Vimal Vs. Sukumar Anna Patil and Another

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Court : Mumbai

Decided On : Aug-20-1980

Reported in : (1981)83BOMLR37; 1981MhLJ82

Judge : Dharmadhikari, J.

Appeal No. : Criminal Appln. for Revn. No. 670 of 1979

Appellant : Vimal

Respondent : Sukumar Anna Patil and Another

Advocate for Def. : Shri. Rege

Judgement :
ORDER

1. The petitioner wife filed an application under Section 125 of the Code of Criminal Procedure in the Court of Judicial Magistrate, First Class, Jaisingpur, claiming maintenance allowance at the rate of Rs. 300/- per month from the respondent No. 1-Sukumar A. Patil, her husband. It is an admitted position that the petitioner is the legally married wife of the respondent-Sukumar and their marriage took place as per Hindu rites on 24th May, 1967. According to the petitioner-wife after the marriage they resided together for a period of two years. Thereafter there were frequent quarrels between the husband and wife and ultimately the respondent-husband drove her out of the house and has forsaken her. In her application she had also made allegations about the ill-treatment meted out to her

by her husband. It is also her case that the respondent-husband has remarried with one Rajmati daughter of Jingonda Patil and the said Rajmati is residing with him at Jaisingpur. It was further alleged by her that a daughter was born to the Respondent-husband from Rajmati and therefore on this ground also she is entitled to claim maintenance allowance under Section 125 of the Code of Criminal Procedure. She further alleged that though respondent-husband is a man with sufficient means he has neglected and refused to maintain her. She also stated that she has no source of income and therefore she is unable to maintain herself.

2. In the written statement respondent-husband denied the allegations made by the petitioner-wife. The respondent-husband denied the fact that he had ever ill-treated his wife or has driven her out of the house. He further denied the allegation about the remarriage with Rajmati. He also stated that it is not possible for him to pay an amount of Rs. 300/- per month as maintenance allowance to the Petitioner-wife. Thus in substance the respondent-husband denied all the allegations made in the application.

3. In support of her case the Petitioner-wife examined herself, and her brother Appasaheb and Dr. Bhirdi. She also produced documentary evidence in support of her case, namely, an entry from the birth register maintained by the Municipal Council of Jaisingpur about the birth of female child to Rajmati and an extract from the Electoral Roll as well as 7 x 12 extract relating to the landed property of the respondent-husband.

4. On the other hand the Respondent-husband examined himself. After appreciating all the evidence on record both oral and documentary, the learned Judicial Magistrate, First Class, Jaisingpur, recorded a finding that the Petitioner-wife has proved that the opponent-husband has neglected and refused to maintain her. He further found that respondent-husband has sufficient means to maintain his wife. The learned Magistrate further came to the conclusion that the Petitioner-wife has also established the alleged second marriage. In view of these findings the learned Magistrate passed an order granting Rs. 125/- per month as maintenance allowance to the petitioner-wife from the date of the application.

5. Being aggrieved by this order passed by the Judicial Magistrate, First Class, Jaisingpur, both the parties filed revision petitions before the Sessions Court at Kolhapur. The opponent-husband challenged the order on the ground that the findings recorded by the learned Judicial Magistrate, First Class, were vitiated by errors apparent on the face of record and the Petitioner-wife had not made out any case for grant of maintenance allowance. The revision petition filed by him was registered as Criminal Revision Application No. 6 of 1979. The Petitioner-wife also filed revision petition claiming enhancement of the amount of maintenance allowance. Her revision petition was registered as Criminal Revision Application No. 13 of 1979. As both these revision petitions were filed against one land the same order they were heard together by the Additional Sessions Judge. The Additional Sessions Judge, Kolhapur after reappreciating the whole evidence came to the conclusion that the Petitioner-wife has failed to plead and prove her inability to maintain herself and therefore the application filed by her under Section 125 of the Code of Criminal Procedure was not maintainable. So far as the merits of the controversy are concerned the learned Additional Sessions Judge came to the conclusion that the petitioner-wife has failed to prove her case of ill-treatment or that she was driven out of the house by the husband. He further found that the petitioner-wife has failed to prove the second marriage. In this view of the matter the learned Additional Sessions Judge by his order dated 13th August, 1979 allowed the revision petition filed by the Respondent-husband and set aside the order passed by the Judicial Magistrate. First Class awarding maintenance allowance to the Petitioner-wife. As a necessary consequence of this, he dismissed the revision petition field by the Petitioner-wife for enhancement of maintenance allowance. Against this order of the learned Additional Sessions Judge the present revision petition is filed by the Petitioner-wife.

