



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.63 OF 2020
WITH
CIVIL APPLICATION NO. 1741 OF 2020 IN SA/63/2020
WITH
CIVIL APPLICATION NO. 12443 OF 2021 IN SA/63/2020
WITH
CIVIL APPLICATION NO. 13957 OF 2021 IN SA/63/2020

Balasaheb Dattarao Jangale And Others

VERSUS

Urmila Balasaheb Jangale

...

Advocate for Appellant : Mr. M.M. Bhokarikar

Advocate for Respondents : Mr. A.S. Radikar

...

WITH

CRIMINAL WRIT PETITION NO. 576 OF 2015

Balasaheb Dattarao Jangale

VERSUS

Urmila Balasaheb Jangale

...

Advocate for Appellant : Mr. M.M. Bhokarikar

Advocate for Respondents : Mr. A.S. Radikar

CORAM : S. G. CHAPALGAONKAR, J.

Dated : December 16, 2024

COMMON ORDER :-

1. The appellants/original defendants takes exception to the judgment and decree dated 4.12.2019 passed by District Judge, Parbhani in RCA no.110 of 2016 thereby confirming the judgment and decree dated 25.8.2016 passed by learned Civil Judge S.D., Parbhani in R.C.S. No.64 of 2013

granting maintenance of Rs.5,000/- p.m. in favour of respondent/original plaintiff.

2. Petitioner in Criminal Writ Petition no.576 of 2015 takes exception to the order dated 24.3.2015 passed in Criminal Revision Petition No.112 of 2012 by the Additional Sessions Judge, Parbhani thereby confirming the judgment and order dated 19.10.2012 passed by the learned Judicial Magistrate First Class, Parbhani in Misc. Criminal Application no.312 of 2011 thereby granting enhanced maintenance of Rs.3,000/- p.m. in the proceedings under section 127 of the Criminal Procedure Code.

3. Both the aforesaid proceedings have been placed before this Court in view of the administrative order dated 12.2.2020 passed by the Hon'ble Senior Judge. Consequently, taken up for hearing together.

4. The gist of contentions of the parties and dispute raised in aforesaid proceedings can be summarized as below. (Hereinafter, parties are referred to as per their original status in the RCS No.64 of 2013 for the purpose of brevity).

5. Marriage between plaintiff and defendant no.1 Balasaheb solemnized in the year 2001. However, defendant no.1 failed to maintain plaintiff. She instituted RCS No.1 of 2007 for grant of maintenance against her husband and other family members, who jointly owns landed property. The suit was decreed, maintenance amount of Rs.1,500/- p.m. was granted to her vide judgment and decree dated 30.10.2007. The plaintiff had also instituted Criminal M.A. No.477 of 2004 for grant of maintenance under section 125 of Criminal Procedure Code. It was allowed on 6.3.2006 granting maintenance of Rs.1,500/- p.m. Defendant no.1 had challenged said order before Sessions Court in Cri.M.A. no.483 of 2008. However, it was dismissed on 5.11.2009.

6. Plaintiff filed Misc.Cri. Application no.312 of 2011 under section 127 of the Criminal Procedure Code seeking enhanced maintenance which came to be allowed on 19.12.2012 thereby granting enhanced maintenance amount of Rs.3,000/- p.m.

7. Plaintiff-wife then instituted R.C.S. No.64 of 2013 claiming enhanced maintenance amount under section 18 of the Hindu adoption and maintenance Act. The Trial Court

decreed the suit vide judgment and order dated 25.8.2016 and granted enhanced maintenance @ Rs.5,000/- p.m. Defendants filed R.C.A. No.110 of 2016 raising challenge to the decree passed in R.C.S. No.64 of 2013, however, said appeal came to be dismissed vide judgment and order dated 4.12.2019. The Present Second Appeal No.63 of 2020 takes exception to the maintenance granted under section 18 of the Hindu Adoptions and Maintenance Act, whereas the Criminal Writ Petition raises exception to the order granting enhanced maintainance under section 127 of the Criminal Procedure Code.

8. Mr. M.M. Bhokarikar, learned advocate appearing for the appellants submits that plaintiff instituted the proceedings invoking enabling provisions under different statutes seeking maintenance from husband. In this case, plaintiff instituted proceeding by filing Civil Suit, as well as proceeding under Criminal Procedure Code. Defendant-husband is an agriculturist and also patient of Schizophrenia. Evidence on record is not sufficient to indicate that husband has sufficient means to provide the maintenance. Further, Courts were under obligation to see that plaintiff does not get double benefit by invoking different provisions of law and

excessive maintenance. He submits that the impugned orders nowhere depict that order granting maintenance under other law or requirement as regards to adjustment of maintenance amount which has resulted into unwarranted and illegal harassment of defendant-husband is considered by courts. Mr. Bhokarika, relying upon documents tendered along-with civil application no.13957 of 2021 contend that, in fact, plaintiff-wife has inherited certain properties from her father and capable of maintaining herself. He submits that defendant-husband got knowledge about such properties during pendency of present proceeding and seeks permission to rely upon such documents by granting permission under order 41 Rule 27 of the Civil Procedure Code.

