

THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL REVISION APPLICATION NO. 233/2019

Ekta Kailas Sao ..Versus...Kailas Nanaji Sao

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. S.D. Umredkar, Advocate h/f Mr. A.S.Thotange, Advocate for the applicant
Mr. D.V.Mahajan, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : 22/06/2022

1] Heard Mr.Umredkar, learned counsel h/f
Mr.Thotange, learned counsel for the applicant and
Mr.Mahajan, learned counsel for Respondent.

2] The revision challenges the judgment passed by
the learned Sessions Judge, Gadchiroli dated 27.12.2017,
whereby while allowing the appeal, the judgment dated
31.5.2017 passed by the learned Magistrate under the
provisions of Section 12 of the Domestic Violence Act has been
set aside and the application filed by the complainant has
been dismissed.

3] Mr. Umredkar, learned counsel for the applicant
submits that the judgment passed by the learned Magistrate
was a well reasoned one considering all aspects of the matter
and the finding rendered therein that the wife had suffered

cruelty at the hands of her husband ought not to have been disturbed by the learned Appellate Court. He further submits that even otherwise the applicant/wife is entitled to maintenance from the husband, which has been so granted by the learned Magistrate at the rate of Rs. 9,000/- per month and therefore the same ought not to have been interfered with by the learned Appellate Court. It is therefore submitted that the impugned judgment of the learned Appellate Court needs to be quashed and set aside and that of the learned Magistrate needs to be restored.

4] Mr. Mahajan, learned counsel for the respondent supports the impugned judgments and contends that the findings by the learned Magistrate cannot be sustained, as they were in ignorance of the decree for restitution of conjugal rights passed by the learned Civil Court in the proceedings instituted on 28.03.2016 in HMP No. 9/2016 under Section 9 of the H.M. Act. He further submits that the findings rendered in the subsequent decree passed by the learned Civil Court in HMP No. 18/2017, dated 23.10.2018, which holds that the wife had treated the husband cruelly, also needs to be taken into consideration for the purposes of deciding the present revision.

5] The date of marriage is 29.5.2015. The applicant wife hardly resided with the husband for around 3 months

and left for her parents residence on 15.9.2015. All attempts made by the husband to bring her back did not prove fruitful. It has also come on record that when there was a meeting arranged at the residence of the father of the wife, in the said meeting the wife had categorically stated that she will act as per the dictates of her father. Her father thereupon had stated that he was not sending back his daughter and whenever he would feel it appropriate, he would consider sending her back. Thereafter the husband having no other alternative instituted proceedings under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, which came to be registered as HMP No. 9/2016, which was contested by the applicant/wife.

6] The learned Civil Judge, Senior Division, Gadchiroli, by his judgment dated 23.8.2016 having rendered the finding upon the evidence laid before him that the applicant wife had left the company of the husband without any reasonable ground, allowed the petition and directed the applicant wife to join the society of the husband within two months. Neither the said judgment dated 23.8.2016 was challenged by the applicant wife, nor was any restitution attempted, considering which the decree dated 23.8.2016 became final including the findings rendered therein.

7] The applicant wife earlier on 26.2.2016 had filed proceedings under Section 12 of the D.V. Act before the

learned JMFC, Gadchiroli, who without noticing the judgment rendered in HMP No. 9/2016 under Section 9 of the H.M. Act dated 23.8.2016, allowed the application under Section 12 of the D.V Act on 31.5.2017, holding that there was domestic violence at the hands of the husband, meted to the applicant-wife and therefore, directed a restraint order to be issued and so also granted a maintenance of Rs.9,000/- per month and Rs.75,000/- as compensation and Rs. 2000/- as costs.

8] The learned Appellate Court noticed that the judgment in HMP No. 9/2016 was never brought to the notice of the learned Magistrate in proceedings under Section 12 of the D.V. Act. It was further found that the judgment in HMP No. 9/2016 had not been challenged, nor had been complied with. Over and above that there was not a single complaint by the applicant wife regarding the alleged harassment claimed by her, either during the time of approximately three months for which she resided with the respondent-husband or even thereafter, when she went to her parents' place and therefore, the learned Appellate Court holding that there was no domestic violence whatsoever and any direction under Section 12 of the D.V. Act could only be granted in case there was domestic violence and since in his considered opinion the same was not proved, allowed the appeal and dismissed the complaint filed by the applicant wife.

9] It is also material to note that in the meantime, the husband had on 9.3.2017 instituted proceedings under Section 13 (1)(ia) and 13 (1)(b) of the Hindu Marriage Act seeking a decree of divorce on the ground of cruelty at the hands of the wife and desertion. The matter viz HMP No. 18/2017 was contested by the applicant wife. The learned CJSD, Gadchiroli by his judgment dated 23.10.2018 allowed the petition and dissolved the marriage between the applicant and the non-applicant on account of the husband being treated with cruelty by the wife. The claim for divorce on the ground of desertion was turned down. A decree under Section 13(1-A) of the H.M. Act was also granted. It is thus apparent that though the judgment in HMP No. 18/2017 has come later in point of time, than the impugned judgment by the learned Sessions Court, which is dated 21.12.2017, the judgment dated 23.10.2018 in HMP No.18/2017 dissolving the marriage between the applicant and the non-applicant would be binding upon them and has to be now taken into consideration for the purpose of deciding the present application.

10] It is also material to note that the judgment in HMP No. 18/2017, dated 23.10.2018 has not been appealed by the applicant wife and thus has attained finality, as a result of which the findings rendered therein that the wife has treated the husband with cruelty is now no longer open to challenge. The factual position which was extant when D.V.

proceedings No.4/2016 was filed by the applicant wife on 26.2.2016 as well as on 31.5.2017 when the same was decided, was equally extant, when HMP No.18/2017 was filed on 9.3.2017 and was decided on 23.10.2018. This being the position, no court can traverse beyond the findings which have been rendered by the learned CJSD in HMP No. 18/2017, dt 23.10.2018, which have attained finality.

11] It is thus apparent that the findings as rendered by the learned Magistrate in D.V. Proceeding No. 4/2016, dated 31.5.2017 cannot survive in light of what has been held in HMP No. 18/2017 and therefore, the contention of Mr. Umredkar, learned counsel for the applicant that in view of the findings rendered by the learned Magistrate in D.V. proceedings that the wife was treated with cruelty and therefore was entitled to protection order and resultant maintenance also, in my considered opinion has rightly been set aside by the appellate court by the judgment dated 21.12.2017. I therefore do not see any reason to interfere in the judgment dated 21.12.2017. There is no merit in the application and the same is accordingly dismissed. No costs.

Rvjalit

JUDGE

Digitally sign byRAJESH
VASANTRAO JALIT
Location:
Signing Date:23.06.2022 11:29