6. Shri Bhimrao N. Naik, the learned Counsel appearing for the Petitioner-wife contended before me that the learned Additional Sessions Judge has exceeded his jurisdiction in reappreciating the whole evidence on record and then recording a different or contrary findings of fact. According to Shri Naik it was not open to the Additional Sessions Judge while exercising his revisional jurisdiction to interfere with the findings of fact recorded by the trial Court. Thus according to the learned Counsel the order passed by the learned Additional Sessions Judge is without

jurisdiction. Shri Naik has also contended that the learned Additional Sessions Judge has committed an error in coming to the conclusion that the petitioner-wife has not proved the fact that she was unable to maintain herself. According to Shri Naik from the averments made in the application as well as in her evidence, it is quite clear that she was unable to maintain herself. He further contended that the learned Judicial Magistrate was right in not believing the evidence of the Respondent-husband which was not only self contradictory but was also the result of an afterthought. According to Shri Naik, the petitioner-wife has stated in her deposition that she was driven out of the house by Respondent-husband and thereafter he never cared to maintain her which in law amounted to neglect or refusal to maintain. He further contended that so far as the second marriage of the opponent-husband is concerned the evidence of petitioner-wife Vimal and her brother Appasaheb has gone unchallenged. The said evidence gets substantial corroboration in the entry made by the Municipal Council in the birth register as well as the entry made in Electoral Roll and therefore the learned Judicial Magistrate was right in believing the evidence of the Petitioner-wife and then coming to a conclusion that the Petitioner-wife has proved that the opponent-husband has contacted a second marriage with Rajmati. Therefore according to Shri Naik the order passed by the learned Additional Sessions Judge is wholly vitiated by an error apparent on the face of record and is also without jurisdiction.

7. On the other hand, it is contended by Shri Rege learned Counsel appearing for the Opponent-husband that under Section 125 of the Code of Criminal Procedure it was obligatory on the part of the Petitioner-wife to allege and prove that she was unable to maintain herself. According to Shri Rege the expression used in this section i.e. 'unable to maintain herself' clearly indicates that it must be proved by the Petitioner-wife that she is incapable of earning anything for her maintenance. If the wife is able bodied and is capable of earning, then it cannot be said that she is unable to earn or is unable to maintain herself. Such an evidence is wholly lacking in this case. Therefore the learned Additional Sessions Judge was right in coming to the conclusion that the application filed by her was not maintainable. In support of this contention Shri Rege has relied upon two decisions of the Allahabad High Court reported in Manmohan Singh v. Smt. Mahindar Kaur and in Bishambhar Dass v. Smt. Anguri, . So far as the merits of the controversy are concerned, it is

contended by Shri Rege that the learned Additional Sessions Judge was right in coming to the conclusion that the Petitioner-wife has failed to prove by adducing cogent and satisfactory evidence that she was driven out of the matrimonial home by the respondent-husband. She has also failed to prove the alleged ill-treatment at the hands of her husband. So far as the second marriage is concerned, there is no evidence on record to prove this second marriage nor there is any evidence on record to show that Rajmati was living with Respondent-husband. The entries in the birth register or extract from the Electoral Roll are not proved in accordance with law nor they have any presumptive value to show that Rajmati was living with Respondent-husband as his wife or mistress. Therefore according to Shri Rege as the Judicial Magistrate, First Class had misread the pleadings as well as the evidence of the parties and had based his conclusions on the inadmissible and hearsay evidence, the Additional Sessions Judge, was right in interfering with the so-called findings of fact recorded by the trial court.

8. Shri Walavalkar the learned public prosecutor has contended before me that the learned Additional Sessions Judge has committed an error in coming to the conclusion that the Petitioner-wife has failed to prove that she is unable to maintain herself. According to Shri Walavalkar the physical ability or capacity of the wife to earn is wholly irrelevant while deciding the said question and therefore the interpretation put forward by the learned Additional Sessions Judge on the expression 'unable to maintain' as used in Section 125 of the Code of Criminal Procedure is wholly incorrect.