9. Per contra, Mr. A.S. Radika, learned advocate appearing for plaintiff-wife would submit that both the proceeding, which are subject matter of second appeal and criminal writ petition are in the nature of second round for enhancement of maintenance amount that has been already granted in earlier round. He submits that the order granting maintenance under section 125 of the Criminal Procedure Code has attained finality thereby approving entitlement of

wife to receive the maintenance. Similarly, decree in previous suit i.e. R.C.S. No.1 of 2007 dated 30.10.2007 has also attained finality and right to receive maintenance has been approved and confirmed in favour of the plaintiff/wife. The R.C.S. No.64 of 2013 has been filed for enhanced maintenance. Courts have considered rising price index of essential commodities and inflation thereby assessed appropriate maintenance amount. In the facts and circumstances of the case, according to him, no substantial question of law arises for consideration in this second appeal; nor there is any merit in the criminal writ petition.

10. Having considered the submissions advanced by learned advocates appearing for respective parties and after considering reasoning adopted by the Courts in the impugned orders, it is certain that, there is no dispute as regards to relationship between parties and entitlement by plaintiff-wife to receive the maintenance under Civil law and Criminal proceeding. The core issue that arises for consideration in this second appeal and criminal writ petition is as regards to quantum of maintenance amount or its interse adjustment.

11. It is a matter of record that first of all plaintiff wife had instituted proceeding under section 125 of the Criminal Procedure Code. The maintenance of Rs 1500 was granted, which has been now enhanced to Rs.3,000/- p.m. vide order passed in Misc. Cri. Application No.312 of 2011 under section 127 of the Criminal Procedure Code. Similarly, in first suit i.e. R.C.S. no.1 of 2007 maintenance was granted @ Rs.1,500/- p.m. vide judgment and decree dated 30.10.2007 which has been enhanced in subsequent suit i.e. R.C.S. No.64 of 2013 vide judgment and decree dated 25.8.2016 to Rs.5,000/- p.m. As such, by two different orders under two different statutes, plaintiff/wife is held entitled for total maintenance of Rs.8,000/- p.m. It is well settled that the Courts have discretion to allow adjustment of the maintenance amount based on facts of the case. Although remedies provided under section 125 of the Cr.P.C. and section 18 of the Hindu Adoptions and Maintenance Act or section 24 of the Hindu Marriage Act operates in different spheres, Courts are guided by principle of avoiding inequity and in appropriate cases direct adjustment of maintenance amount against each other. In case of **Vishal Rajesaheb Gore Vs. Sow. Aparna Vishal Gore reported in 2018 3 AIR (Bom)(R) (Cri) 686**, this Court approved that

maintenance awarded under section 125 of Cr.P.C. is adjustable against the amount under section 24 of the Hindu Marriage Act and reinforced that lower amount should be adjusted against higher amount. The Supreme Court of India in case of **Rajesh Vs. Neha and others** reported in (2021) 2 SCC 324 ruled out that while wife can claim maintenance under different statute, she must show previous award to avoid conflicting award and ensure adjustment.

12. In light of the exposition of law emerging from aforesaid authoritative pronouncement, it is necessary to delve into facts of this case. Apparently, proceeding filed under section 18 of the Hindu Adoptions and Maintenance Act was instituted in 2013 i.e. later in point of time than the proceeding under Code of Criminal Procedure. The judgment of the Trial Court in RCS No.64 of 2013 depicts that while granting maintenance of Rs.5,000/- p.m. note was taken as regards to maintenance amount granted under section 125 of Cr.P.C. so also enhancement granted under section 127 of the Cr.P.C. The Court in paragraph no.13 of the judgment refers that enhancement granted under section 127 of the Cr.P.C. was stayed by the Revisional Court and assuming that Rs.1,500/-

maintenance was granted under section 125 of Cr.P.C. enhanced maintenance amount under civil proceeding to Rs.5,000/- Lateron, Criminal Revision No.112 of 2012 has been dismissed vide judgment and order dated 24.3.2015 which is subject matter of Criminal Writ Petition no.576 of 2015.

13. The fact remains that on 24.03.2015 judgment has been delivered in Criminal Revision Application 112 of 2012 and judgment in R.C.A. No.110 of 2016 is delivered on 4.12.2019. In that view of the matter, keeping in mind admitted fact that husband owns more than 3 Hectares of land and the fact that plaintiff-wife has no source of income, cumulative maintenance amount of Rs. 8000/- p.m. granted to her under two different proceedings cannot be said to be excessive or exorbitant so that this Court shall cause interference in exercise of jurisdiction either under section 100 of the Civil Procedure Code or under Article 227 of the Constitution of India.

14. Although, Mr. Bhokarikaar relied upon certain documents tendered alongwith civil application no.13957 of

2021, there is nothing to show that respondent-wife is granted definite share in agricultural land alleged to have been owned by her father or she is generating any income out of the properties which are standing in name of her father. Consequently, plaintiff/wife shall be entitled to receive maintenance amount granted in both the proceedings independently and without impeded by each other, no adjustment of amount is required in facts and circumstances of the present case. No infirmity can be found in the approach of Courts below. No substantial question of law arises for consideration in this second appeal. There is no merit in appeal. Hence, second appeal stands dismissed. No costs. Pending civil applications also stand disposed off.

15. In light of above discussion there is no merit in Criminal Writ Petition no.576 of 2015, this court is not inclined to exercise extra ordinary writ jurisdiction under Article 227 of the Constitution of India. Hence, Criminal Writ Petition No.576 of 2015 also stands dismissed. Pending civil applications, if any, also stands disposed off.

(S. G. CHAPALGAONKAR)
JUDGE

...

aaa- (f)