

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 602 OF 2005

Dadasaheb Uttam Purnale,
Age : 35 years, Occu: Labourer,
R/o. Bhagur, Tal. Shevgaon,
Dist. Ahmednagar.

... **PETITIONER**

VERSUS

Bebi Dadasaheb Purnale,
Age: 27 years, Occu: Labourer & Tailoring,
R/o. Kham-Pimpri,
Tq. Shevgaon, Dist. Ahmednagar.

... **RESPONDENT**

...
Mr. N. V. Gaware, Advocate for the Petitioner.
Mr. D. A. Bide, Advocate for the Respondent.
...

CORAM : **V. K. JADHAV, J.**
DATE : 01st December, 2016.

ORAL JUDGMENT:

. Being aggrieved by the judgment and order dated 22nd August, 2003 in Criminal Miscellaneous Application No.52 of 1999 passed by the learned Judicial Magistrate First Class, Shevgaon and the judgment and order dated 20th August, 2005 passed by the 2nd Ad-hoc Additional Sessions Judge, Ahmednagar in Criminal Revision

No.297 of 2003, confirming thereby the order passed by the Magistrate as aforesaid, the original Respondent / husband preferred this criminal writ petition.

2 Brief facts giving rise to the present criminal writ petition are as follows:

- a) Respondent is the legally wedded wife of the Petitioner and their marriage was performed on 11th May, 1997. It is the case of Respondent / wife that after the marriage, she was treated well initially and thereafter, subjected to ill-treatment on various grounds including demand of cash amount. Even she was forced to terminate the pregnancy at the instance of Petitioner / husband. However, the Petitioner / husband driven her out from the house and threatened that he would cohabit with her only if she brings Rs.25,000/- from her father. It has also alleged by the Respondent / wife that the Petitioner / husband has also performed marriage with another girl. She was not provided with the amount for her maintenance. She is not in a position to maintain herself.

Thus, the Respondent / wife had initiated the proceedings under Section 125 of the Code of Criminal Procedure vide Criminal Miscellaneous Application No.52 of 1999 for grant of maintenance. It has also contended in the application that the Petitioner / husband though having sufficient means, refused and neglected to maintain her.

The Petitioner / husband has strongly resisted the said application by filing his say. He has denied the relations. He has also denied rest of the allegations. According to the Petitioner / husband, the relations as husband and wife is not in existence between them and thus he has no reason to provide any monthly maintenance allowance to the Respondent / wife. It is contended that the Respondent / wife has filed false application for maintenance.

Both of them led oral and documentary evidence in support of their rival contentions. Initially the learned Judicial Magistrate First Class, Shevgaon by order dated 23rd May, 2001, dismissed the application with the

observations that relations as husband and wife does not exist. Being aggrieved by the same, the wife preferred Criminal Revision No.194 of 2001 before the Sessions Court, Ahmednagar and the learned II Additional Sessions Judge, Ahmednagar vide its judgment and order dated 10th May, 2002, partly allowed the said revision application and remanded the matter to the Magistrate with directions to give opportunity afresh to the parties to adduce evidence. Thereafter, the parties led their evidence in Criminal Miscellaneous Application No.52 of 1999 afresh and after giving opportunity of being heard to both the parties, the learned Magistrate vide its impugned judgment and order dated 22nd August, 2003, partly allowed the application and thereby directed the Petitioner / husband to pay the monthly allowance of Rs.700/- to the Respondent / wife alongwith costs of Rs.500/-. Being aggrieved by the same, the Petitioner / husband preferred Criminal Revision Application No.297 of 2003 and the learned Additional Sessions Judge, Ahmednagar vide its order dated 20th August, 2005,

dismissed the criminal revision application by confirming the order passed by the learned Magistrate. Hence, this criminal writ petition.

3 The learned counsel for Petitioner submits that the Petitioner's grand-father died on 1st May, 1997 and marriage as alleged by the Respondent / wife could not have been performed on 11th May, 1997. The learned counsel submits that, as per the custom and traditions, 13 days sad period is observed in case of death in a family and therefore, there was no question of performing any marriage as such. The learned counsel submits that the Respondent / wife has examined her father and maternal uncle, who have deposed about the presence of grand-father of the Petitioner / husband in the so-called marriage, when the grand-father of Petitioner / husband died prior to the alleged date of solemnization of the marriage. The learned counsel submits that the Courts below have given reference to the general custom prevailing in the Hindu community. It is nobody's case that after curtailing the sad period, the marriage between the Petitioner and Respondent was solemnized. However, the Courts below have considered the said custom and

drawn inference that the marriage could have been performed in the period within 13 days after the death of the grand-father of Petitioner / husband. The learned counsel submits that the Respondent / wife has failed to prove the marriage invitation card and the medical card showing the termination of her pregnancy, though produced on record. The learned counsel submits that, however, the Courts below have unnecessarily given weightage to the charge-sheet vide R.C.C. No.33 of 1999 wherein the Petitioner / husband came to be acquitted by the Court. The learned counsel submits that the impugned judgment and orders are therefore, liable to be quashed and set aside.

