

Rajaram Vs. State of Maharashtra and Another

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Court : Mumbai Aurangabad

Decided On : Jul-23-2014

Judge : V.M. Deshpande

Appeal No. : Criminal Writ Petition No. 551 of 2001

Appellant : Rajaram

Respondent : State of Maharashtra and Another

Advocate for Pet/Ap. : Mr. S.L. Bhapkar

Judgement :

Oral Judgment:

1. Being aggrieved and dis-satisfied by the Judgment and order passed by the learned Addl.Sessions Judge, Ahmednagar dated 3rd February, 1999 in Cri. Revn. Appln.No. 415/1994, the petitioner has filed present Writ Petition. The learned Addl. Sessions Judge was pleased to partly allowed the Cri.Application and awarded monthly maintenance allowance @ Rs.150/- to Respondent No.2, from the date of the Application.

2. This matter is pending for its final disposal since the year 2001. I have heard Mr. S.L. Bhapkar, learned counsel for the petitioner and Mr. A.S. Shinde, learned A.P.P. for the State of Maharashtra. Though Respondent No.2 was served long back, his counsel chose not to remain present in the court, when the matter was

taken up for its final hearing today.

3. On 29th August, 1992 Ahilyabai filed an application U/Section 125 of the Code of Criminal Procedure, 1973 before the learned Judicial Magistrate, F.C., Ahmednagar. Said application was registered as Cri.M.A.No.409/1992. In the said application, present Resp. No.2 was joined as Applicant No.2. At the time of filing of Cri. M.A. No.409/12, the age of Applicant No.2 therein i.e. Manoj was three months. Said application was filed by Ahilyabai on behalf of Manoj, as his natural guardian.

4. It was asserted on behalf of Ahilyabai that her marriage took place with the present petitioner on 27th June, 1991. From the said wedlock, she delivered Resp.No.2 Manoj. It was alleged in the said application that initially for the period of two months from her marriage, she received nice treatment at the hands of present petitioner and thereafter, couple came to reside at M.I.D.C., area Ahmednagar. That time, ill treatment was started to her. Ultimately she was driven out of the house by the present petitioner forcing her to take shelter of her mother's house at village Pimpalgaon Malwi, Tal. and Dist. Ahmednagar. After she was driven out of house, her relative - Anna Bhimaji Kadam tried to reconcile with the present petitioner by taking Ahilyabai to his house however, in vain. According to Ahilyabai, present petitioner performed his second marriage. There is specific pleading and assertion in the application that, on 18th May, 1992 Ahilyabai delivered male child whose name is Manoj, who is present Resp.No.-2.

5. With these contentions, Cri.Application was proceeded further in the court of the Judicial Magistrate, F.C., Ahmednagar. On being summoned, the petitioner filed his W.S. which is at Exh.No.13 on record of the court below. Each and every statement made by Ahilyabai was denied in the W.S. The petitioner even denied that he is the biological father of Resp.No.2 -Manoj.

6. Parties went to trial by entering into the witness-box by themselves and also tried to substantiate their claim by adducing the evidence of other witnesses. In the evidence from the witness box, Ahilyabai has specifically deposed that she and the petitioner took one room on rent in MIDC area of Ahmednagar for their residence and for about three months, they resided there.

7. It will not be out of place to mention here that prior to initiation of proceedings U/Section 125 of the Code of Criminal Procedure, 1973, notice was given by Ahilyabai to the petitioner. Said notice is at Exh.No.14. It is dated 31st March, 1992. Said notice was addressed to "Raju Sarjerao Aher". The court is required to mention this because the Petitioner has submitted that, no point of time, he was known in society as Raju Sarjerao Aher. Now receipt of said notice Exh.No.14 is not denied by the petitioner. Further the said notice was duly replied by the present petitioner. In the said reply to the Notice, it was never contested by the petitioner that he is not known by name Raju Sarjerao Aher. Said aspect goes to the root of the matter, in as much as that was earliest opportunity which was available to the present petitioner to deny that he was never known by name Raju Sarjerao Aher, in the society. Merely because he has filed certain documents to show that his name is Rajaram Sarjerao Aher and not Raju Sarjerao Aher that does not exclude the assertion made in the application U/Section 125 of the Code of Criminal Procedure, 1973 that his name is Raju Sarjerao Aher, therefore, the contention raised by the learned counsel for the Petitioner to that extent is devoid of any substance.

8. As observed above, it is specifically brought in the evidence of Ahilyabai that room was taken on rent at MIDC Area, Ahmednagar. In that behalf the learned counsel for the Petitioner strenuously urged before me that, Ahilyabai failed to adduce evidence of the landlord. The submission made by learned counsel for the Petitioner at first blush appears to be attractive however, on close scrutiny said submission needs rejection.

9. The Petitioner entered into the witness box after entire evidence of Ahilyabai was over. When the Petitioner adduced his oral evidence before the court, he was fully known about the case of Ahilyabai. In his entire deposition from the witness box, present petitioner never whispered that at any point of time, he was not residing with Ahilyabai in a rented room at MIDC Area, Ahmednagar. Therefore, in view of fact which emerged on record, merely because the landlord was not examined before the Court, adverse inference cannot be drawn in the matter.

10. Applicant No.1 Ahilyabai in Cri.M.A.No.409/92 placed on record the birth certificate of Resp.No.1 Manoj. Said Certificate is at Exh.No.9. Said birth certificate clearly shows the name as "Manoj Raju Aher". Since the joint residence of present Petitioner with Ahilyabai is fully established, the birth of Resp.No.2 is immediate and within the proximity of the time when Ahilyabai was driven out of the house, by the present Petitioner, the only presumption which is available in the law that, Respondent was born to Ahilyabai out of her relationship with the present petitioner.

11. In the present case, both the courts below have found that Ahilyabai has miserably failed to prove her marriage with present petitioner and that she is his first wife. Though she tried to prove her case by adducing evidence of Priest, who performed their marriage however, the petitioner has successfully pointed out by adducing cogent and consistent evidence that he was already married with one Sunita. If that is so, both the courts below were right in recording findings that Ahilyabai is not legally wedded wife of the petitioner. Therefore, both the courts below have rightly rejected the claim of maintenance filed by the Ahilyabai.

12. It is worth to note that the even after her claim was rejected by the learned revisional court she did not prefer Writ Petition questioning the correctness of order passed by the revisional court thus, just finding recorded against her, attained finality. The learned revisional court rightly appreciated the facts and evidence brought on the record and rightly set aside the order passed by the Magistrate rejecting the claim of maintenance filed on behalf of Respondent No.2. Upon careful scrutiny of the record which is made available to this court, since it was called at the time of admission of the present Writ Petition, and after hearing the learned counsel, I see no reasons to interfere with the order passed by the revisional court in writ jurisdiction under Art.227 of the Constitution of Indian. Up shot of the aforesaid discussion leads me to pass the following order :-

ORDER

(i) Writ Petition is dismissed with costs of Rs.1000/-[Rs.One Thousand only].

(ii) Rule discharged.

(iii) Needless to mention, Interim stay shall stands vacated.

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