

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.68 OF 2018

Santosh s/o Laxman Sangale,
Age : 34 years, Occu. Agri.,
R/o Sangalwadi, Tq. Shirur-Kasar,
District Beed

APPLICANT

VERSUS

Pragati w/o Santosh Sangale,
Age : 29 years, Occu. Household,
R/o Patoda, Tq. Patoda,
District Beed

RESPONDENT

Mr. A.V. Lavte, Advocate holding for Mr. S.J.
Salunke, Advocate for the applicant
Mr. A.N. Nagargoje, Advocate for the respondent

CORAM : SANGITRAO S. PATIL, J.

DATE : 25th JUNE, 2018

ORAL JUDGMENT :

The applicant has challenged the legality and correctness of the judgment and order dated 14th December, 2017 passed in Criminal Appeal No.43 of 2016 by the learned Sessions Judge, Beed, whereby the judgment and order dated 8th March, 2016 passed by the learned Judicial Magistrate, First Class, Shirur (Ka.)

in Misc. Criminal Application No.123 of 2014, directing the applicant to pay an amount of Rs.6000/- per month to the respondent towards maintenance, came to be confirmed.

2. The applicant and the respondent got married on 27th November, 2013. It is alleged by the respondent that the applicant used to beat and illtreat her with a view to compel her to bring Rs.5,00,000/- from her maternal home. She was driven out of the house in the month of December, 2013. However, due to intervention of some relations, she was again taken back for cohabitation by the applicant in July, 2014. However, on 31st August, 2014, the applicant tried to administer poison to the respondent. Therefore, she was constrained to leave the house of the applicant. She lodged an FIR against the applicant for the offence punishable under Section 498-A of the Indian Penal Code. The case is pending against him for that offence. It is alleged that the applicant, though serving as a Headmaster in a High School at Karanjwad, earning Rs.30,000/- per month and having ten acres of irrigated agricultural land, did not care for maintenance of the respondent. The applicant claims that she has no source of income and is unable to

maintain herself. The respondent prayed for maintenance and also for her protection from domestic violence.

3. The applicant resisted the application. According to him, after the marriage, the respondent cohabited with him for about five days only and left for her maternal home. Thereafter, she did not come back. It was transpired that she had already married to one Raju alias Rajendra Chhagan Garje against whom she had filed Hindu Marriage Petition (H.M.P.) No.63/2005 for divorce, but it was rejected. Since the relations between the respondent and Raju Garje are still subsisting, she cannot claim maintenance from the applicant. It is further stated that the applicant has no source of income. On the contrary, the respondent is able to maintain herself at her own.

4. After recording the evidence of the parties, the learned Judicial Magistrate allowed the application partly, directed the applicant not to subject the respondent to domestic violence and further directed him to pay Rs.6000/- per month towards her maintenance with effect from 5th September, 2014 and to pay Rs.10,000/- towards compensation.

5. The applicant challenged the order passed by the learned Judicial Magistrate before the Sessions Court at Beed. After hearing the parties and considering the facts and circumstances of the case, the learned Sessions Judge dismissed the appeal on 14th December, 2017. The applicant has challenged the said judgment and order before this Court.

6. The learned counsel for the applicant submits that the respondent cannot be said to be legally wedded wife of the applicant since she was already married to one Rajendra Chhagan Garje and their marital tie is still subsisting. He then submits that the respondent resided with the applicant for five days only and left for her maternal home. Thereafter, she did not resume the cohabitation with the applicant. She herself deserted the applicant. Therefore, she is not entitled to get maintenance. He submits that the applicant is jobless. He does not possess any irrigated agricultural land. The learned Magistrate did not consider the need of the applicant properly and directed him to pay Rs.6000/- per month towards maintenance. According to him, the quantum of maintenance is high and excessive. He, therefore, prays that the impugned judgment and

order may be quashed and set aside and the application filed by the respondent may be dismissed.

