

Prakash Arjun Adsule Vs. Sunanda Prakash Adsule

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Court : Mumbai

Decided On : Apr-20-1993

Reported in : I(1994)DMC128

Judge : S.P. Kurdukar and ;P.S. Patankar, JJ.

Acts : [Family Courts Act, 1984](#) - Sections 19; [Code of Criminal Procedure \(CrPC\)](#), 1973 - Sections 125

Appeal No. : F.C.A. No. 33 of 1992

Appellant : Prakash Arjun Adsule

Respondent : Sunanda Prakash Adsule

Advocate for Def. : V.G. Peshave, Adv.

Advocate for Pet/Ap. : H.N. Kore, Adv.

Disposition : Appeal dismissed

Judgement :

S.P. Kurdukar, J.

1. This Family Court Appeal under Section 19 of the [Family Courts Act, 1984](#) (hereinafter referred to as the Act), has been filed by the husband challenging the judgment and order dated 29th September, 1991, passed by the Family Court,

Pune, directing the appellant to pay Rs. 330/- per month by way of maintenance from the date of order.

2. The present proceedings arise out of an application made by the respondent-wife for maintenance under Section 125 of the Criminal Procedure Code. There is no dispute that the appellant was married to the respondent according to Hindu Vedic rites on February 16, 1990. The respondent is from Pune whereas the appellant is from Bombay.

3. There does not seem to be any dispute that after marriage, the appellant and respondent stayed together at the appellant's residence at Khar. There was some incident on 9-9-1990 in which respondent sustained burn injuries. She received treatment at Bombay and thereafter on 27-9-1990 she was taken to her parent's house at Pune. She was also treated at Nerlekar Hospital at Pune. Respondent again came to matrimonial home but left the said home on 10-2-1991. On the following day, a police complaint under Section 498A of the Indian Penal Code was lodged against the appellant. We are told that the said complaint is pending.

4. An application under Section 125 of the Criminal Procedure Code was filed by the respondent on 28-4-1991, alleging that she was ill-treated by the appellant at the matrimonial home. She further alleged that there is danger to her life and she is not ready and willing to stay with her husband. In paragraph 6 she has alleged that the appellant has been ill-treating her on the ground that she was having illicit relations with a stranger. These allegations caused lot of mental cruelty to her and because of these allegations, it has become impossible for her to stay in the matrimonial home. She was compelled to leave the matrimonial home. The appellant is in a position to maintain her. He has failed and neglected to maintain her and, therefore, she has prayed Rs. 500/- per month towards maintenance.

5. The appellant in his written statement dated June 6, 1991, denied the allegation of mental or physical cruelty caused to her by him. According to him, the respondent has lodged a false complaint in the Police Station and because of the said false complaint he had to undergo lot of mental worries. He further stated that he was not responsible for the incident which took place on 9-9-1990. It was an incident in which the respondent had sustained burn injuries and accordingly she

had stated before various persons residing in the said locality. At the instance of some interested persons she had filed criminal complaint against him under Section 498A of the Indian Penal Code which has caused lot of mental tension to him.

6. In paragraph 2, the appellant has stated that he has never ill-treated the respondent. He pleaded that he had no illicit relations with anybody. On the contrary, according to him, his wife-respondent was having illicit relation with one young boy (Bhayya) who was working in the flour mill run by the respondent's father. Respondent, respondent has been treated honourably at his house. Despite this good treatment has left matrimonial home without rhyme or reason. The respondent is not entitled to any maintenance under Section 125 of the Criminal Procedure Code. Application filed by the respondent is false and the same be dismissed.

7. Both the parties led oral and documentary evidence in support of their rival contentions. The learned Trial Judge after appreciating the oral and documentary evidence of the parties on record, came to the conclusion that the appellant has failed and neglected to maintain his wife and consequently directed the appellant to pay maintenance of Rs. 300/- per month from the date of order. It is this order which is the subject-matter of challenge in this appeal.

8. Mr. Kore, learned Counsel appearing for the appellant urged that the appellant was not given sufficient opportunity to produce documentary evidence on record. He, therefore, urged that this Court may peruse the said record and pass appropriate orders. He produced some letters exchanged between the parties. We may make it clear that these letters relate to incident which took place on 9-9-1990. For the purpose of this appeal, we may leave out of consideration, the incident which took place on 9-9-1990. Additional evidence sought to be produced, therefore, has no bearing upon reasons which will be set out hereinafter for confirming the order of maintenance passed by the learned Trial Judge.

9. The appellant has made serious allegations against the character of the respondent. The appellant has also sought to justify these allegations in his evidence. He also gave a suggestion to the respondent and her witnesses as

regards her character. In the written statement, the respondent has specifically stated that he learnt that respondent was having illicit relations with a young boy working in the flour mill of her father. In view of this serious allegation, which were tried to be justified by the appellant, in our opinion, the wife was fully justified in staying away from the appellant. If this be so, the appellant, is required to maintain the respondent. It is not disputed that since 10-2-1991, the respondent has been residing with her parents and the appellant has made no provision whatsoever to maintain the respondent. The appellant is gainfully employed in the Bombay Municipal Corporation and brings home a pay packet of Rs. 1500/-. As against this, respondent is not employed any where. She is unable to maintain herself. She is dependent upon her parents. Having regard to the facts and circumstances of the case, we are of the opinion that the learned Trial Judge was right in granting application of the respondent and directing the appellant to pay Rs. 300/- per month towards maintenance to the respondent. There is no substance in this appeal. Appeal to stand dismissed with costs.