



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

CRIMINAL WRIT PETITION NO. 495 & 497 BOTH OF 2023

Dr. Baban s/o Ramdasji Kamble
v e r s u s

..PETITIONER

Jyoti w/o Baban Kamble

..RESPONDENT

.....
Mr V. S.Mishra, Advocate for the petitioner, in both petitions
.....

CORAM: ANIL L. PANSARE, J.
DATED: 25th August, 2023

PC:

The petitioner-husband, by way of Writ Petition No. 497/2023, is seeking to quash the proceedings in Miscellaneous Criminal Application No.1/2021 filed by the respondent-wife, under the provisions of the Protection of Women from Domestic Violence Act, 2005 (in short, "Act of 2005") filed before the learned Judicial Magistrate First Class, Sadak-Arjuni.

2. The learned Magistrate has vide order dated 29th January, 2022 passed below Exh.1 in the aforesaid Application was pleased to direct the petitioner to pay, as an interim maintenance, an amount of Rs. 7,000/-per month. This order was challenged before the learned Additional Sessions Judge, Gondia, under section 29 of the Act of 2005, by both, the petitioner and the respondent. The petitioner was

aggrieved by the order of granting maintenance, whereas the respondent was aggrieved by the order of quantum of maintenance. The learned Addl. Sessions Judge, dismissed the challenge raised by the petitioner whereas partly allowed the challenge raised by the respondent by enhancing the amount of interim maintenance to Rs. 12,000/- per month. The petitioner by means of Writ Petition No.495/2023 is challenging the said order.

3. Heard Mr.V.S.Mishra, the learned counsel for the petitioner, at length.

4. As regards quashing of the proceedings, it is well-settled by now, and as laid down in the case of Niharika Infrastructures Pvt.Ltd. Vs. State of Maharashtra: (2021 SCC Online SC 315), while examining the complaint/ FIR, the quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint/FIR. The Hon'ble Supreme Court has held that the criminal proceedings ought not to be scuttled at the initial stage and quashing of complaint/FIR should be an exception and a rarity than an ordinary rule. Nonetheless, if upon perusal of complaint and upon considering it to be reliable or genuine or in a way by accepting the allegations to be true, if no case is made out, the complaint/FIR may be quashed.

5. Keeping in mind the above enunciation of law, let us consider the case in hand.

6. The respondent states that she is a legally wedded wife of

the petitioner. The marriage was solemnized on 26th January, 2006 at village Adayal. After marriage, they resided happily for some time. The petitioner was a veterinary doctor. The petitioner is/was a married person and from his first wedlock, he had begotten two sons. The petitioner approached the respondent through near relatives with a proposal of marriage some time in the month of October 2005, on the ground that his first wife is suffering from mental disorder and continuance of marriage was not possible. The petitioner disclosed that he had filed divorce proceedings before the learned Civil Judge, Sr.Dn. Bhandara. Accordingly, the second marriage was performed.

7. The respondent then states in her complainant as to how they resided together at various places from 2006 onwards. She then described the properties acquired and owned by the petitioner and the rental income received by him. The respondent stated that after superannuation, the petitioner has again started meeting his ex-wife. In the month of January, 2020 the petitioner left the respondent at Pulgaon and proceeded to Nagpur, on the premise that he has to establish a milk factory. Thereafter, the petitioner did not turn back and is avoiding to continue the relationship and even to receive the phone calls of the respondent.

8. As regards evidence, the respondent has filed a photocopy of the invitation card. The respondent then stated that in an election process relating to Gram Panchayat, Sadak-Arjuni, the petitioner has given an undertaking stating therein that the respondent is his wife. The respondent has relied upon the Lease Agreement dated 21st April, 2018 executed between the respondent with Bharat Petroleum for godown,

mentioning her name as, 'Smt.Jyoti Baban Kamble'. The petitioner is a signatory to the said agreement as witness no.1. Thus, name of the petitioner is shown as husband. Another document relied upon by the respondent is the Adhar Card, indicating the petitioner as her husband.

9. The case of the petitioner as pleaded and now argued by Mr V.S. Mishra, the learned counsel for the petitioner, is that the respondent is not his legally wedded wife and, therefore, is not in domestic relationship with him, particularly since the respondent was very much aware of existence of the first marriage of the petitioner. He has placed reliance upon the judgment passed by the co-ordinate Bench of this Court in the case of Deepak Kanegaonkar vs. The State and another: (Criminal Application No.341/2014), more particularly paragraph 18 thereof, which reads thus :-

“18. Over all view of the evidence of all the witnesses and silence on the part of respondent no.2 on vital facts of the case, clearly indicate that respondent no.2 knew that the applicant was a married person and he had children from his wife. Respondent no.2 also knew that the applicant had been staying with his wife. Despite that, she had maintained relationship with the applicant. In my opinion, the said relationship cannot be relationship in the nature of marriage. Therefore, it cannot be said that respondent no.2 was “aggrieved person” within the meaning of Section 2(q) of the Act. She was obviously therefore, not entitled for any relief under Protection of Women from Domestic Violence Act, 2005. Learned Magistrate should have rejected her prayer. The appeal should have been dismissed by the appellate Court. If respondent no. 2 was not entitled for any relief under the Act, it follows that her children are also not entitled for the relief under the said Act. It is another thing that the children may be entitled for relief under section 125 of the Code of Criminal Procedure.”

