

Sunanda Chandrakant Vs. Chandrakant Bhaskar and Another

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Court : Mumbai

Decided On : Jan-04-1988

Reported in : 1988(1)BomCR268; (1988)90BOMLR85

Judge : S.M. Daud, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125 and 127

Appeal No. : Criminal Writ Petn. No. 737 of 1986

Appellant : Sunanda Chandrakant

Respondent : Chandrakant Bhaskar and Another

Judgement :

ORDER

1. This petition impugns the reversal of an order for maintenance passed in favour of the petitioner in proceedings initiated under S. 125 read with S. 127 of the Code of Criminal procedure, 1973.

2. The petitioner and respondent No. 1 are wife and man respectively, joined in that union at Chalisgaon on 31-5-1978. The marriage has been an unhappy one right from the inception. The petitioner instituted a proceedings under S. 125, Cr.P.C. in the Courts of J.M.F.C. at Chalisgaon, which proceeding was registered as Criminal Miscellaneous Application No. 22 of 1979. In this application, it was alleged that the husband though possessed of sufficient means had refused and

neglected to maintain the wife who was not in a position to maintain herself. The husband contested the proceeding contending that far from his not wanting the wife to live with him or maintain her it was that lady who had deserted him soon after the marriage and had refused to return back. The learned Magistrate who heard the 1979 application, dismissed it and the wife's revision to the Sessions Court met with no better result. The husband having succeeded, it was now his turn to give a dose of her own medicine to the wife. He therefore filed two proceedings, one in a Court at Jalgaon and the other in a Court at Thane. The two proceedings were for a divorce and a declaration that the marriage was nullity. Both these petitions were dismissed. The spouses being addicted to litigation, the wife now initiated Criminal Miscellaneous Application No. 6 of 1982 claiming maintenance under S. 125 of the Cr.P.C. It was averred that there had been a change in the circumstances, for which reason the dismissal of the earlier application for maintenance did not operate as a bar. The husband took exception to the second application for maintenance, pleading the bar of res judicata and also that the equities were such as to dis-entitle the wife from claiming maintenance. Parties were examined and so far as the attitude of the husband is concerned, it is best reflected in the following passage from the judgment of the learned Magistrate :-

'In this case, the opponent (husband) is really at fault and he is misusing the provisions of law very lightly and according to him without any incident (?). He has also admitted on oath that after the petition was dismissed he had never tried to take the applicant in his conjugal home. It is also position on record that he has not specifically pleaded in his say at Exh. 5 that he is ready and willing to take her at his home for his conjugal company. He has admitted in his cross-examination that his father is in Railway service and he is also working in the same Department since last 6 years. He has also admitted that he has filed petition for divorce in Jalgaon court as applicant is not coming at his home since last 5 years but in the same breath he has also admitted that after the petition of 22/79 was dismissed, he has never tried to take the applicant at his home in his conjugal company.'

The Magistrate negated the bar of res judicata and held that the wife was entitled to maintenance at rate Rs. 100/- per month which amount was made payable unto

her as from the date of the application i.e. the one bearing Criminal Miscellaneous Application No. 6 of 1982. Aggrieved by the award of maintenance, the husband moved the Sessions Court at Jalgaon in revision. The revision came up before an Additional Sessions Judge. He was of the opinion that the dismissal of the first application for maintenance on merits, debarred the second application which was based on the same set of facts and circumstances as its predecessor. For this reason, he allowed the revision application and quashed the award of maintenance made in favour of the wife.

3. Having regard to the submissions made by learned Counsel, I have to address myself to the determination of the following questions :-

1. Whether the second application for maintenance was maintainable in law ?
2. Whether the wife established the husband's neglect and refusal to maintain her ?

I record affirmative answer to both the points and allow the petition for the reasons given below.

4. The first maintenance application was moved by the wife very shortly after the marriage. In that application, it was alleged that the wife had been ill-treated and driven away from the marital home. This allegation was negated by the Magistrate, which finding was affirmed in the revision that the wife preferred against the dismissal of the maintenance application. More or less, the same words were used by the wife in the second maintenance application in which she secured the award for maintenance in her favour. But the words were with reference to a different set of circumstances. For one thing, there had been a change in the time and certain supervening events had taken place. Passage of the time and the happening of events changed the circumstances in which the wife's claim for maintenance has to be appraised. The first application was moved in the year 1979, whereas the second was initiated in 1982. In between, the husband had moved two petitions to rid himself of the marital tie. Having regard to this very significant feature, I do not understand how the Additional Sessions Judge could still hold that there had been 'no change in the circumstances.' The

husband's answers reproduced above show quite clearly that he was not interested in the resumption of the marital tie. His attempts to secure a divorce or a declaration of the nullity of the marriage, had failed. This was the background in which the second application for maintenance had to be decided. After all the tie of marriage subsisted and the fact that the wife had failed in the first application did not mean that she was for ever dis-entitled to claim maintenance. If the Sessions Court's view is to be upheld, the position would be that the wife would be punished for foolishness exhibited by her in 1979, much later after the act of folly and this despite the husband's failure to obtain a divorce or somehow get rid of the marital tie. I do not believe the law to be this. Counsel for the husband tried to support the Sessions Court's view by recourse to the judgments of Mr. Justice Kambli and Mr. Justice Puranik reported in . Neither decision has any bearing upon the question that arises in the instant case. Here, the passage of time and the happening of events subsequent to the dismissal of the first application constituted a change in the circumstances removing the bar of *res judicata*. I therefore hold that the Magistrate was right in holding that the second application was maintainable.

5. In relation to the second point, the husband's answers conclude the matter. Despite inability to get a divorce or a declaration of nullity, he does not want the wife to return unto him. On his part he has made no effort to bring back the wife to the marital home. It was argued that the wife had to establish that the husband had refused or neglected to maintain her and that she had made any attempt for repairing the breach between the spouses. The wife can be faulted for going to the court first and that is about all. After that first move it was the husband who went on the offensive. Despite the failure in the Thane and Jalgaon Courts, the husband did not offer to maintain the wife if she returned to live with him. His Counsel in this Court said at the Bar that the husband was prepared to take the wife back if she returned to live with him and maintain her. These are statements made to salvage the damage. The husband's statements made on oath before the Magistrate give a better indication of his mind than what is now put forth on his behalf. The offer to take back the wife is insincere and cannot be accepted.

6. The result of then foregoing discussion is that the Sessions Court was in error in quashing the award for maintenance made in favour of the wife. Hence the order.

7. The award for maintenance made in favour of the wife is hereby resorted with costs throughout. These are quantified at Rs. 250/-. Rule in these terms made absolute.

8. Order accordingly.

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