

Babinanda Vs. Vijaykumar

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Court : Mumbai

Decided On : Aug-17-1999

Reported in : I(2000)DMC549

Judge : J.N. Patel, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125, 397 and 401

Appeal No. : Criminal Revision Application No. 109 of 1996

Appellant : Babinanda

Respondent : Vijaykumar

Advocate for Def. : None

Advocate for Pet/Ap. : P.A. Deshmukh, Adv.

Disposition : Revision allowed

Judgement :

J.N. Patel, J.

1. Heard Mr. P.A. Deshmukh, learned Counsel for the applicant.

None for the non-applicant.

The applicant/wife has impugned the order dated 12th July, 1996 passed by the First Additional Sessions Judge, Nagpur, in Criminal Revision Application No. 1837 of 1995 filed by the non-applicant/husband, under which the learned Additional Sessions Judge set aside the order passed by the learned Magistrate granting maintenance to the applicant/wife.

2. The applicant was married to the non-applicant on 15.5.1991. For some time, they lived happily together, but due to the fact that the applicant was treated with cruelty and assaulted by her husband (non-applicant herein), she was required to leave the matrimonial home on 19.10.1991 and went to reside with her parents. The applicant lodged a report with the police against the non-applicant/husband in respect of cruelty meted out to her, as she and her parents were not able to fulfil the demands made by the non-applicant/husband to bring cot, fan, furniture and some other household articles. It was also contended by the applicant that the non-applicant/husband is addicted to consuming liquor daily and used to abuse her in filthy language, which caused mental torture to her, that she was required to leave the matrimonial home in order to save herself from this ill-treatment and that after she went to reside with her parents, the non-applicant/husband had been to the house of her parents and threatened them that he would kill them with an axe, of which a report is lodged to c Police Station. It was the case of the applicant that as she was required to reside with her parents, due to the ill-treatment meted out to her by the non-applicant/husband, the non-applicant/husband has refused and neglected to maintain her, and as she has no source of income and unable to maintain herself, she requires Rs. 500/- per month towards maintenance.

3. On the other hand, it was the case of the non-applicant/husband that the applicant/wife has left the matrimonial home without any justification. It was the case of the non-applicant/husband that the applicant/wife did not like that his parents should visit his place and he should give financial assistance to them. It was further contended that though the non-applicant/husband permitted the applicant/wife to prosecute her studies, instead of going to college, she used to go to her father's place, which caused lot of inconvenience to him, and because of these differences arose between them, on the day of Dassera, the applicant/wife left the matrimonial home and went to the house of her parents. It was also

contended that the applicant/wife is able to maintain herself and earns Rs. 500/- to Rs. 600/- per month by giving tuitions and doing job work in typing and, therefore, she is not entitled for maintenance.

4. The learned Magistrate found that the applicant has proved that the non-applicant/husband has refused and neglected to maintain her, though he has sufficient source of income and further that she is unable to maintain herself, and granted her maintenance at the rate of Rs. 400/- per month from the date of the application, along with the costs. This order came to be challenged in the Court of Sessions. The learned 1st Additional Sessions Judge, in exercise of his powers of revision, allowed the Revision Application filed by the non-applicant/husband and quashed and set aside the order of the learned Magistrate granting maintenance to the applicant/wife. It is against this order of the learned Additional Sessions Judge that the applicant/wife has approached this Court by way of the instant Criminal Revision Application.

5. It is contended by Mr. Deshmukh, learned Counsel for the applicant/wife, that the learned Additional Sessions Judge has exceeded his jurisdiction in revision by marshalling the evidence and arriving at his own conclusion, which is contrary to the facts and record of the case. It is submitted that the learned Additional Sessions Judge was misled because of the two contradictions which are wrongly referred and brought on record in the evidence of the applicant/wife. The first is in respect of the fact that the applicant was forced to consume liquor in a party arranged by her husband to celebrate the marriage, in which he invited his friends and when she refused to do so she was beaten and abused in filthy language before her friends and parents. According to Mr. Deshmukh, this cannot be said to be a contradiction, as in cross-examination of the applicant, she has been questioned about Birth Day of the non-applicant's relative at Kuhi, and the applicant has rightly answered that she made no allegations in her application that in that function the non-applicant forced her to drink liquor and when she refused to do so, the non-applicant started beating her. It is submitted that portion marked 'A' in the application filed by the applicant/wife is not in reference to the birthday of the non-applicant's relative at Kuhi, but it is in respect of the marriage party given by the non-applicant/husband at their house, where his friends were

invited. It is, therefore, submitted that this prevailed in the mind of the learned Additional Sessions Judge as a false statement made by the applicant and, therefore, in his impugned order, the learned Additional Sessions Judge has recorded that she admitted that the alleged incident which happened at village Kuhi in a marriage party, had not taken place and the allegations in the application in that behalf were not correct.