9. So far as the interpretation put forward by the learned Additional Sessions Judge upon the expression 'unable to maintain herself' as used in S. 125(1)(a) of the Code of Criminal Procedure, is concerned in my view the said interpretation is wholly unwarranted. None of the sub-clauses of Section 125 can be read in isolation. Section 125 will have to be read as a whole together with Sections 126, 127 and 128 of the Code of Criminal Procedure. Chapter IX of the Code of Criminal Procedure deals with the order for maintenance of wives, children and parents. I had an occasion to consider the scope and object of this provision in Isak Chanda Palkar v. Nyamatbi The said provision also came for consideration before the Supreme Court in Bai Tahira v. Ali Hussain Fissalli Chothia, : 1979

CriLJ151 therefore keeping in view the object of the legislation the expression used in Section 125 i.e. 'unable to maintain herself' will have to be construed in the context of the object sought to be achieved. Section 125(1) together with its sub-clauses read as under :-

'125. (1) If any person having sufficient means neglects or refuses to maintain -

(a) his wife, unable to maintain herself, or

(b) legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself'.

The expression 'unable to maintain' is used in all these sub-clauses. Sub-section (1)(a) deals with the case of wife. Sub-section (1)(b) is concerned with providing maintenance allowance to legitimate or illegitimate minor child whereas sub-section (1)(c) deals with the question of major child who is, by reason of any physical or mental abnormality or injury is unable to maintain itself. Sub-section (1)(d) deals with the father or mother who is unable to maintain himself or herself. In sub-section (c) of Section 125(1) there is intrinsic aid or evidence available for construing the expression 'unable to maintain'. If by this expression the legislature intended that every able bodied person who is otherwise able to earn, is not entitled to claim maintenance allowance under Section 125, then in sub-section (c) it was not necessary for the legislature to say in express terms that the child who has attained majority will be entitled to get maintenance only if by reason of any physical or mental abnormality or injury such a child is unable to maintain itself. This provision throws light on the intention of legislature. If the provision of sub-section (1)(a) is read in this context then in my opinion, it is quite clear that while construing the expression 'unable to maintain' the concept of able bodied person's ability to earn cannot be imported. The expression 'unable to maintain herself'

connotes the situation wherein it is not possible for the wife to maintain herself from any other source, meaning thereby wherein it is demonstrated that but for the maintenance allowance claimed from her husband, she has no other source or means of maintenance.

10. It is well-known that merely because a person is able bodied and does not suffer from any physical or mental disability, he is not always able to earn. Ability to earn many times depends upon several other factors, such as, education, experience, finances, family tradition etc. In the competitive employment market mere physical ability is not the only qualification required for getting a job. In a country where economic independence of the wife is still a rarity, such a situation would never have been intended by the legislature. As observed by the Supreme Court in Bai Tahira's case : 1979 CriLJ151 , Article 15(3) has compelling compassionate relevance in the context of Section 125 and benefit of doubt, if any, in statutory interpretation belongs to ill-used wife. Protection against moral and material abandonment manifest in Article 39 is part of social and economic justice specified in Article 38, fulfilment of which is fundamental to the governance of Country. (Article 37).

11. In this context a reference could also be made to the report of the Joint Committee which reads as under :-

'In the case of wife, the order can be passed only if she is unable to maintain herself. Having regard to the object behind these provisions, which is mainly to prevent vagrancy, there is in the Committee's opinion, no need to compel the husband to pay maintenance to a wife who is possessed of sufficient means'. (See AIR Commentaries on the Criminal Procedure Code, 1973).

In Nanak Chand v. Chandra Kishore, : 1970 CriLJ522 , the Supreme Court had an occasion to consider the scope of word 'child' as used in Section 488 of old Criminal Procedure Code. It was held by the Supreme Court in the said decision that the said word does not mean minor son or daughter but the real intention is contained in the expression 'unable to maintain itself'. Then in para 9 of the said judgment a reference was made to the lot of helpless children who though major are unable to support themselves because of their imbecility or deformity or other

handicaps. Then in para 13 of the said decision, namely Nanak Chand's case the Supreme Court observed as under :-'Coming to the third point raised by the learned counsel we are of the view that the learned Additional Sessions Judge and the High Court were right in taking into consideration the existing situation, the situation being that at the time the order was passed Chandra Kishore was a student of M. Com. and Ravindra Kishore was a student of M.B.B.S. 'Course'.

