

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO.139 OF 2015.

Shri Glorio Fabiano Dias, 60 years of
age, H. No.190, Near Mother Teresa
Convent, Igramol, Zoglawada, Quepem,
Goa.

...Petitioner.

VS

1. Smt. Lucia Dias, major of age,
r/o. H. No. 36-4, Massordem Road,
Valpoi, Sattari, Goa.
2. State
(Through Public Prosecutor, Panjim-
Goa.

...Respondents.

Mr. A. Bhobe, Advocate for the Petitioner.
Ms. A. Bhat, Advocate for the respondent no.1.

CORAM: MANISH PITALE, J.

Date: 28th JANUARY, 2022

JUDGMENT

By this Writ petition, the petitioner has challenged order dated 8.1.2015, passed by the Court of Additional Sessions Judge, Mapusa, whereby revision application filed by the respondent no.1 was partly allowed and the petitioner was directed to pay maintenance of Rs.3000/- to the said respondent from the date of the order of the Magistrate.

2. In the present case, the respondent no.1 had approached the Magistrate by filing an application under Section 125 of Criminal

Procedure Code (CrPC), seeking maintenance for herself and minor child.

3. The case of the applicant was that she was required to leave the matrimonial house due to harassment and threats, as also false allegations of adultery levelled by the petitioner. It was claimed that the respondent no.1 was unable to support herself and that therefore, the petitioner was liable to pay amount towards maintenance to the respondent no.1 as well as the minor child. The petitioner resisted the said application, claiming that the respondent no.1 had, on her own volition, left the matrimonial house and she had taken all the valuables including vehicles i.e. Toyota qualis (four wheeler) and also a two wheeler along with her. It is claimed that respondent no.1 was plying the said four wheeler as a taxi and she had enough monthly income from the said source. It was further alleged that the respondent no.1 had indulged in adultery and therefore, she had disentitled herself for maintenance in the application under Section 125 of the Cr.P.C.

4. The Magistrate, by order dated 17.8.2006, partly allowed the application for maintenance. It was held that the respondent no.1 was not entitled for maintenance for the reason that the allegation of adultery was proved and also because there was material on

record to indicate that the respondent no.1 was deriving income by plying the said four wheeler as a taxi. It was directed that the petitioner shall pay monthly maintenance of Rs. 2500/- to the minor child from the wedlock. It is an undisputed position that the petitioner continued to pay maintenance amount to the minor child, till he attained majority.

5. The respondent no.1 filed a revision application before the Sessions Court challenging denial of maintenance to her. By the impugned judgment and order, the Sessions Court took into consideration the material on record and came to the conclusion that the findings rendered by the Magistrate about the source of income available to the respondent no.1 were unsustainable and that since the petitioner was a seaman by profession and he was earning at least to the extent of Rs.18,000/- per month, he was liable to pay maintenance to the respondent no.1. It was further found that the petitioner also had certain property in his name, part of which was given on rent and the income derived from rent was also taken into consideration. On the aspect of adultery, the Sessions Court upset the finding of the Magistrate and partly allowed the revision application, directing that the petitioner shall pay monthly maintenance of Rs.3000/- to the respondent no.1.

6. Mr. A. Bhobe, learned Counsel appearing for the petitioner submitted that the Sessions Court erred in exercising revisional jurisdiction in favour of the respondent no.1, to interfere with the well reasoned order of the Magistrate. It was submitted that the aspect of the respondent no.1 not being able to support herself was erroneously appreciated by the Sessions Court. It was submitted that the material on record indicated that the respondent no.1 was indeed paying insurance premium, as also vehicle tax pertaining to the four wheeler, indicating that she had sufficient income to maintain the vehicle. It was further submitted that the Sessions Court also erred in ignoring the aspect of the respondent no.1 having failed to place on record cogent material to show that she had no source of income and that the petitioner had neglected her in any manner. It was further submitted that the Sessions Court erroneously failed to appreciate that the petitioner had offered the respondent no.1 to join his company, thereby showing that the prayer for grant of maintenance could not have been considered at all. On the question of the finding about adultery, the learned Counsel submitted that the finding rendered by the Magistrate was upset in a cursory manner, without properly appreciating the

evidence on record. On this basis, it was submitted that the impugned order deserved interference.

