

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2352 OF 2014

Kalpana D. Kamble

...Petitioner.

vs.

Deelip T. Kamble and anr.

... Respondents

Mr. R.S. Apte, Senior Advocate a/w. Mr. Saurabh Oka for the
Petitioner.

Mr. R.M. More i/b Mr.Sandeep S. Koregave for Respondent No.1.

CORAM : M. S. SONAK, J.

Date of Reserving the Order : 14 June 2016.

Date of Pronouncing the Order : 24 June 2016.

ORDER :-

1] Heard Mr. R.S. Apte, learned senior advocate alongwith Mr. Saurabh Oka, learned counsel for the petitioner as well as Mr. R.M. More alongwith Mr. Sandeep Koregave, learned counsel for respondent No.1.

2] An attempt was made to persuade the parties to arrive at an amicable settlement in the matter. However, the parties reported that no such settlement is possible.

3] The challenge in this petition is to the judgment and order dated 27 February 2014 made by the Additional Sessions Judge,

Jaysingpur in Criminal Revision Application No. 11 of 2013. By the impugned judgment and order, the learned Additional Sessions Judge has set aside the judgment and order dated 18 February 2013 made by learned Judicial Magistrate First Class (JMFC), Jaysingpur awarding maintenance of Rs.1000/- to the petitioner-wife under Section 125 of the Criminal Procedure Code, 1973 (CR.P.C.).

4] Mr. R.S. Apte, learned senior advocate for the petitioner-wife, has submitted that the material on record was sufficient to establish the factum of marriage between the petitioner and the respondent No.1. The petitioner had examined herself and two witnesses. The testimony of the witnesses, i.e., the petitioner's brother and the brother's friend, was incorrectly excluded from consideration by the learned Additional Sessions Judge, *inter alia*, on the ground that they were interested witnesses. Mr. Apte submitted that such witnesses were natural witnesses for the marriage ceremony and the learned Additional Sessions Judge, in the exercise of revisional jurisdiction, was not justified in re-appreciating the material on record and to reverse the JMFC. Mr. Apte, learned senior advocate for the petitioner, submitted that merely because the petitioner had continued to use her maiden name in official records, including in

the electoral rolls, that by itself was not sufficient to draw any inference against the marriage. Mr. Apte submitted that the learned Additional Sessions Judge has clearly exceeded the bounds of revisional jurisdiction and therefore, the impugned judgment and order warrants interference.

5] The learned counsel for the respondent No.1, submitted that the case set out by the petitioner-wife is inherently inconceivable and improbable. He submitted that in the present case, the application seeking maintenance has been made after about seventeen to eighteen years. The learned counsel submitted that apart from there being no documentary evidence whatsoever in support of the factum of marriage, the contradictions in the testimony of the witnesses are too great to be ignored. The documentary evidence on record, does not support the factum of any marriage between the petitioner and respondent No.1. Besides, the learned counsel pointed out that respondent No.1 is a married person having four children. Respondent No.1 has since retired and any foisting of marriage upon respondent No.1 or the liability to pay maintenance at this stage, will be illegal and inequitable, in the facts and circumstances of the present case.

6] Upon due consideration of rival contentions and perusal of the record and perusal of the judgment and order made by the JMFC as well as the impugned judgment and order made by the learned Additional Sessions Judge, I am satisfied that this is not a fit case to interfere with the impugned judgment and order under Articles 227 of the Constitution of India.

7] The petitioner-wife claims that the marriage took place in 1981 in presence of several persons and relatives. It is also the case of the petitioner-wife that the respondent No.1 was drunkard and demanded dowry from the petitioner-wife. It is also the case of the petitioner-wife that because the petitioner-wife would not yield to such demand, respondent No.1 deserted her soon thereafter. It is the case of the petitioner-wife that for twenty one years, the petitioner-wife has lived with her brother and finally, since the brother is unable to maintain her, she has after almost 19 to 20 years applied for maintenance.

8] The delay in applying for maintenance, is quite inordinate. There is no material produced on record in the form of correspondence or otherwise as to what really transpired for over

two decades since the date of alleged marriage and the claim for maintenance. There is no record of any complaint to any authorities in the matter of alleged demand of dowry or mis-behaviour consequent upon drunkenness. The virtual silence in the matter for the period of over two decades from the date of alleged marriage till the date of claim for maintenance, is a valid circumstance, in the matter of determination as to whether such marriage was at all solemnized.

9] That apart, the documentary evidence on record, supports the case of respondent No.1 that there was no marriage between the petitioner and respondent No.1. The voters list continue to indicate that the petitioner's maiden name. The voters list has been revised from time to time. In none of the revisions, has the petitioner even bothered to change her name. This is quite unlikely, considering the background of the petitioner. Therefore, the learned Additional Sessions Judge was rightly in observing that the documents on record do not support the theory of marriage. There were opportunities for correction in the year 1995, 2003, 2008, 2011 etc.. However, on none of the occasions the petitioner has chosen to indicate that she was married to respondent No.1 and that her name

is therefore, now different.

10] The learned Additional Sessions Judge has applied his mind to the oral testimony on record. The testimony, as observed by the learned Additional Sessions Judge, does not inspire much confidence and the judgment and order, was rightly interfered with by the learned Additional Sessions Judge. In any case, as between the documentary evidence and oral testimony, it cannot be said that the learned Additional Sessions Judge has exceeded jurisdiction in relying upon the documentary evidence.

11] This is not a case where learned Additional Sessions Judge has re-appreciated the material on record. This is a case where learned Additional Sessions Judge has laid emphasis upon documentary evidence, as the learned JMFC has chosen to virtually ignore the same. The JMFC had not even adverted to the circumstances that the petitioner for over two decades had neither made any claim of marriage nor had applied for payment of maintenance. Further, the material on record does suggest that respondent No.1 is already married and has four children. The financial position of respondent No.1 is not such as, he can afford to

maintain the petitioner, particularly, where the factum of marriage has not been established. It is the case of the petitioner that respondent No.1 earns a salary of Rs.10,000/- per month. Even assuming this is so, it must be noted that the respondent No.1 is required to maintain his wife and four children.

12] For all these reasons, there is no case made out to interfere with the impugned judgment and order. Accordingly, this petition is dismissed. There shall however, be no order as to costs.

(M. S. SONAK, J.)

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