Thus, while considering the question as to whether major children were entitled to maintenance, the Supreme Court took into consideration 'the existing situation' only and did not consider the said question in the light of their physical ability or capacity to earn. Therefore while considering the question as to whether the wife or child is 'unable to maintain herself or itself', the existing situation alone is relevant and if the wife is not possessed of sufficient means to maintain herself then it will have to be held that she so unable to maintain herself. The view which I have taken seems to have been taken by the Gujarat High Court in Nirmala Bhanji v. Jayantilal Vithaldas (1976) 17 G LR 457.

12. However Shri Rege, learned Counsel appearing for the respondent-husband has placed reliance upon the two decisions of the Allahabad High Court referred to hereinabove. The said decisions will have to be read in the context of the facts of those cases. In Manmohan Singh's case it appears that it was neither alleged in the application nor the wife had stated in her deposition that she was unable to maintain herself and therefore the Allahabad High Court came to the conclusion that there was no evidence on record to show that the wife was unable to maintain herself.

In Bishambhar Dass's case also the opposite party No. 1 had not mentioned in her petition that she is unable to maintain herself. In her statement also she did not say so. All that she said was that she was maintaining herself with some difficulty. I view of this position, it was held by the single Judge of the Allahabad High Court that this does not amount to her being unable to maintain herself. It is well settled that precedents on legal propositions are useful but variety of circumstances and peculiar features of each case cannot be identical with those in another. Therefore none of these two decisions can support the interpretation placed by Shri Rege on

the expression 'unable to maintain herself'.

13. Shri Rege has also place reliance upon the decision of the Supreme Court in Bhagwan v. Kamla Devi, : 1975 CriLJ40 in the said decision the Supreme Court had an occasion to interpret S. 488(1) of the old Code of Criminal Procedure. It was held therein that while determining the claim of the wife for maintenance the Magistrate is not debarred from taking into consideration the wife's own separate income or means of support. In paragraphs 11, 19, 20 and 21 of the said judgment the Supreme Court has made a reference to the object of the legislature and has observed as under :-

'11. Sections 488, 489 and 490 constitute one family. They have been grouped together in Chapter XXXVI of the Code of 1890 under the caption, 'Of the maintenance of wives and children'. This Chapter, in the words of Sir James Fitzstephen, provides 'a mode of preventing vagrancy, or at least of preventing its consequences'. These provisions are intended to fulfil a social purpose. Their object is to compel a man to perform the moral obligation which he owes to society in respect of his wife and children. By providing a simple speedy but limited relief, they seek to ensure that the neglected wife and children are not left beggared and destituted on the scrap-head of society and thereby driven to a life of vagrancy, immorality and crime for their subsistence. Thus, Section 488 is not intended to provide for a full and final determination of the status and personal rights of the parties. The jurisdiction conferred by the section on the Magistrate is more in the nature of a preventive, rather than a remedial jurisdiction; it is certainly not punitive. As pointed out in Thompson's case 6 NWP 205 the scope of the Chapter XXXVI is limited and the Magistrate cannot, except as thereunder provided, usurp the jurisdiction in matrimonial disputes possessed by the Civil Court. Sub-section (2) of Section 489 expressly makes orders passed under Chapter XXXVI of the Code subject to any final adjudication that may be made by a Civil Court between the parties regarding their status and Civil rights.

19. The object of those provisions being to prevent vagrancy and destitution, the Magistrate has to find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with

the status of the family. The needs and requirements of the wife for such moderated living can be fairly determined, only if her separate income, also is taken into account together with the earnings of the husband and his commitments.

20. There is nothing in these provisions to show that in determining the maintenance and its rate, the Magistrate has to inquire into the means of the husband, alone, and exclude the means of the wife altogether from consideration. Rather, there is a definite indication in the language of the associate Section 489(1), that the financial resources of the wife are also a relevant consideration in making such a determination. Section 489(1) provides, inter alia, that 'on proof of a change in the circumstances of any person receiving under Section 488 a monthly allowance, the Magistrate, may make such alteration in the allowance as he thinks fit'. The 'circumstances' contemplated by Section 489(1) must include financial circumstances and in that view, the inquiry as to the change in the circumstances must extend to a change in the financial circumstances of the wife.

21. Keeping in view the object, scheme, setting and the language of these associate provisions in Chapter XXXVI, it seems to us clear that in determining the amount of maintenance under Section 488(1) the Magistrate is competent to take into consideration the separate income and means of the wife.'

