

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.342 OF 2002

Shri Vasant Vishnu Patil.	]	... Applicant
Versus		
1. Sou. Saraswati Vasant Patil,	]	
2. The State of Maharashtra.	]	... Respondents

Mr. Rahul Deodhar h/f Mr. S. M. Kamble for Applicant.

Mr. Harshad Shingnapurkar i/b Mr. Amit Borkar for Respondent No.1.

CORAM :- M. S. SONAK, J.

DATE :- DECEMBER 02, 2015

P. C. :-

1. The challenge in this petition is to the orders dated 31/01/2000 made by the Judicial Magistrate First Class ('JMFC'), Gargoti and the Judgment and Order dated 04/04/2002 made by the Sessions Judge, Kolhapur. By the order dated 31/01/2000, the learned JMFC has granted maintenance of Rs.1,000/- per month to the respondent no.1, under Section 125 of Code of Criminal Procedure, 1973 (Cr.P.C.). By Judgment and Order dated 04/04/2002, the learned Sessions Judge, Kolhapur, has dismissed the Criminal Revision Application No.51 of 2000 instituted by the applicant.

2. Mr. Rahul Deodhar, learned Counsel for respondent no.1, is right in his submission that the learned Sessions Judge, Kolhapur, was not justified in summarily dismissing the applicant's Criminal

Revision Application No.51 of 2000 by observing that no illegality was found on the fact of record. The Judgment and Order dated 04/04/2002 runs into only two paras and the second para reads thus :-

“2. I have gone through the judgment the lower Court and I do not find any illegality on the face of the record. Therefore, the revision petition is liable to be dismissed. Hence the order.”

3. Mr. Deodhar is right in his submission that this is hardly a satisfactory manner to dispose of the Criminal Revision Application. The learned Sessions Judge has not adverted to the various grounds raised in the memo of the revision petition. The test of 'legality on the face of the record' may be a relevant consideration at the stage of deciding the review petition, but is not the only consideration at the stage of deciding the Criminal Revision Application.

4. However, rather than setting aside the Judgment and Order dated 04/04/2002 and remanding the Criminal Revision Application No.51 of 2000 for fresh consideration at this point of time, Mr. Deodhar was heard with regard to his grievances against the order dated 31/01/2000 made by the learned JMFC.

5. Mr. Deodhar contended that in this case, the respondent no.1-wife has instituted a false case against the applicant and his family members under Section 498A of IPC. The applicant and his

family members were ultimately acquitted. Considering that false allegations levelled by the respondent no.1-wife against the applicant and his family members, the respondent no.1 was disentitled for maintenance from the applicant. Mr. Deodhar also submitted that the findings with regard to applicant's income are vitiated by perversity. The learned JMFC has failed to appreciate that the property to which reference is made in the impugned order, were in the name of elder brother of the applicant and that income from the said property could never have been regarded as income of the applicant.

6. Mr. Deodhar finally submitted that the material on record establishes that the respondent no.1-wife had virtually deserted the applicant without any reasonable cause and accordingly respondent no.1-wife was not entitled to claim any maintenance under Section 125 of Cr.P.C.

7. Mr. Harshad Shingnapurkar, learned Counsel for respondent no.1, submitted that the applicant has not made out any case to interfere with the concurrent findings of fact recorded by the learned JMFC and the learned Sessions Judge. He has pointed out that the acquittal of the applicant and his family members was not really on merits but because the prosecution was unable to establish its case beyond reasonable doubt. Mr. Shingnapurkar pointed out that proceedings under Section 125 of Cr.P.C. are summary in nature and on the basis of the material on record, both the Courts were right in awarding maintenance to the respondent no.1-wife.

8. There is no case made out to interfere with the Judgment and Order dated 31/01/2000 made by the learned JMFC. No doubt, upon a complaint by the respondent no.1, proceedings were instituted against the applicant and his family members for offences punishable under Section 498A of IPC. The applicant and his family members were acquitted as the prosecution failed to establish the case against the applicant and his family members beyond reasonable doubt. This circumstance, by itself, is not some kind of jurisdictional bar to award of maintenance to the wife. The standard of proof necessary in matters of criminal prosecution under Section 498A of IPC and the standard of proof necessary in summary proceedings under Section 125 of IPC is entirely different. The scope and object of the provisions contained in Section 125 of Cr.P.C. is also entirely different. The learned JMFC has taken into consideration the relevant parameters and only thereafter proceeded to award maintenance.

9. In this case, apart from the property documents, there is reference to the applicant owning a jeep and carrying passengers. This material was sufficient to conclude that the applicant had means to pay maintenance at the rate of Rs.1,000/- per month to the respondent no.1-wife.

10. In this case, it cannot be said that the respondent no.1-wife had deserted the applicant without any reasonable cause. Several instances have been referred to in the evidence which compelled the respondent no.1-wife to stay away from the applicant

and with her own parents. The matters reached up to the stage of launching of criminal prosecution against the applicant and his family members. No case is therefore made out to deny maintenance to the respondent no.1-wife on the ground that she has deserted the applicant without any reasonable cause.

11. Upon cumulative consideration of all the aforesaid aspects, no case is made out to grant any relief in this Criminal Revision Application.

12. Further, it is noted that the applicant in this case had already instituted Criminal Revision Application No.51 of 2000 before the Sessions Judge ad Kolhapur against the JMFC's order dated 31/01/2000. The said revision came to be dismissed by order dated 04/04/2002. Section 397 (3) of Cr.P.C. provides that if application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them. Accordingly, this Criminal Revision Application is not maintainable in terms of the provisions contained in Section 397(3) of the Cr.P.C.

13. Nevertheless, considering the order made by the learned Sessions Judge on 04/04/2002, the applicant was afforded opportunity to make his submission on merits on the basis that this was the first Revision Application.

14. For all these reasons, the Criminal Revision Application is dismissed.

15. There shall be no order as to costs.

(M. S. SONAK, J.)