

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6419 OF 2015

BABASAHEB S/O ASHRUBA RASVE
VERSUS
THE STATE OF MAHARASHTRA & ORS

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Advocate for Applicant : Mr. Mr. A.A. Mukhedkar

APP for Respondent No.1: Mr. A.R. Kale

Adv. for Respondent Nos. 2 and 3 : Mrs. Chaitali Kutti h/f Mr. N.P. Bangar

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CORAM : V. K. JADHAV, J.
DATED : 20th OCTOBER, 2016

PER COURT:-

1. Heard finally with consent of the parties.
2. Being aggrieved by the judgment and order passed by the learned J.M.F.C. Georai Court No.2, dated 5.10.2013 in Misc. Criminal application No. 139 of 2007 and the judgment and order passed by the learned Sessions Judge, Beed dated 27.10.2015 in Criminal Revision application No. 126 of 2013 confirming thereby the order passed by the Magistrate, original respondent-husband, has filed the present criminal application.
3. Brief facts, giving rise to the present criminal application are as follows:-

a) Respondent Nos. 2 and 3 filed Misc. criminal application No. 139 of 2007 under section 125 of Cr.P.C. for grant of maintenance before the J.M.F.C. Georai. It has stated in the application that respondent No.2 got married with the applicant 21 years back and respondent No.3 is their daughter. Respondent No.2 was driven out by the applicant and since then she is residing with her parents alongwith her daughter. Respondent No.2 wife is not able to maintain herself and her daughter. The applicant refused and neglected to maintain them though having sufficient means. It has also stated in the application that the applicant is having 19 acres of agriculture land and by excluding the expenses, he is getting the income near about Rs.4,00,000/- per annum from the agriculture land.

b) The applicant husband has strongly resisted the application by filing his say at Exh.11. It has stated in the say that after the marriage, respondent No.2 started insisting him to mutate the landed property in her name and started quarreling with the applicant on that count. It has also contended that respondent No.2 had filed Misc. criminal application No. 156 of 1991 under Section 125 of Cr.P.C. for grant of maintenance, before the court and the learned Magistrate, after considering evidence in that case, by judgment and order dated 30.9.1993, granted maintenance to respondent No.2 wife at the rate

of Rs.150/- p.m. It has stated in the say that after the said decision rendered by the Magistrate, the applicant made sincere efforts and brought her back for further cohabitation. However, thereafter respondent No.2 wife started insisting him to reside separately from his mother. Accordingly, they started residing separately. However, respondent No.2 wife again started insisting him to transfer the land standing in the name of his mother, in her name and on that count, she started quarreling with the applicant husband. It has further stated in the say that respondent No.2 wife, on her own, alongwith respondent No.3 went to her parents house and started residing there since then. According to the applicant husband, wife is residing separately without any just cause and therefore, she is not entitled to claim any maintenance. It has also stated that she is able to maintain herself as she is doing the labour work. It has further stated that the applicant husband is having 4 acres of dry land and he is unable to give separate maintenance to the respondent wife.

c) Both the parties led their oral as well as documentary evidence in support of their rival contentions. The learned Magistrate by the impugned order dated 5.10.2013 allowed the application and directed the applicant herein to pay Rs.1200/- p.m. to respondent No.2 wife and Rs.600/- p.m. to respondent No.3 daughter. Being aggrieved by the same, the applicant husband has preferred criminal

revision application No. 126 of 2013. However, the learned Sessions Judge, Beed by impugned order dated 27.10.2015 dismissed the revision by confirming the order passed by the Magistrate. Hence, this criminal application.

4. Learned counsel for the applicant submits that respondent No.2 wife had filed Misc. Criminal application No. 156 of 1991 for grant of maintenance under Section 125 of Cr.P.C. and accordingly the Magistrate by judgment and order dated 30.9.1993 granted maintenance to her at the rate of Rs.150/- p.m. Respondent No.2 wife should have filed application under the provisions of section 127 of Cr.P.C. However, respondent No.2 wife filed the second application for grant of maintenance when the first order of grant of maintenance remain in force. Thus, second application for grant of maintenance under Section 125 of Cr.P.C. is not maintainable and the same is barred by the principles of *res-judicata*. On 26.4.2013, during pendency of criminal revision application before the Sessions Judge, Beed, respondent No.3 got married and now she is staying with her husband. The order of maintenance in her favour thus stands automatically cancelled on attaining the majority.

Learned counsel for the applicant, in order to substantiate his submissions, placed reliance on the judgments in the following

cases:-

- i. Vithalrao Marotrao Awadhut vs. Ratnaprabha Awadhut & Ors, reported in 1979 Bom.C.R. 249,***
- ii. Dnyanoba Phirangoo Katore vs. Housabai Dnyanoba Katore and another, reported in 1983 (1) Bom.C.R. 461***
- iii. Shivaji Baburao Bhabad @ Bhawad vs. Alka Shivaji Bhabad @ Bhawad & Anr, reported in 2010 (3) Mh.L.J. 710***

5. Learned counsel for the respondents submits that in para 14 of the judgment, the learned Magistrate has observed that after first order of maintenance passed by the Magistrate in the year 1993, the compromise was effected between the parties and accordingly the respondent wife started cohabiting with the applicant husband. Learned Magistrate has further observed in the same para that this fact is admitted by both the parties. It is also admitted position that thereafter, the respondent wife started residing with her parents. Learned counsel submits that in view of changed facts and circumstances, second application for grant of maintenance is maintainable and the same is not barred by the principles of *res-judicata*. The order of grant of maintenance in favour of daughter, if she has attained the majority during pendency of revision application before the Sessions Court or present application before this court, does not get automatically cancelled and the applicant husband has

to take recourse to the provisions of Section 127 of Cr.P.C. for cancellation of said order of maintenance granted in favour of daughter.