10. This judgment will not be of any assistance, at least, at the stage. The view expressed by the co-ordinate Bench in paragraph 18 quoted above, has been expressed after considering the overall evidence led before it. The Court held that the respondent no.2-wife therein, was aware that the husband was a married person and has children and that applicant therein had been staying with his wife. The wife despite knowing the said fact has maintained relationship with the husband. The Court, therefore, opined that said relationship cannot be a relationship in the nature of marriage.

11. In the present case, the respondent-wife has placed on record documentary evidence indicating that the petitioner and the respondent have solemnized the marriage. The petitioner appears to have made respondent believe that his first wife had some mental issues and it is impossible for him to continue the relationship and, therefore, he has filed divorce proceedings.

12. The learned Magistrate has rightly held that while considering the application seeking interim maintenance, the Court is required to go through the pleadings in the complaint to assess whether there exist any *prima facie* case and the contentious issue as to whether the petitioner is married or not, will have to be considered after leading evidence.

13. This finding has been rightly upheld by the first Appellate Court, considering the documentary evidence placed before it.

14. Mr. Mishra, the learned counsel for the petitioner disputes

the marriage certificate. However, he could not give any satisfactory and convincing reply on the point of petitioner's signature as witness no.1 in the lease deed executed by the respondent with Bharat Petroleum where petitioner is named as her husband. The Aadhar Card is yet another document which requires consideration, to ascertain the existence of a *prima facie* case. These three documents coupled with the pleadings would definitely support the case of the respondent-wife.

15. Mr. Mishra, the learned counsel for the petitioner has then made a futile attempt to take advantage of the reasoning given by the first Appellate Court, where the first Appellate Court on the point of proof of marriage has expressed that no documentary evidence is placed on record by the respondent showing that her marriage had been solemnized with the petitioner. However, on the basis of lease agreement and Adhar Card, the Court held that *prima facie* the petitioner has accepted the respondent as his wife and resided with her. The emphasis of the learned counsel is on the expression "no documentary evidence is placed on record". To my mind, this expression cannot be read in isolation. What has been said by the first Appellate Court is that the lease agreement and Aadhar card, by itself, cannot be treated as a proof of solemnization of marriage which, strictly speaking, would require registration certificate of marriage, but the first Appellate Court has, on the basis of the said two documents, and rightly so, arrived at a *prima facie* view, that the petitioner has accepted the respondent as his wife and resided with her. I do not find any perversity whatsoever in the said reasoning, as also the finding.

16. While enhancing the maintenance, the first Appellate Court

has taken into account the amount of pension which the petitioner is receiving, the rental income and two immovable properties so also an agricultural land and its income.

17. According to the respondent, the petitioner is getting around Rs. 50,000/- as pension, Rs. 12,000/- as rental income and had received about Rs. 80 lakhs towards retiral benefits. The petitioner is said to be the owner of I-20 Car worth Rs 10 lakhs, and is earning Rs. 4 lakhs per month from the agricultural land. Accordingly, the respondent claimed Rs. 60,000/- per month, as maintenance.

18. Considering the above, in my view, the learned Magistrate has committed an error in granting a measly amount of maintenance of Rs. Rs. 7,000/-. The first Appellate Court has rightly enhanced it to Rs. 12,000/-. I do not find any illegality or perversity in the said order.

19. As regards quashing of the complaint, if one considers the averments made in the complaint which have been briefly stated above and considering the same in the light of the law laid down in Niharika's case (*supra*), the complaint cannot be quashed. The averments and documents indicate that the petitioner and respondent have solemnized the marriage and had resided together. Thus, *prima facie*, evidence of existence of domestic relationship exists. The allegation is that the petitioner left the respondent without any financial aid. This act of desertion, *prima facie*, amounts to economic abuse, amongst other abuses, and thus, would attract the provisions of the Act of 2005. The respondent would fall within the definition of "aggrieved person". Under these circumstances, the complaint cannot be quashed, as prayed for.

20. Both the petitions being sans merit, are liable to be dismissed. The Petitions are accordingly dismissed at the threshold. Copy of order be served upon the concerned first Appellate Court and the Magistrate.

(ANIL L. PANSARE, J.)

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