessions Court has considered the record in respect of divorce obtained by the wife from the first

husband and there is no reason to disbelieve the case of the wife that on the date of marriage of the respondent - Ujwala with the petitioner, the marriage tie with the first husband of Ujwala was not in existence. The fact of the marriage is not seriously disputed and the evidence is also given on the fact of the marriage by Ujwala. In view of these circumstances and considering the scope of the proceeding filed under section 125 of Cr.P.C., this Court holds that Smt. Ujwala is entitled to claim maintenance and the J.M.F.C. had committed error in refusing to give maintenance to her.

14. The record is produced in respect of the licence of the liquor shop of the family of present petitioner and it shows that the licence was issued to two persons like Mr. Jimmy and Mr. Parvez. Jimmy is father of petitioner and Parvez is uncle of petitioner. It is a foreign liquor shop situated in Dhule city. There is also record about the house property of these two brothers showing that the property admeasuring 433.9 Sq. Mtrs. is situated in Dhule city (CTS No. 3166). There is one more property bearing CTS No. 3155 admeasuring 362 Sq. Mtrs. in Dhule city. The husband has admitted that he was working in the liquor shop though he has tried to say that due to dispute, at present, he is not working in the shop. In view of the record

showing that the father of the petitioner and his uncle were doing the business in partnership, this Court holds that there is no force in the defence taken by the petitioner that he has no source of income. In view of the status of the parties and the requirements of the original claimants, this Court has no hesitation to hold that the maintenance at the rate of Rs. 1500/- per month needs to be granted to each of the original claimant. The total amount of Rs. 3000/- is not on higher side. Thus, there is no reason to interfere in the order made by the learned Sessions Judge.

15. In the result, the petition stands dismissed. The other two criminal applications stand disposed of as the main proceeding is disposed of.

[T.V. NALAWADE, J.]

ssc/