14. From these observations of the Supreme Court it is quite clear that the object of the provisions is to prevent vagrancy and destitution. These provisions are intended to fulfil a social purpose. Its object is to compel a man to perform the moral obligation which he owes to society in respect of his wife and children. By providing a simple, speedy but limited relief, it seeks to ensure that the neglected wife and children are not left beggared and destituted on the scrap-heap of society and thereby driven to a life of vagrancy, immorality and crime for their subsistence. In this context a reference could also be made to the following observations of the Supreme Court in Ramesh Chander Kaushal v. Veena Kaushal : 1979 CriLJ3 .

'This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Art. 39. We have no doubt that sections of statutes calling for

construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretations out of two alternatives which advances the cause of the derelicts.'

Therefore while construing the provisions of Section 125 of the Code of Criminal Procedure the object which the legislature intended to achieve cannot be overlooked. From the phraseology used in Section 125 it is quite obvious that this provision which is applicable to all destitute wives irrespective of their caste, creed or religion is meant for making a provision for their maintenance. It is not doubt true that the expression used by the legislature is in the negative form i.e. 'unable to maintain herself', but if this expression is converted into positive form. It only means that, 'she is otherwise able to maintain herself', or has got income earning property or other means to support herself. The expression 'unable to maintain' only connotes that the wife has no other means or source to maintain herself. It has nothing to do with her potential earning capacity. If the interpretation suggested by Shri Rege is accepted then the whole provision will become unworkable and will result in defeating the very object of the legislature. It will involve revering and endless enquiry about her physical ability, capacity as well as avenues and opportunities available to her for earning her livelihood. It is obvious that this was never intended by the legislature. In the case before me, it is nobody's case that the petitioner-wife was ever earning anything on her own. It is also not the case of respondent-husband that with a mala fide intention of harassing him, the petitioner-wife has created an artificial necessity by leaving a job or by disposing of her property. Therefore it is not possible for me to accept the contention raised by Shri Rege the learned Counsel appearing for the respondent-husband.

15. The question as to whether the wife is unable to maintain herself will have to be decided having regard to the facts and circumstances of each case. No general rule can be laid down in this behalf, nor it is advisable to lay down any general. It cannot also be forgotten that it is not the mere form, but substance of the matter which will have to be looked into, and no undue or exaggerated importance could

be attached to the form or words, and expression used by the wife in her application or deposition. In a given case if it is neither suggested nor established that the wife has any other source of maintenance, then depending upon the totality of the circumstances such a finding could safely be recorded. In para 5 of her application the Petitioner-wife has alleged in clearest terms that she has no other source of income. Then in para 4 of her deposition she had again stated on oath that she had no other source of livelihood. But for making vague suggestion in the cross-examination nothing useful has been brought on record to indicate that the petitioner-wife had any other source of income or has any other means of maintenance. It is an admitted position that there is nothing on record to show that as a matter of fact she was earning anything or had any other source of livelihood. In these circumstances it will have to be held that the petitioner-wife has established beyond doubt that she was unable to maintain herself. Hence the application filed by her under Section 125 was obviously maintainable.

16. So far as the merits of the controversy are concerned it is the case of the petitioner-wife that after ill treatment she was driven out from the matrimonial home by the respondent-husband. In this connection the husband has come with somewhat different story. The respondent-husband has stated in his deposition that his wife was related to his step mother. He further stated that his wife and step mother neglected him and ultimately drove him out of the house. Thereafter he joined the service at Ichalkaranji and shifted to live there. The petitioner-wife did not come to Ichalkaranji with him. From his deposition it also appears that the relations of husband and wife were not cordial. He has gone to the extent of saying that the petitioner-wife drove him out of the house within four days after their marriage. This was not his case in the written statement. Thus the evidence adduced by the respondent-husband is to some extent contrary to his own version as stated in written statement. This was also not his case in the reply sent to the notice given by the petitioner-wife. In view of the self-contradictory stand taken by the respondent-husband in his written statement and in his deposition, the learned Judicial Magistrate chose to rely upon the evidence of the petitioner-wife. After appreciating all the evidence on record the learned Judge of the trial court recorded a finding that it was respondent-husband who drove her out of matrimonial home and thereafter neglected and refused to maintain her. However