7. On the other hand, the learned counsel for the respondent submits that the applicant made false allegations against the respondent that she was already married to some other person. The learned counsel pointed out to the evidence of the applicant and his witness Vishnu, who have stated that Rajendra Garje was married to one Gita d/o Bhimrao Funde on 17th May, 1998. The applicant did not produce any evidence to show that the respondent was married to the said Rajendra Garje. The learned counsel submits that with this wild allegation, it is clear that the applicant was not interested in cohabiting with the respondent. He deserted the respondent. Though there is no evidence to show that the applicant is serving as Headmaster in a school, it has come on record that he is B.A. B.Ed. He suppressed his income from his own occupation and also from his agricultural lands, which fact was within his special knowledge. Accordingly, the amount of Rs.6000/- per month is quite reasonable and proper for maintenance of the respondent, who is unable to maintain herself. The learned counsel supports the impugned judgment and

order and prays that the Revision Application may be dismissed.

8. The applicant alleged that the respondent was already married to one Rajendra Chhagan Garje. However, he could not produce any document in support of this allegation. The learned counsel for the applicant pointed out to the copy of H.M.P. No.63 of 2005 filed by one Pragati Raju Garje against Raju Chhagan Garje, in which the place of residence of the petitioner Pragati is shown as Mahasangvi, Taluka Patoda, District Beed. However, in her application for maintenance filed before the learned Judicial Magistrate, First Class, the address of the respondent shown as that of Patoda. There is nothing on record to show that the respondent was residing at Mahasangvi. As such, the learned Magistrate found that the applicant failed to establish that the respondent was married to one Rajendra Garje and that her marriage was subsisting when she married to the applicant. Such type of allegation, without any evidence, makes the intention of the applicant clear that he is not interested in cohabiting with the respondent.

9. The respondent specifically states that the

applicant had tried to administer poison to her on 31st August, 2014. She has filed a report against him for the offence punishable under Section 498-A of the Indian Penal Code and the case is pending against him. There is nothing on record to show that after August, 2014, the applicant made any genuine efforts to bring the respondent back to his house for cohabitation.

10. From the above facts, it is clear that the applicant deserted the respondent. There is nothing on record to show that the applicant made any arrangement for maintenance of the respondent. This fact itself is sufficient to show that he neglected to maintain her.

11. The applicant states that he has no source of income and is unable to maintain the respondent. Though there is no documentary evidence to show that the applicant is serving as Headmaster in a High School and earning Rs.30,000/- per month, it is admitted fact that the applicant is B.A. B.Ed. Naturally, he must be doing some job. In any case, his income must be more than that of an ordinary labourer, which may not be less than Rs.7500/- per month. Besides that, there is some irrigated agricultural land owned by the applicant from which the applicant is getting income. The applicant did

not disclose his income, which fact is within his special knowledge. He tried to suppress his income. There may be some exaggeration in the version of the respondent about the income of the applicant. Considering the earning capacity of the applicant, his monthly income can reasonably be fixed at Rs.10,000/-. Considering this income of the applicant, I am of the view that it will be rather difficult for him to spare Rs.6000/- per month for being paid to the respondent towards maintenance. I, therefore, fix the quantum of maintenance to Rs.5000/- per month. It would not be difficult for the applicant to pay Rs.5000/- per month to the respondent towards maintenance.

12. The rest of the directions given by the learned Magistrate in the impugned order need no interference. The Criminal Revision Application is liable to be allowed partly. In the result, I pass the following order:-

O R D E R

(A) The Criminal Revision Application is partly allowed.

(B) The order dated 14th December, 2017 passed by

the Sessions Judge, Beed in Criminal Appeal No.43 of 2016 is quashed and set aside.

(C) The order dated 8th March, 2016 passed by the learned Judicial Magistrate, First Class, Shirur (Ka.) in Misc. Criminal Application No.123 of 2014 is modified to the extent of quantum of maintenance, which is reduced to Rs.5000/-. The applicant is directed to pay maintenance at the rate of Rs.5000/- per month to the respondent from the date of application i.e. 5th September, 2014.

(D) The rest of the directions given in the order dated 8th March, 2016 passed by the learned Judicial Magistrate, First Class, Shirur (Ka.) are maintained as they are.

(E) The Criminal Revision Application is disposed of accordingly.

[SANGITRAO S. PATIL]
JUDGE

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