4 The learned counsel for Respondent / wife submits that in a proceeding under Section 125 of the Code of Criminal Procedure seeking maintenance, strict proof of marriage is not required. The learned Magistrate has also observed that the Criminal Court has no jurisdiction to decide the validity or invalidity of the marriage. The learned counsel submits that till this date, the Petitioner / husband has not sought declaration of the status of his relation with Respondent / wife by approaching the Civil Court. The learned counsel submits that the Respondent / wife has filed a complaint against the Petitioner and

his family members for having committed the offence punishable under Sections 323, 498-A and 504 read with 34 of the Indian Penal Code. Though the Petitioner / husband and his family members came to be acquitted in the said case, the fact remained as it is that after due investigation, the police submitted charge-sheet against the Petitioner / husband and his family members. Further, in the said case, the Petitioner / husband has not raised a defence that there exist no relation as husband and wife with Respondent (Complainant in the said criminal case). The learned counsel submits that considering the source of income of the Petitioner / husband and the status of the parties, the Courts below have rightly granted the maintenance. No interference is required.

5 According to the Respondent / wife, the marriage was solemnized on 11th May, 1997 at Paithan in the Math of Gangubai. The Petitioner / husband has produced on record the death certificate of his grand-father and it is rather an admitted position that the grand-father of Petitioner / husband died on 1st May, 1997. Both the Courts below have agreed that there is general custom in Hindu community that after the death of a family member, 13 days sad period is followed. However, the Courts below also agreed with one another

custom wherein the marriage is also permitted to be performed by curtailing the said sad period. In view of this, the Courts below have rightly observed that the burden is on the Petitioner / husband to prove that even though there is custom in Hindu community to curtail such a period of 13 days, even then his family has observed the sad period of 13 days after the death of his grand-father. The Petitioner / husband has not deposed anything about the observance of the said sad period after the death of his grand-father. He has also not stated that the said sad period was observed including the day on which the marriage alleged to have been solemnized. The Petitioner / husband has only suggested the possibility that in case of death of a family member, within 13 days from the date of death, no holy ceremony or other functions are solemnized in the family and therefore, there could not have been any possibility to perform the marriage on 11th May, 1997 as alleged. However, in absence of any evidence in this regard, only on the basis of such averments nothing can be concluded. Both the Courts below have rightly given weightage to registration of Regular Criminal Case No.33 of 1999, a copy of the same is placed on record and marked as Exhibit – 56. After due investigation, the police submitted the charge-sheet against the Petitioner / husband

and his family members for having committed the offence punishable under Sections 498-A, 323 and 504 read with 34 of the Indian Penal Code. Needless to say that complaint under Section 498-A of the Indian Penal Code can be filed only against the husband and his family members, if at all the wife is subjected to cruelty as defined under the said section.

6 It has further come in the evidence of the Respondent / wife and her father and uncle that after the marriage, for initial period she was treated well and thereafter, subjected to ill-treatment on various reasons including non-fulfillment of demand of cash amount. Both the Courts below have recorded a concurrent finding that the Petitioner / husband though having sufficient means, refused and neglected to maintain the Respondent / wife. The learned counsel for the Petitioner / husband has not pointed out anything contrary to draw any other conclusion.

7 So far as sufficient means possessed by the Petitioner / husband is concerned, it has come in the evidence that the Petitioner / husband owned and possessed certain land at village Bhagur, Taluka Shevgaon. Even accepting that the Petitioner /

husband is doing the labour work, the amount of maintenance allowance granted at the rate of Rs.700/- per month is quite just and reasonable considering the financial condition of the Petitioner / husband and the status of the parties to the proceedings. No interference is required. Hence, the following order:

ORDER

The criminal writ petition is hereby dismissed. Rule is discharged.

[V. K. JADHAV, J.]

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