Learned counsel for the respondents submits that both the courts below have considered that the respondent wife has just cause to live separate and claim maintenance. The applicant husband, though having sufficient means, refused and neglected to maintain the respondents. Both the courts below considering the income proof, granted just and reasonable amount of maintenance in favour of the respondents. No interference is required and the criminal application is liable to be dismissed.

Learned counsel for respondent Nos. 2 and 3, in order to substantiate her contentions, placed reliance on the judgment in the case of ***Sou. Janabai vs. Krishna Ravba Rithe and another, reported in 1993 Cri.L.J. 1183.***

6. I have also heard learned A.P.P. for respondent No.1-State

7. It is an admitted fact that in the year 1991, the respondent wife had filed an application bearing Criminal Misc. application No. 156 of 1991 and the Magistrate, by judgment and order dated 30.9.1993

granted maintenance to her at the rate of Rs.150/- p.m.. It is also an admitted fact and also observed by the trial court that the compromise was effected between the parties before the court and in terms of said compromise, the applicant husband took the respondent wife to his house for further cohabitation and accordingly she had cohabited with him. It has also come in the evidence that respondent No.3 born when respondent No.2 wife was staying with her parents. It has also come in the oral evidence of the parties that in the year 2007, respondent wife gave birth to one male child viz. Shubham and he died in the year 2007. It is thus clear that in terms of said compromise, respondent wife started cohabiting with her husband and in the year 2007 she gave birth to one male child, who died afterwards. It has alleged in the application for grant of maintenance that thereafter, the applicant husband drove her out from the house and accordingly she started residing with her parents alongwith the daughter.

8. In the case of ***Vitthalrao Awadhut (supra)***, relied upon by learned counsel for the applicant, in second application for maintenance, the wife has alleged that her husband is irregular in making the payment of maintenance allowance. Every time she had to approach the Court for getting the arrears of maintenance. It has also alleged by her that her husband is now residing with another

woman and he does not care to maintain her. In the light of these facts, this court has observed that no new facts have been alleged in the case except the averment that the husband was irregular in making the payment of arrears of maintenance on the basis of the earlier order. This court has further observed that this averment does not amount to new facts on which second application for maintenance would be competent. In the light of these observations, this court has further held that the only recourse is to file application under Section 127 of Cr.P.C. and not otherwise.

9. In the case of ***Sou. Janabai (supra)*** relied upon by learned counsel for the respondent wife, this court has also referred earlier judgment rendered in the case ***Vitthalrao Awadhut (supra)*** and held that since the petitioner has approached this court on fresh facts and circumstances and various events have intervened between the disposal of earlier application and the filing of the second application, the second application is maintainable and not barred by principles of *res-judicata*. This court, while distinguishing the facts of ***Vitthalrao Awadhut's (supra)*** case held that the facts of ***Vitthalrao Awadhut (supra)*** have no application for the reason that in the said case, there are no new facts in the second application for grant of maintenance and since the second application, being substantially on the same facts, was held to be barred by principles of *res-judicata*.

10. In the instant case, as discussed in the foregoing paras, admittedly, after the compromise effected between the parties, the respondent wife started residing with husband and even she conceived and gave birth to another son, who died when she was staying with her husband. The said son by name Shubham died in the year 2007. The respondent wife has further alleged in the application that in the year 2007 itself, the applicant husband drove her out from his house and she started residing with her parents and therefore, constrained to file an application for grant of maintenance. In view of these new facts, I have no hesitation, in my mind, to hold that the second application for grant of maintenance is maintainable and the same is not barred by the principles of *res-judicata*. The ratio laid down by this court in the case ***Sou. Janabai (supra)***, squarely applies to the facts and circumstances of the present case.

11. Learned counsel for the applicant submits that since respondent No.3 daughter has attained majority and is now married, she is not entitled to grant of maintenance and maintenance order passed in her favour stands cancelled automatically. However, in the case of ***Shivaji Baburao Bhabad @ Bhawad (supra)***, this Court by referring the judgment of the Supreme Court in the case of ***Jagir Singh vs. Ranbir Singh and Anr., reported in AIR 1979 SC 381***, it

is held that this would be the circumstances, which entitled the father to have the order passed in favour of the son, cancelled. In the case in hand, the applicant husband may file an application for cancellation of order of maintenance passed in favour of the respondent daughter on the ground, as stated herein before.

12. Both the courts below have recorded the concurrent findings that the respondent wife was driven out from the house without any reason and the applicant husband refused and neglected to maintain the respondents. Both the courts below have also observed that the applicant husband is having sufficient means to pay separate maintenance to the respondents. In the year 2013, learned Magistrate has granted maintenance at the rate of Rs.1200/- p.m. to respondent No2. wife and Rs.600/- p.m. as maintenance to respondent No.3 daughter, in the application filed in the year 2007. Further, the said order came to be confirmed by the revisional court in the year 2015. I do not find any reason to interfere in the orders passed by the courts below. Hence, I proceed to pass the following order:-

O R D E R

Criminal application is hereby dismissed.

(V. K. JADHAV, J.)