

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 154 OF 2001

Shri Babanrao Rambhau Borhade
Age: 54 years, Occ. Agriculturist
Residing at : Javulke Bk.
Taluka Khed, Dist. Pune

...Applicant

Versus

1) Smt. Chandrabhaga Babanrao Borhade
Age 46 yrs, Occ. Nil
Residing at Rajgurunagar
Kumbharwada, Tal. Khed
Dist. Pune

2) State of Maharashtra

...Respondents

Mr. Saurabh Oka for the Applicant.
Mr. Vilas B. Tapkir for Respondent No.1.
Mrs. Rutuja Ambekar, APP for Respondent No.2/State.

**CORAM : MRS. MRIDULA BHATKAR, J.
DATED : 10 OCTOBER 2018
DICTATED ON : 10 OCTOBER 2018**

JUDGMENT

1. In this Criminal Revision Application, the issue of maintenance under Section 125 of the Code of Criminal Procedure, 1973 ("the Cr.P.C.") is involved.

2. Respondent No.1-wife i.e., the original applicant, had filed Misc. Application No. 138 of 1994 for maintenance under Section 125 of the Cr.P.C. By the judgment and order dated 11th January 1999, the learned Judicial Magistrate First Class, Rajgurunagar dismissed the said application. Against which, respondent No.1-wife had filed Criminal Revision Application No. 61 of 1999 before the Sessions Court, Pune. The learned 4th Additional Sessions Judge, Pune allowed the said application by the judgment and order dated 20th March, 2001 and directed the applicant-husband i.e., original Opponent No.1, to pay maintenance of Rs. 500/- per month to respondent No.1-wife from 8th July, 1994. Hence, this Criminal Revision Application.

3. It is the case of respondent No.1-wife that a marriage was performed between the applicant and respondent No.1 nearly 30 years prior to 1994. After marriage, within two years, respondent No.1-wife had to leave the house of her husband due to ill treatment and the physical assault at the hands of applicant-husband. She started residing with her father and though tried to come back to the applicant-husband, her all efforts were futile. Thereafter, immediately, the applicant-husband performed second marriage with one Usha Jagannath Jadhav in the year 1980 and respondent No.1-wife remained neglected and stayed with her father. Thereafter, she had filed Misc. Application No. 138 of 1994 for maintenance under Section 125 of the Cr.P.C. The applicant-husband had denied

the fact of marriage itself and contended that his marriage was performed with Usha Jadhav in the year 1980. Thereafter, the relations were strained and, therefore, she filed an application for maintenance bearing No. 239 of 1980 against the applicant-husband. However, the marriage was compromised and they were living together. It was contended that, in between, respondent No.1-wife whose father was working as a gardener in the orange orchid owned by the applicant got acquainted with respondent No.1-wife and she, by filing this application for maintenance has taken the advantage of the said acquaintance. This is the abuse of process of law.

4. The learned counsel for the applicant has submitted that the trial Court has rightly rejected the application by discarding the evidence tendered by respondent No.1-wife. He has pointed out the contradictions in the evidence of respondent No.1-wife and her witnesses on the point of number of Mangalashtaka, taking seven rounds around home (sacred fire) and on the point of age of the parties. He has further submitted that the discrepancies in the evidence of respondent No. 1-wife and her witnesses are glaring and material. He has further submitted that the learned Judge of the Sessions Court ought not to have reversed the order of the learned Magistrate, but should have confirmed the same. He has further submitted that respondent No.1-wife filed the maintenance application after 30 years and after leaving the house, she has not

filed any criminal complaint against the applicant-husband on the point of physical abuse. In the absence of documentary evidence on the point of marriage, respondent No.1-wife has failed to prove her marriage with the applicant-husband and, therefore, the order of maintenance passed by the learned 4th Additional Sessions Judge, Pune is illegal and it is to be set aside and the Revision Application be allowed.

5. Per contra, the learned counsel for respondent No.1-wife has argued that respondent No.1-wife did not file any application for maintenance for 30 years because her father was alive and was looking after her. Now, it is not possible to earn livelihood to maintain herself and, therefore, the application for maintenance has been filed. He has relied on the evidence of respondent No.1-wife and her witnesses whose evidence is positive and reliable on the point of marriage performed between the applicant and respondent No.1. He has further submitted that a strict proof of fact is not required to prove the marriage in the proceedings filed under Section 125 of the Cr.P.C. He supported the order passed by the learned Judge of the Sessions Court.

6. This Criminal Revision Application was earlier dismissed ex-parte by order dated 20th November, 2014 by this Court for want of prosecution. Thereafter, by order dated 7th August 2015, earlier order was recalled and the Revision Application was restored for afresh hearing and decision.

