

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 34 OF 2005

Ravindra @ Rupesh Jankilal Sharma,
Age 32 years, Occ. Advocate,
R/o Prithampur, AL 275 Housing
Board, Prithampur, Taluka and
District Dhar (MP).

..Petitioner

Versus

1. Savita Ravindra @ Rupesh Sharma
Age 30 years, Occ. Household
R/o C/o Shri Ratanlal Bhuralal,
Chalisgaon, District Jalgaon.

2. Karmesh Ravindra Sharma
age about 3 years, Occ. Education,
As minor, through Guardian mother
Petitioner No.1.

..Respondents

...

Advocate for Petitioner : Shri L.V.Sangit
Advocate for Respondents : Shri H.P.Deshmukh h/f Shri P.B.Patil

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: June 23, 2016

...

ORAL JUDGMENT :-

1. The petitioner is aggrieved by the judgment and order dated 30.10.2004, by which, the revisional Court granted maintenance at the rate of Rs.1500/- per month and Rs.1000/- per month to both the respondents, respectively.

2. This Court by its order dated 12.4.2005 had directed the petitioner to continue to pay a total maintenance allowance at the rate of Rs.2000/- regularly. By the subsequent order dated 16.4.2007, the petitioner was

directed to continue to pay the said maintenance as well as pay the arrears of maintenance.

3. Shri Sangeet, learned Advocate for the petitioner has strenuously criticized the impugned judgment. He submits that the revisional Court, before causing any interference, should have considered the evidence on record and as to whether such evidence would support its conclusions. He, therefore, draws my attention to the conclusions arrived at by the learned Magistrate in the judgment dated 29.8.2012, by which, respondent No.1 / wife was refused maintenance and respondent No.2 was granted maintenance at the rate of Rs.1000/-.

4. He further submits that though the proceedings before the learned Magistrate were ex-parte, it was noted that the wife could not establish that the petitioner had deserted her. In fact, the trial Court has come to a conclusion that the evidence with regard to refusal to maintain and neglect was not proved by the wife. The reason that compelled her to leave the marital home was also not established and hence the Magistrate refused maintenance to the wife. Shri Sangeet, therefore, submits that the revisional Court could not have interfered with these findings of facts, unless they were totally contrary to the evidence on record.

5. He further submits that the reason why the revisional Court has granted maintenance to the wife as well, is evident from its conclusions in paragraph No.12 of the impugned judgment. The revisional Court noted that

the petitioner had filed a petition for divorce and succeeded in getting an ex-parte decree. The respondent / wife approached this Court and by the judgment of this Court, the ex-parte decree of divorce was set aside and the matter was once again remanded to the trial Court. This aspect has been wrongly construed by the revisional Court as being indicative of the fact that the petitioner did not desire to continue his marital life with the respondent and would therefore, establish that he had deserted her.

6. Shri Sangeet, therefore, submits that the impugned judgment deserves to be quashed and set aside.

7. Learned Advocate for the respondents has supported the impugned judgment and has prayed for the dismissal of the petition. It is stated that the petitioner wanted to divorce the respondent and, therefore, after ill-treating her and compelling her to leave her marital home, he had moved the appropriate Court and had obtained an ex-parte divorce decree which was set aside by this Court.

8. I have considered the submissions of the learned Advocates.

9. It is not in dispute that after the respondent / wife left her marital home, the petitioner had moved the appropriate Court for seeking a divorce. He succeeded in the first round of litigation, when the proceedings were ex-parte. This Court, however, set aside the said judgment and remanded the case for a fresh trial. Both the parties are

unable to state as to what were the developments in the proceedings thereafter. However, the order of this Court dated 16.4.2007 indicates that the petitioner was directed to continue to pay the maintenance as well as clear off all the arrears of maintenance.

10. I have considered the impugned judgment in the light of the submissions of the learned Advocates. I do not find that the revisional Court has committed any error in concluding that the institution of the divorce proceedings by the petitioner is indicative of the fact that he did not desire to continue his marital life with the respondent. Merely because a second view could be possibly taken, in the light of the submissions of Shri Sangeet, would not justify interference in the impugned judgment in the revisional jurisdiction of this Court, in view of the ratio laid down by the Honourable Supreme Court in the cases of Shalini Sham Shetty Vs. Rajendra Shankar Patil [2010 (8) SCC 329] and Radhey Shyam Vs. Chhabi Nath [(2015) 5 SCC 523].

11. This petition, being devoid of merits, is dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

...

akl/d