

Bombay High Court

Murlidhar Chintaman Waghmare

vs

Smt. Pratibha Murlidhar Waghmare ... on 9 October, 1985

Equivalent citations: 1986 (1) BomCR 358, (1985) 87 BOMLR 561

Bench: B K Patil

ORDER

1. This is a Criminal Application filed by the Petitioner (Original opponent) against the order of the Additional Sessions Judge, Pune.

2. The Petitioner and the 1st Respondent (original applicant) were legally wedded on 12-5-1967 as per Hindu religious rites. It was the second marriage of the Petitioner which was performed after the death of his first wife who left behind a daughter from that marriage. After their marriage, the Petitioner and the 1st Respondent started residing at Neral in Taluka Karjat, District Raigad. In the initial period their relations were normal. However, thereafter, the Petitioner and his mother started ill-treating the 1st Respondent in the various ways. She was starved, harassed in various other ways by the Petitioner and his mother. The Petitioner's abnormal sexual appetite subjected Respondent No. 1 to physical sufferings. When she went to see her ailing brother on 31-10-1967 the Petitioner was incensed out on her return. She was severely assaulted and was forced out of her marital home in the month of December 1967. Ever since, she has been residing with her brother at Pimpri : she has no source of income and hence she has to depend on her brother. The 1st Respondent, therefore claimed maintenance at the rate of Rs. 250/- per month since the date of the filing of the Maintenance Application.

3. The present Petitioner, who was respondent to the said application, filed his Written Statement denying the allegations of the 1st Respondent. While admitting that the 1st Respondent is his wife, the Petitioner contended that it is the 1st Respondent who is not willing to reside with him at her marital home. Hence she has come out with various imaginary incidents. He denied that he refused or neglected to maintain the 1st Respondent and stated that she refused to stay with him without any justification. The Petitioner also contended that the 1st Respondent is in a position to maintain herself. He also denied that his monthly income is Rs. 1,500/-. According to him, he gets monthly salary of about Rs. 800/- only.

4. The learned Judicial Magistrate, First Class (A.C.) Pune, who heard the application, on the basis of oral and documentary evidence, came to the conclusion that the 1st Respondent was able to maintain herself and that she had no just and sufficient reasons to reside separately from the Petitioner. The learned Magistrate further held that the Petitioner had offered to maintain the 1st Respondent which offer she had refused. Consequently, the application was dismissed without any order as to costs. It may be mentioned here that the 1st Respondent had earlier filed a similar maintenance application which was withdrawn by her. Thereafter she also filed a civil suit for declaration that she was entitled to reside separately and for maintenance under the Hindu Adoptions and Maintenance Act, 1956. The said suit was dismissed on merits. No appeal was filed by her against the said order. The learned Magistrate unfortunately did not refer to the said civil suit in his judgment.

5. The learned Additional Judge, while allowing the Revision filed against the order of the learned Magistrate, granted maintenance of Rs. 150/- per month, and observed that the principles of res judicata or double jeopardy would not come into play as the present proceedings were of a summary nature. According to me, the learned Sessions Judge has missed a vital point in coming to the said conclusion. The proceedings in the civil Court are substantial whereas the proceedings under S. 125 of the Criminal Procedure Code are of a summary nature. Once the civil Court of competent jurisdiction comes to the conclusion that Respondent No. 1 is not entitled to maintenance, the criminal Court, under Section 125, cannot sit in appeal over the said decision. This itself, without anything more, is sufficient to set aside the impugned order of the learned Sessions Judge. Even S.

127(2) of the Criminal Procedure Code contemplates cancellation of the order passed under S. 125 after the decision of the civil Court.

6. Mrs. A. A. Agarwal, learned Advocate appearing for the 1st Respondent, has relied on a decision of the Supreme Court in Nanak Chand v. Chandra Kishore Aggarwal, , for the proposition that Section 4(b) of Hindu Adoptions and Maintenance Act (1956) does not repeal or affect in any manner the provisions of Section 488 of the Code of Criminal Procedure. I have gone through the authority cited and the principles laid down therein and I am of the opinion that this authority has no application to the facts of the present case and the issue involved in this petition. Their Lordships of the Supreme Court observed :-

“Section 4(b) of the Hindu Adoptions and Maintenance Act (1956), does not repeal or affect in any manner the provisions of Section 488, Cr.P.C. There is no inconsistency between the Maintenance Act and Section 488, Cr.P.C. Both can stand together. The scope of the two laws is different. The Maintenance Act is an Act to amend and modify the law relating to adoptions and maintenance among Hindus. Section 488, Cr.P.C. provides a summary remedy and it is applicable to all persons belonging to all religions and has no relationship with the personal law of the parties.”

Thus, their Lordships were of the view that remedy under section 488 of the Criminal Procedure Code was available notwithstanding the provisions of the Hindu Adoptions and Maintenance Act. However, the issue in this case is, what would be the effect of the earlier decision of the Civil Court.

7. Mrs. Agarwal then relied on a decision of the Allahabad High Court, in Ram Singh v. State, . In that case, the Allahabad High Court observed :

“The right of maintenance under section 488, Cr.P.C. is a special right given under the Code. The mere fact that similar analogous remedy is available under the Hindu Adoptions and Maintenance Act in a Civil Court, does not take away the jurisdiction of the Magistrate under S. 488, Cr.P.C. to order maintenance to a Hindu wife.

The provisions of S. 488, Cr.P.C. are by no means any text, rule or interpretation of Hindu law or any custom or usage as part of that law; nor are they in any manner repugnant to, or inconsistent with the provisions of the Hindu Adoptions and Maintenance Act. Hence S. 4 of that Act cannot override S. 488, Cr.P.C. There is nothing in the Hindu Adoptions and Maintenance Act

to suggest expressly or by necessary implication that the Act is intended to be a substitute for the provisions of Section 488, Cr.P.C. In fact the provisions of Section 18 of the Act cannot be a substitute for Section 488, Cr.P.C. The latter provision is general and is applicable to a wife, irrespective of her religion, but the former is applicable to the case of Hindus only.”

This ruling also has no bearing on the issue as regards the effect of the earlier decision of the Civil Court.

8. In the result, the Criminal Application succeeds. The judgment and Order passed by the learned Additional Sessions Judge, Pune, in Criminal Revision Application No. 43 of 1984 is set aside and quashed. Rule is made absolute.

9. Order accordingly.