7. This is very old and unfortunate case pending on the file for 17 years wherein respondent No.1-wife had to wait for such a long period to assert her right.

8. The fact of marriage is disputed. The applicant-husband has bluntly denied any relationship much less a nuptial knot between the parties. Respondent No.1-wife had filed an application under Section 125 of the Cr.P.C. and, therefore, the necessarily burden lies on her to prove the fact of marriage with the applicant-husband. It is settled position of law that the proceeding filed under Section 125 of the Cr.P.C. is summary proceeding wherein a strict proof of fact is not required like other criminal proceedings. The Court should get reasonable assurance from the evidence adduced by respondent No.-1-wife that the marriage has taken place between the parties and she is the first legally wedded wife of the husband from whom she claims maintenance. On this point, the ratio laid down in the case of ***Dwarika Prasad Satpathy Versus Bidyut Prava Dixit and another*** reported in ***2000 Cri. L.J.1 SC*** is useful. In the said case, the Supreme Court has held as under:

“In our view, validity of the marriage for the purpose of summary proceeding under Section 125 Cr.P.C. is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceeding is not as strict as is required in a trial of offence under section 494 of the I.P.C. If the claimant in proceedings under Section 125 of the Code succeeds in showing that she

and the respondent have lived together as husband and wife, the Court can presume that they are legally wedded spouses, and in such a situation, the party who denies the marital status can rebut the presumption”.

9. This position of law has remained same till today. In the judgment of Bombay High Court in the case of ***Sidhappa Satappa Savali Versus Smt. Mahananda Sidhappa Savali*** in ***Criminal Writ Petition No. 1464 of 2001 dated 8th December, 2015***, the learned Single Judge has held that the proceedings under Section 125 of the Cr.P.C. are never intended to affect the civil rights of the parties as these are the summary proceedings which never come in the way of the petitioner obtaining appropriate declaration from the Civil Court in respect of the validity of marriage.

10. On this background, the evidence tendered in the present case and the view taken by the trial Court and the Sessions Court are to be assessed. The record shows that the applicant-husband and respondent No.1-wife both have stepped in the witness box and gave their oral evidence. Respondent No.1-wife in support of her case, examined four witnesses. PW-2 Murlidhar Joshi, examined at Exhibit 28, was a Brahmin who performed the actual marriage. PW 3 Bhika Dhavale, examined at Exhibit 29, who is a relative of respondent No.1-wife and PW 4 Shankar Borhade, examined at Exhibit 34, who is a stepbrother of the applicant-husband. The applicant-husband did not examine any witness.

11. On perusal of the judgment of the learned Magistrate, it is found that the learned Magistrate has taken into account the discrepancies in the evidence of all these witnesses on different points, those can be summed up as follows:

(a) Respondent No.1-wife i.e., original applicant deposed that at the time of marriage, her age was 6 ½ years old and the applicant-husband was 50 years old. PW 2 Murlidhar Joshi i.e., Brahmin, who performed the wedding, stated that at the time of marriage, the age of respondent No.1-wife was 13 to 14 years old and the age of the applicant-husband was 17 to 18 years old. PW 3 Bhika Dhavale stated that at the time of marriage, the age of respondent No. 1-wife was 15 years old and the age of the applicant-husband was 20 to 22 years old. PW 4 Shankar Borhade stated that at the time of marriage, the age of respondent No.- 1 wife and the applicant-husband was between 16 to 17 years old.

(b) On the point of number of reciting of Mangalashtaka at the time of marriage, respondent No.1-wife gave number as six. PW 2 Murlidhar Joshi i.e., Brahmin said that seven

Mangalashtaka were recited at the time of marriage and PW 3 Bhika Dhavale gave number as five. So also respondent No.1-wife deposed that she took seven rounds around home (sacred fire) along with the applicant-husband. However, PW 3 Bhika Dhavale deposed that respondent No.1-wife and the applicant-husband took three rounds around home (sacred fire). The learned Magistrate found that there is glaring variance in deposition of all these witnesses and, therefore, respondent No.1 –wife failed to establish the fact of her marriage with the applicant-husband.

(c) A question was put to respondent No.1-wife that what is the name of her father-in-law, which could not answer and, therefore, the learned Magistrate has observed that it is highly impossible that respondent No.1-wife not knowing the name of her father-in-law.

(d) The learned Magistrate also gave weightage to conduct of respondent No.1-wife that she did not file any criminal complaint against the applicant-husband when her husband performed second marriage with Usha Jadhav. The learned

Magistrate has also observed that that no documentary proof of marriage is produced. No record or register is maintained by PW 2, who is a Brahmin, about the date of marriage.

