

Uttam Vs. Babita and Others

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Court : Mumbai Aurangabad

Decided On : Jul-08-2014

Judge : V.M. Deshpande

Appeal No. : Criminal Revision Application No. 47 of 2001

Appellant : Uttam

Respondent : Babita and Others

Judgement :

Oral Judgment:

1. Uttam s/o Kisan Pawar felt aggrieved by the Judgment and Order dated 6th February, 2001 passed by the Principal Judge, Family Court, Aurangabad in Petition No.A-721/1999, by which the learned Judge, Family court was pleased to allow the Petition partly, filed on behalf of present Respondent Nos. 1 to 3 and the court below was pleased to direct the present applicant to pay monthly maintenance allowance @ Rs.500/- to Resp.No.1 from the month of December, 1999 onwards and also directed that, from the month of December, 1999, the applicant to pay monthly maintenance allowance @ Rs.250/- each to respondent Nos. 2 and 3.

2. I have heard Mr. S.A. Dhengle, learned counsel appearing for the applicant in extenso. I have also heard Mr. Bhange, learned A.P.P. for Respondent No.4. Though Resp.Nos. 1 to 3 are served, nobody appeared on their behalf.

3. According to the learned counsel for the applicant, the court below had committed serious mistake in granting maintenance allowance in favour of Respondent Nos. 1 to 3. He further submitted that, there is no evidence on record to show that, Resp.No.1 was unable to maintain herself. It was another limb of argument of the learned counsel for the applicant that the respondent wife on her own accord has withdrawn the company of the applicant, therefore, she is disentitled to claim maintenance from the present applicant U/Section 125 of the Code of Criminal Procedure, 1973. He submitted that, since the year 1999, the wife on her own accord has withdrawn from the company of the applicant. The learned counsel further submitted that, present applicant is a rickshaw driver and he has no rickshaw of his own. The learned counsel further submitted that, the court below has failed to consider the aspect that the applicant has to maintain his age old parents. Thus, sum and substance of argument of the learned counsel for the applicant is that the learned Judge of Family Court has failed to appreciate the aforesaid contentions and, therefore, miscarriage of justice is done at the hands of the learned Principal Judge, Family Court, Aurangabad.

4. It appears from the Judgment and Order passed by the trial court that said judgment is common judgment, delivered by the Principal Judge, Family Court, Aurangabad in Petition No.A-405/99, Petition No.D- 56/99 and Petition No.E-721/99.

5. Petition No.A-405/99 was filed by the present applicant against present Resp.No.1 U/Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. Petition No.D-56/99 was also filed by the present applicant / husband against Resp.No.1 for custody of two minor children i.e. present Resp.Nos. 2 and 3. Petition No.E-721/99 was filed by present Resp.Nos. 1 to 3 U/Section 125 of the Code of Criminal Procedure, 1973 against the present applicant. The common judgment reveals that, evidence was commonly recorded in Petition No.A-405/99, and those Petitions were decided by common judgment dated 6th February, 2001.

6. Petition No.A-405/99 and Petition No.D-56/99 filed by the applicant / husband were dismissed by the Principal Judge, Family Court, Aurangabad. Being aggrieved and dis-satisfied by the Judgment and Order passed by the learned

Principal Judge, Family Court in Petition No.E- 721/99, the applicant has filed present Cri. Revn.Appln.

7. On 28th November, 1999, Resp.Nos. 1 to 3 approached to the Family Court by filing proceedings U/Section 125 of Cri.P.C. Said proceedings, as observed above, was registered as Petition No.E-721/99. Undisputely, the applicant is the husband of Resp.No.1 and father of Resp.Nos. 2 and 3. Marriage between the applicant and Resp.No.1 took place in the year 1999 at village Babulgaon, Tal. Paithan, Dist. Aurangabad as per Hindu rites and customs. Resp.Nos. 2 and 3 born from their wedlock.

8. According to Resp.No.1., on 25th September, 1999 present applicant, Shantabai, Kisan, Shankar, Dropadabai, Hirabai and Leela gave beating to her and they drove away her from the matrimonial home alongwith Resp.Nos. 2 and 3. They also demanded Rs.10 thousand from her. Application filed U/Section 125 of the Code of Criminal Procedure, 1973 further disclosed that in respect of beating, at the hands of the applicant and his others relatives and illegal demand of dowry, she lodged complaint with Mukundwadi Police Station, Aurangabad vide CR No.120/99 for the offence punishable U/Section.s. 498(A), 323, 504, 506 read with 34 of the Indian Penal Code, 1860 and said proceedings were pending.

9. In so far as the argument of the learned counsel for the applicant that Resp.No.1 on her own accord has withdrawn from the company of the applicant, there is no material to substantiate his argument. It was the case of the present applicant before the Family Court in Petition No.A-405/99 that, Respondent - wife has withdrawn from matrimonial company of the present applicant.

10. In Petition No.A-405/99 for restitution of conjugal rights, there was specific issue to the effect, as to whether the applicant / husband has proved that respondent / wife without reasonable excuse has withdrawn herself from the society of the petitioner. The learned Judge, Family court after appreciating the evidence found that the applicant has failed to demonstrate that the wife has withdrawn herself without reasonable excuse from the company of the applicant. Once there is specific findings to that effect, this court is unable to accept the contentions of the applicant that the wife has withdrawn herself from the company

of the applicant.

11. Wife / Resp.No.1 has specifically pleaded in the Petition/s and also specifically deposed in her evidence recorded before the Court that, she is unable to maintain herself and her two minor children. Admittedly, Resp. No.1 is a housewife. It was for the applicant / husband to point out that wife is having independent source of income to maintain her. In absence of such evidence and especially when it is proved on record that it is the husband's action and act which forced Respondent No.1 to leave the company and society of the applicant; it does not lie in the mouth of the applicant that Resp. No.1 is having sufficient means to maintain her and her children.

12. The learned counsel for the applicant though submitted that the applicant is only auto rickshaw driver however, said submission is contrary to the pleadings of the applicant himself. In paragraph No.8 of Criminal Application filed U/Section 125 of the Code of Criminal Procedure, 1973 respondent / wife has specifically pleaded that the applicant is having his own auto rickshaw bearing registration No.MH/12/363 and from the said auto rickshaw he is earning Rs.300 to Rs.400/- per day. In the written statement the applicant has stated that he has purchased said auto rickshaw by obtaining loan from the Bank and said auto rickshaw is hypothecated with the Bank. With these specific pleadings in the written statement, I am unable to accept the contention of the learned counsel that the applicant is only auto rickshaw driver and does not own his own auto rickshaw. The learned Judge, Family court has evaluated the evidence brought on the record and on the scrutiny of the averments, the learned court below found that Respondent / wife is unable to maintain herself and the applicant is having sufficient means to provide separate maintenance allowance to his wife and children.

13. Further the applicant being the husband of Resp.No.1 and father of Resp.Nos. 2 and 3 is under obligation to maintain them. He cannot shirk his responsibility by supplementing flimsy reasons, which were found to be unworthy to accept by the court below. The learned Judge, Family court has rightly appreciated the pleadings, documents and evidence brought on the record and correctly reached

to the conclusion that the wife and children are entitled for monthly maintenance allowance. Grant of maintenance either from the date of order or from the date of application is a matter of discretion of the court, granting such maintenance. Nothing is brought on record to show that, discretion exercised by the court below in favour of the wife and minor children is unreasonable and unjust. I find no merit in the present Cri.Revn.Appln. Accordingly, same is dismissed.

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