

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.870 of 2013

Indrajeet Santramsingh Rajput .. Petitioner

Versus

Asmit Indrajeet Rajput & ors .. Respondents

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Mr.Rupesh Lanjekar for the petitioner.
Mrs.Prabha U. Badadare for respondent no.1.
Mr.Rajan Salvi APP for respondent State.

CORAM: SMT.BHARATI H. DANGRE, J

DATED : 5th APRIL 2018

P.C:-

1 The present Criminal Application is filed by the petitioner husband being aggrieved by the order in Appeal passed by the Addl. Sessions Judge, Solapur, thereby dismissing the Revision Application. The Judicial Magistrate First Class (JMFC), Taluka Akkalkot, District Solapur, on an application filed by the respondent wife had directed the applicant to pay monthly maintenance of Rs.2,500/- p.m to the applicant no.1 and Rs.1,500/- to the applicant no.2 from the date of application. The said application was heard by the learned JMFC, and on accepting the undisputed fact that the respondent being a legally wedded

wife of the applicant and in light of the subsisting relationship, on consideration of the income of the applicant, the learned Magistrate proceeded to decide the application for grant of maintenance. It is pertinent to note that the wife had claimed maintenance @ Rs.5,000/- p.m for applicant nos.1 and 2 from the date of application.

Being aggrieved by the said order, the applicant husband approached the Sessions Court and the foremost ground on which he assailed the impugned order was that he was not afforded an opportunity and he was not heard by the learned Magistrate and the order passed was ex-parte. According to him, his earning capacity and the requirements of the wife were not taken into consideration, in absence of his participating in the proceedings. The attention of the Court is specifically invited to paragraph no.3 of the order, wherein the Court observed thus :-

“In pursuance to the application notice was issued to the non-applicant by R.P.A.D. As per the endorsement of the postal authority in spite of intimation the non-applicant has not taken the said notice. Therefore, matter proceeded ex-parte against the non-applicant”

2 The learned Magistrate specifically noted that in spite of issuance of notice of the application through R.P.A.D, non-

applicant husband had avoided to accept the notice and considering the conduct of the non-applicant and on deciding the application preferred by the wife on merits, the Court awarded maintenance to the tune of Rs.2,500/- for the applicant no.1 and Rs.1,500/- for the applicant no.2. On a revision being preferred, the Sessions Judge noted the contention of the applicant that he did not get an opportunity to participate in the proceedings as they were proceeded ex-parte. The Appellate Court observed that it was not the case of the revision applicant that he was not served with a notice of application which was filed under Section 125 of the Code of Criminal Procedure and on the other hand, the record reveals that the applicant was served with the notice of the said application, but he did not appear in the proceedings and, therefore, the proceedings were required to proceed ex-parte. With the aforesaid observations, the Addl. Sessions Judge, Solapur by an order dated 17th June 2013 was pleased to dismiss the revision.

3 Being aggrieved by the dismissal of the revision, the applicant has approached this Court by filing the present application. The learned counsel for the applicant would vehemently argue that the notice was not served upon him and the

matter was proceeded ex-parte. According to him, if he would have been afforded an opportunity, he would have demonstrated as to how the application was not maintainable, and the wife was not entitled for the amount of maintenance, which she had claimed and by not affording an opportunity, it had resulted into a traversity of justice. He would, therefore, pray for setting aside the impugned order and remanding the matter back. The learned counsel for the respondent opposed the said ground and would specifically argue that the notice was served on the respondent. However, he preferred to remain absent and the attention of the Court was invited to the endorsement of the postal authority, refusing the acceptance of notice.

4 On consideration of the rival claim of the parties, it can be seen that the learned Magistrate was constrained to proceed with the matter, ex-parte, specifically in the light of the endorsement of the postal authority that inspite of intimation, the non-applicant is not accepting the notice, thereby reflecting the refusal to accept the said notice. It is not the specific case of the applicant either before the proceedings in revision or before this Court that he has not received any notice at any point of time. In such circumstances, the presumption under Section 27 of the

General Clauses Act would come into play, and according to the said provision, when the expression 'serve' or the expression 'give' or 'send' is used in a statute, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing a document and unless the contrary is proved, the service will be deemed to be effected at the time at which the letter would be delivered in the ordinary course of post. The learned JMFC had specifically observed that the notice was sent by RPAD, and if at all, the applicant wanted to rebut the said presumption, it was incumbent upon to prove to the contrary allegation. However, the applicant has chosen not to do so and in absence of the rebuttal of the said presumption u/s.27 of the General Clauses Act, it can be said that the notice has been duly served, and the refusal to accept the notice would amount to 'deemed service of notice'.

In such circumstances, the grievance raised by the applicant that he was not served and therefore, he did not avail an opportunity to participate in the proceedings before the JMFC, is not correct. The order passed by the JMFC, proceedings ex-parte therefore, cannot be faulted with, nor can the order passed by the

District Judge, Solapur in the revision application would be said to be faulty.

For the aforesaid reasons, there is no merit in the present application, and it is dismissed. Needless to say that if any interim orders are in operation, they stands vacated.

(BHARATI H. DANGRE, J)