12. This case entirely hinges upon the appreciation of the evidence of respondent No.1-wife and the witnesses. After going through the judgment of the learned Magistrate, it is found that the learned Magistrate could not get the pulse while appreciating evidence in the proceedings of maintenance filed under Section 125 of the Cr.P.C. The Judge has taken very technical and pedantic view, which is not expected in the matters of maintenance, but gender friendly approach is required. In such cases, while appreciating the evidence, a Judge needs to be sensitive enough to know social fibre of rural people in India. The evidence is to be appreciated on constructing the time period of 1964-65. Respondent No.1-wife is not educated. She is a daughter of gardener, who was working in the orange orchid owned by the applicant-husband. She deposed about her plight after the marriage. She was beaten up and harassed by her husband after marriage and he insisted that she should give him divorce. Therefore, she left her husband.

13. It is not required for a woman to depose that she was driven out of the house by husband. Due to physical assault or unbearable mental harassment,

if she is compelled to leave the house of a husband, then it is not a voluntary withdrawal from the company of the husband, it is to be considered as neglect or refusal on the part of the husband to maintain his wife. Many illiterate witnesses from the rural area do not understand the numbers or figures. They just quote some figure whatever strikes them. The witnesses from such class refuse to accept some times that they do not have knowledge of a particular thing. So they just answer whatever comes in their mind. The Judge in the present case needed to clear chaff from grain in order to extract the truthfulness when respondent No.1 gave evidence that she was 6 ½ years old at the time of marriage and her husband was 50 years old. The learned Magistrate ought to have considered her age when she came to give evidence. Illiteracy is to be assessed properly with open mind and wisdom. Same is applicable to the number of Mangalashtaka. Bride or groom will never remember how many Mangalashtaka were recited at the time of their marriage because they never count stanzas on such moment. Their minds are filled up with different thoughts and emotions and hardly, there can be counting of Mangalashtaka on such occasion.

14. Much is argued on the point of delay of 30 years in filing the application for maintenance. If this fact is viewed from the other angle, then delay is explained. After leaving her husband's house, respondent No.1-wife started residing with her father, who looked after her for so many years. After her father's death, she found

that it is difficult to support her livelihood and, therefore, she decided to file an application for maintenance. This, on the contrary, shows that respondent No.1- wife indeed needs money to maintain herself at this age. The applicant-husband has relied on maintenance application bearing No. 239 of 1980 filed by his wife Usha Jadhav for maintenance. He has deposed that his first wife was Usha Jadhav and she filed this maintenance application. Thus, by putting up this fact, he wanted to rebut the fact of his marriage with respondent No.1-wife. Usha Jadhav has not stepped in the witness box. The maintenance application No. 239 of 1980 was filed by Usha Jadhav and the order passed therein cannot be disputed. However, that is an independent proceeding filed by Usha Jadhav where the present respondent No.1-wife had no say. Thus, claim made for maintenance by Usha Jadhav itself cannot negate the fact of marriage of the applicant with respondent No.1-wife.

15. Respondent No.1-wife and the witnesses are consistent in their evidence on the point of performance of the marriage of respondent No.1-wife with the applicant-husband, which took place nearly 30 years prior to 1994. They all have stated that after marriage, respondent No.1 -wife and the applicant-husband lived together for a period of 1 and $\frac{1}{2}$ years and thereafter, she was compelled to leave the matrimonial house. In the defence taken by the applicant-husband, he has contended that the father of respondent No.1-wife was working as a gardener in his orange orchid so respondent No.1-wife knew him and has

filed false case. This contention does not appeal to the reason. On the contrary, it supports the case of the wife that there was some cause for husband of coming in contact with respondent No.1-wife. In view of the facts and evidence before the Court, it is difficult to accept that respondent No.1, who is a daughter of the gardener, has filed proceedings of false claim of maintenance after 30 years against the owner of orchid by abusing process of law. There is no substance in the submissions of the applicant. The evidence need not to be stated in the application and it can be elaborated while deposing and it cannot be treated as inconsistent or contradiction.

16. Thus, it is found that the learned 4th Additional Sessions Judge, Pune has properly appreciated the evidence and granted maintenance to respondent No.1-wife. No illegality is found in the order dated 20th March, 2001 passed by the learned 4th Additional Sessions Judge, Pune and it is confirmed.

17. Criminal Revision Application is dismissed.

18. The amount of maintenance which is due is to be paid to respondent No.1-wife within two weeks hereafter.

(MRIDULA BHATKAR, J.)