6. It is further submitted that Mr. Deshmukh, learned Counsel for the applicant/wife that the learned Additional Sessions Judge also fell in error in recording that the applicant also admitted that the allegation of her ouster from the house of the non-applicant/husband on 19.10.1991 was also not correct and she had not stated to make such allegation, to her Counsel. It is submitted that the applicant has specifically mentioned in her application that she was beaten and driven out of the matrimonial home, except for the fact that though the incident was of 10th October, 1991, the report in the matter came to be lodged on 19th October, 1991. It is submitted that this by itself would also not come in the way of the applicant/wife's claim for maintenance, as the applicant has sufficiently established that she was ill-treated by her husband and in order to save herself from the ill-treatment at the hands of her husband, she was required to leave her matrimonial home and this sufficiently justifies her staying away from the non-applicant/husband and claiming maintenance from him. It is submitted that the applicant has brought on record that the non-applicant/husband was earning from selling fruits and thereafter he has started plying auto-rickshaw, which shows that he has sufficient means to maintain the applicant and, therefore, the impugned order deserves to be quashed and set aside and the order passed by the learned Magistrate granting Rs. 400/- per month to the applicant/wife towards maintenance be restored.

7. In order to make out a case for maintenance, the applicant/wife has examined herself. She has stated in her evidence that the non-applicant/husband started beating her, after she went to reside with him and told her to bring cot, fan and cash of Rs. 10,000/- from her father's house. As she was not in a position to fulfil the demand, he continued the ill-treatment, of which a police report had been filed. In her evidence before the Trial Court she has stated that she was driven out of

the house by the non-applicant/husband on 19.10.1991, and since then she is residing at her parents' house. She has also stated that the non-applicant/husband is earning Rs. 100/- per day from driving auto-rickshaw and possesses agricultural land. In her cross-examination, she has admitted that in her application she has not made any allegation in respect of the demand made by the non-applicant/husband for bringing cash of Rs. 10,000/- from her father's house. From her evidence, it appears that through she and the non-applicant/husband lived together for some time, there arose differences, as admitted by the non-applicant/husband, as the applicant/ wife did not like him to extend financial assistance to his father and the frequent visits of his father at their place. In the cross-examination, the non-applicant/ husband tried to suggest that quarrel took place between them for purchasing a new blouse-piece, and since then she has started residing at her parents' house, but in his own evidence, the non-applicant/husband has stated that the applicant/wife left the house on the Dassera day due to differences between them and for the reason that he was annoyed with her because she used to go and stay at her father's place which caused him lot of inconvenience, as he could not have food in time and so on.

8. From the evidence on record, one thing is clear that the non-applicant/ husband was annoyed with his wife for various reasons and, therefore, it cannot be said that the applicant/wife has come out with a false case that she was being ill-treated by her husband, and the question is the extent of ill-treatment and whether the applicant/wife was justified in leaving the house of the non-applicant/husband in such a situation. As there is no other evidence on record, there is no reason to disbelieve the applicant/wife when she has made specific allegations of ill-treatment at the hands of the non-applicant/husband which made her take such an important decision so as to leave her husband's house. Admittedly, after the applicant lodged a complaint with the police, the non-applicant did not go to take her back or made any other efforts so as to resume the marital life. In the circumstances, the non-applicant/husband cannot take an advantage of the situation and blame the applicant/wife, for which there is no material on record that the wife is guilty of desertion without any justification.

9. The fact remains that even after filing of the application for maintenance, the non-applicant/husband took the plea that the applicant/wife is able to maintain herself as she is taking tuitions and also doing job work in typing, rather than offering to maintain her. This, itself, indicates that the non-applicant/husband chose to refuse and neglect to maintain the applicant/wife. The non-applicant/husband has not been able to prove that the applicant/wife is able to maintain herself. On the other hand, the applicant/wife has come with a specific case that the non-applicant/husband makes Rs. 100/- per day by driving auto-rickshaw, which shows that he has sufficient means to maintain his wife (applicant).

10. As rightly submitted by Mr. Deshmukh, learned Counsel for the applicant/wife, that the learned 1st Additional Sessions Judge misread the evidence before the Trial Court and found that the applicant/wife has not stated the truth and as she has been discredited by bringing on record the contradictions, her claim for maintenance is not reliable, and proceeded to pass the impugned order.

11. This Court finds that the applicant/wife has made out a case that she is entitled to claim maintenance. Though the Trial Court has not approached the case in a proper manner, but the findings of the Trial Court cannot be said to be suffering from any error or illegality and, in the circumstances, the learned 1st Additional Sessions Judge ought not to have interfered with the order of the learned Magistrate granting maintenance to the applicant/wife.

12. In the result, the impugned order of the learned 1st Additional Sessions Judge is quashed and set aside. The order of the learned Magistrate will stand restored. The applicant is entitled for maintenance at the rate of Rs. 400/- per month from the date of the application as granted by the learned Magistrate. Rule is made absolute, with costs.