7. On the other hand, Ms. A. Bhat, learned Counsel appearing for the respondent no.1 submitted that the Sessions Court had properly appreciated the material on record. The said Court had taken into consideration the oral and documentary evidence on record in the correct perspective to render findings in favour of the respondent no.1. It was submitted that the findings pertaining to the four wheeler being used as a taxi and on the aspect of adultery were correctly rendered by the Sessions Court and hence, the monthly maintenance granted at Rs.3000/- per month did not deserve any interference.

8. Heard learned counsel for the rival parties and perused the material on record.

9. The respondent no.1 approached the Magistrate under Section 125 of the CrPC. The learned Counsel for the petitioner is justified in contending that there are certain requirements to be satisfied before the Magistrate can exercise power to grant maintenance in favour of the applicant. Therefore, it needs to be examined as to whether the respondent no.1 had placed on record sufficient material to justify her prayer for grant of maintenance.

Since the Magistrate granted monthly maintenance for the child, which was confirmed by the Sessions Court, this Court is concerned with the question as to whether the Sessions Court was justified in reversing the findings of the Magistrate and granting monthly maintenance of Rs.3000/- to the respondent no. 1.

10. The main contention raised on behalf of the petitioner in the present case is that the respondent no.1 had admittedly taken the aforesaid four wheeler with her when she left the matrimonial house and that she was plying the same as a taxi, which was her source of income. In fact, it was specifically contended on behalf of the petitioner that respondent no.1 was able to earn Rs.10,000/- per month from the said business of plying the four wheeler as a taxi. It needs to be examined whether there was sufficient material on record to support the said assertion made on behalf of the petitioner. It has been recorded by both the Courts below that the respondent no.1 was paying the insurance premium of Rs.1,000/- and about Rs.990/- towards the vehicle tax. There is no other material on record to indicate that the vehicle was actually put to use by the respondent no.1, leave alone being used as a taxi for earning income. A perusal of the order passed by the Magistrate shows that after referring to the said

amounts of insurance premium and vehicle tax being paid by the respondent no.1, the Magistrate jumped to the conclusion that there was enough material to show that the respondent no.1 was using the four wheeler as a taxi and giving it to several customers from which she was earning Rs.10,000/- per month.

11. There is absolutely no material on record to support the said finding rendered by the Magistrate. The Sessions Court was therefore, justified in interfering with the said finding and holding that even if the respondent no.1 was paying the annual insurance premium and vehicle tax, there was no material placed on record by the petitioner to prove his case that the respondent no.1 was able to maintain herself by using the said four wheeler as a taxi. This Court is of the opinion that the finding rendered by the Sessions Court is justified on the basis of the material on record.

12. Apart from this, the Sessions Court has also referred to contents of the plaint concerning a suit filed by the petitioner for recovery of the vehicles from the respondent no.1.

13. In the said plaint, although the petitioner has claimed that he was bearing all the household expenses and the expenses of the respondent no.1 as well as the child, it is significant that he specifically asserted that the respondent no.1 had no source of her

own income and that she was not employed at any time. It is a different matter that the petitioner thereafter claimed before the Magistrate in the aforesaid proceedings under Section 125 of the CrPC that having left the matrimonial house the respondent no.1 had started using the four wheeler as a taxi. But, as noted above, in the absence of any cogent material placed on record to support the aforesaid assertion, the Magistrate could not have accepted the same and the Sessions Court was justified in interfering with the same.

14. In so far as the capacity of the petitioner to pay the amount of maintenance to the respondent no.1, the Sessions Court has drawn a reasonable conclusion that the material on record at least demonstrated that as a seaman by profession, the petitioner was earning about Rs.18,000/- per month, apart from the fact that he had rental income from some property in his name.

15. In so far as the question of adultery is concerned, it appears that the Magistrate believed the witness produced on behalf of the petitioner in this regard. The Sessions Court held that the evidence of the said witness was not trustworthy. In paragraph 17 of the impugned judgment and order, the Sessions Court has given specific reasons why the evidence of the said witness was found to

be untrustworthy and that it did not inspire confidence. This Court is in agreement with the said finding rendered on behalf of the Sessions Court and therefore, on this Count also, it cannot be said that the impugned judgment and order deserves interference.

16. In view of the above, this Court finds that there is no merit in the present Writ Petition. Accordingly, the Writ Petition is dismissed. Rule is discharged.

MANISH PITALE J.