the Additional Sessions Judge took the view that burden was upon the petitioner-wife to establish this allegation and she has failed to discharge the same. The learned Additional Sessions Judge has also observed that in her application the petitioner-wife had stated that her husband Sukumar had driven her out of the house whereas in her deposition she has stated that she was driven out of the house by her father-in-law. Much has been made by the learned Additional Sessions Judge out of this minor contradiction and therefore recorded a finding that the petitioner-wife has failed to establish the case of ill-treatment or that she was driven out of the matrimonial house either by Sukumar or by Anna, her father-in-law. In my opinion this is not the correct approach for appreciating evidence in matrimonial matters. To some extent the question of burden of proof becomes irrelevant when both parties enter into witness box and adduce evidence in support of their respective cases. The respondent-husband very well knew as to what case he was expected to meet. The husband has stated in his deposition that it was he who was driven out of the house and this part of his story is not accepted even by the Additional Sessions Judge. Before filing the application under Section 125 notices were exchanged between the parties. In the reply to the notice served by wife, in the written statement and his deposition before the court the stand taken by the husband is not consistent. It is somewhat self-contra-dictory. It is also an admitted position that the wife was living away from matrimonial home. It is not the case of the husband that after his wife left the house or was driven out of the house he had made any arrangement for her maintenance. In these circumstances, the Judicial Magistrate, First Class, was right in coming to the conclusion that the respondent-husband had neglected and refused to maintain the petitioner-wife and therefore she was entitled to maintenance allowance under Section 125 of the Code of Criminal Procedure. In any case in his revisional jurisdiction it was not open to the Additional Sessions Judge to interfere with the said finding of fact which was solely based on appreciation of evidence. It is by now well settled that normally revisional jurisdiction is to be exercised only in exceptional cases when there is a glaring defect in the Procedure or there is a manifest error on the point of law which has consequently resulted in miscarriage of justice. The revisional court is not expected to act as if it is hearing an appeal. (See State of Orissa v. Nakula Sahu, : 1979 CriLJ594). This is not a case wherein

it is shown that any material piece of evidence was omitted from consideration by the trial court when a finding of fact in this behalf, was recorded. To that extent it can safely be said that the learned Additional Sessions Judge has exceeded the jurisdiction vested in him by law as a revisional court.

17. It was also alleged by the petitioner-wife that the respondent-husband has remarried with one Rajmati and was living with her. She had also alleged that Rajmati has got a female child from the respondent-husband. She has stated so on oath in her deposition. Her brother Appasaheb has supported the said version as deposed to by the petitioner-wife. To prove that Rajmati delivered a female child, the petitioner-wife had examined Dr. Bhirdi who has produced the register maintained by his maternity home. This register shows that on 8-8-1975 at 1.10 a.m. Rajmati delivered a female child in his maternity home. The petitioner-wife has also produced certified copy of the entry relating to the birth of the female child of Rajmati and Respondent-Sukumar, from the birth register maintained by the Municipal Council. She has also produced an extract from the Electoral Roll to prove that Rajmati is residing with Respondent-husband in the same house and this entry describes Rajmati as his wife. The evidence of petitioner-wife Vimal coupled with the evidence of Dr. Bhirdi, which gets substantial corroboration in other documentary evidence was accepted by the learned Judicial Magistrate. First Class, whereas the said evidence is not accepted by the Additional Sessions Judge because according to the learned Additional Sessions Judge the birth entry is not properly proved and certified copy of the extract of Electoral Roll though admissible in evidence has no presumptive value. In the view which I have taken it is not necessary to deal with this aspect of the matter any further, because once it is found that the petitioner-wife was driven out of the house by the respondent-husband and thereafter the husband had refused and neglected to maintain her, then it cannot be disputed that she will be entitled to maintenance allowance from her husband, under Section 125 of the Code of Criminal Procedure.

18. So far as the quantum of maintenance is concerned, as the learned Additional Sessions Judge held that the application itself was not maintainable he has not considered the said question at all. For the same reason he has also not considered the merits of the revision petition filed by the petitioner-wife for

enhancement of the maintenance allowance. Therefore to that extent the matter will have to be remitted back to the Additional Sessions Judge, Kolhapur for deciding the said question in accordance with law after giving a reasonable opportunity to both the parties of being heard.

19. In the result therefore the revision petition is allowed and it is held that the application filed by the petitioner-wife under Section 125 of the Code of Criminal Procedure was maintainable. However the matter is remitted back to the Additional Sessions Judge, Kolhapur for deciding the question as to quantum of maintenance allowance in accordance with law. It is needless to say that while deciding the said question the Additional Sessions Judge will also hear and decide the criminal revision application No. 13 of 1979 filed by the petitioner-wife for enhancement of maintenance allowance. The Additional Sessions Judge is directed to decide the matter as expeditiously as possible.

20. Ordered accordingly.