

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.371 OF 2001

1. Surekha Laxman Ranawade,	]	
2. Sheetal Laxman Ranawade.	]	... Petitioners

Versus

1. Shri Laxman Nathuram Ranawade,	]	
2. The State of Maharashtra.	]	... Respondents

Mr. P. G. Karande for Petitioners.
Mr. Nilesh M. Wable for Respondent.

CORAM :- M. S. SONAK, J.
DATE :- DECEMBER 02, 2015

P. C. :-

1. This petition challenges Judgment and Order dated 11/12/2000 made by the Additional Sessions Judge ('ASJ'), Pune, in Criminal Revision Application No.374 of 2000 ('impugned order').

2. By the impugned order, the ASJ, Pune, has set aside the Judgment and Order dated 06/04/2000 made by the Judicial Magistrate First Class ('JMFC'), Pune by which the petitioner no.1 was awarded maintenance at the rate of Rs.800/- per month and her daughter (petitioner no.2) at the rate of Rs.500/- per month.

3. Mr. P. G. Karande, learned Counsel for petitioners, has submitted that there was ample evidence on record which establishes the factum of marriage between petitioner no.1 and respondent no.1. Such material was appropriately appreciated by the JMFC. The learned ASJ exceeded the bounds of revisional jurisdiction in re-assessing the entire material on record and substituting its own findings in place of the findings of the JMFC. Mr. Karande further submitted that proceedings under Section 125 of Code of Criminal Procedure, 1973 (Cr.P.C.) are summary in nature and therefore, the standard of proof in such proceedings is not comparable to the standard of proof warranted either in criminal or civil cases. Mr. Karande made reference to several decisions in support of his contention.

4. Mr. Wable, learned Counsel for respondent, submitted that the impugned order was validly made and there is no jurisdictional error.

5. Having perused the material on record, I am satisfied that the learned ASJ, in the present case, has indeed exceeded the bounds of revisional jurisdiction. In order to establish the factum of marriage, the petitioner no.1, apart from examining herself, had examined three witnesses. Yashodabai Pathare (PW 2) and Sharad Saraf (PW 4) were examined as they were the invitees for the wedding which took place at Kasturba Mangal Karyalaya, Pune. Hanumantrao Wakhare (PW 3) was the mediator through whose mediation the marriage was brought

about. Besides, PW 3 was also present in the marriage ceremony at Kasturba Mangal Karyalaya, Pune. All these witnesses have deposed to the marriage ceremony and the particulars thereat. The wedding-card was also produced on record. The learned JMFC, conscious of the summary nature of proceedings under Section 125 of the Cr.P.C., has accepted the evidence led by and on behalf of the petitioner no.1 and returned a positive finding on the aspect of marriage. The learned ASJ, however, ignoring the summary nature of proceedings under Section 125 of the Cr.P.C., as also the limited parameters of revisional jurisdiction, has proceeded to re-assess the entire material on record, as if, appellate powers were being exercised in the matter. The learned ASJ has upset the learned JMFC's order by re-appreciating the entire material on record and disbelieving the petitioner no.1 and her witnesses. The re-appreciation of evidence, also leaves much to be desired. On basis of minor and inconsequential discrepancies like the precise time of marriage, the testimony of PW 3 has been discarded. The learned ASJ accepts that PW 3 is not some close relative of the petitioner no.1, but on this basis proceeds to hold that PW 3 must not have found place in the marriage hall very close to the place where the actual marriage ceremony were being conducted and therefore the testimony of PW 3 came to be discarded. This is hardly the approach to be adopted, more particularly in the exercise of revisional jurisdiction. On the basis of material on record, the learned JMFC had rightly awarded maintenance in favour of the petitioners.

6. On behalf of the respondent, besides respondent, Shankar Ranawade, brother of respondent no.1, came to be examined in the proceedings. The brother has denied the factum of marriage. However, the testimony of both respondent and his brother is by no means sufficient to disbelieve the factum of marriage at least for the purposes of proceedings under Section 125 of Cr.P.C. In the case of ***Dwarika Prasad Satpathy Vs. Vidyut Praya Dixit and Another***¹, the Hon'ble Apex Court has held that strict proof with regard to performance of marriage is not necessary for the purposes of proceedings under Section 125 of Cr.P.C. *Prima-facie* evidence with regard to marriage and the parties residing as husband and wife is sufficient. In this case, the evidence on record establishes that petitioner no.2 was born out of the wedlock between the petitioner no.1 and the respondent no.1.

7. In the case of ***Nirmalabai w/o Uttam Dhanai Vs. Uttam s/o Rambhau Dhanai and Anr.***², this Court, taking cognizance of the summary nature of proceedings under Section 125 of Cr.P.C., set aside the inferences drawn by the revisional Court against claimant-wife on the aspect of factum of marriage due to absence of documentary evidence.

8. In the case of ***Smt. Rajmati Vs. Mithai and Anr.***³, the learned single Judge of Allahabad High Court has held that the

1 AIR 1999 SC 3348

2 2001 (3) Mh.L.J. 131

3 1999 Cri.L.J. 3378

revisional Court has no power to re-assess evidence and substitute its finding, particularly in matter under Section 125 of Cr.P.C.

9. In the case of *Dukhia Naik Vs. Basanti Dei and Anr.*⁴, the learned single Judge of Orissa High Court has held that standard of proof in proceedings under Section 125 of Cr.P.C. need not be as high as the standard of proof in proceedings for bigamy or divorce. In the said case, the evidence on record indicated that exchange of garland had taken place and the parties lived as husband and wife for more than three years, during the course of which a child was also born to them.

10. Applying the aforesaid principles to the facts and circumstances of the present case, it is evident that the revisional Court has exceeded the bounds of its jurisdiction. Accordingly, the impugned order dated 11/12/2000 is set aside and the order dated 06/04/2000 made by the learned JMFC is hereby restored. Rule is accordingly made absolute to the aforesaid extent. There shall be no order as to costs.

11. The amount deposited by the respondent no.1 before the Trial Court in pursuance of orders made by this Court at the interim stage can be withdrawn by the petitioners along with interest, if any, that might have accrued thereon. The Trial Court to therefore permit the petitioners to withdraw the said amount.

⁴ 1994 Cri.L.J. 1466

12. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)