

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.339 OF 2015

Vivekanand s/o Babruwan Birajdar,
Age 35 years, Occu. Agril.,
R/o Baspur, Post Nitoor,
Taluka Nilanga, District Latur

.. Petitioner

Versus

1. Sow Ratnamala w/o Vivekanand
Birajdar, Age 32 years,
Occupation Household
2. Kum. Vaishnavi d/o Vivekanand
Birajdar, Age 10 years,
Occupation Education
U/g of her mother respondent
No.1,
Both R/o C/o Dayanand Manikrao
Jadhav, Renuka Nagar, Ambajogai
road, Taluka and Dist. Latur

.. Respondents

Mr S.N. Morampalle, Advocate for petitioner

Mr S.C. Swami Advocate h/f Mr V.D. Gunale, Advocate for respondent
No.1

CORAM : N.W. SAMBRE, J.

DATE : 28th August 2015

PER COURT

Heard.

2. Learned Judicial Magistrate, First Class, Latur by an order dated 3rd January, 2015 awarded maintenance of Rs.5,000/- and Rs.2,000/- to the respondent No.1-wife and her child, respectively w.e.f. 29th June 2011 i.e. from the date of filing of application, which was subjected to challenge in a revision before the learned Sessions Judge, Latur, who by order dated 7th February 2015 ordered present petitioner to deposit the amount of Rs.50,000/- towards the arrears of maintenance within one month and continue to deposit Rs.3,500/- per month towards the

interim maintenance and granted interim relief in favour of the present petitioner.

3. Learned Counsel for the petitioner, in the above referred background, has urged that the procedure that was adopted by learned trial Court in recording the evidence of the claimant – wife was contrary to the provisions of Section 126 (2) of the Cr.P.C. and has invited attention of this Court to the language of said section, which reads thus :

“126 (2) All evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proceed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons- cases:

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms at to payment of costs to the opposite party as the Magistrate may think just and proper.”

4. According to learned Counsel for the petitioner, the respondent No.1 has submitted examination-in-chief on affidavit. The same is not

permissible, as while recording the examination-in-chief, the claimant – wife was not examined.

5. According to him, appropriate reliance can be placed on the judgment of this Court in the matter of **Ramesh Laxman Contractor Vs. Mrs Jayshreeben Ramesh Contractor and anr.**, reported in **1982 CRI.L. J. 1460** and sought remand.

6. Learned Counsel for the claimant-wife supports the order and submits that the examination-in-chief which was tendered in the form of affidavit was further affirmed by the claimant by entering into witness box and deposing that the contents of the said affidavit to be true and correct.

7. It is required to be noted from the analysis of the submissions that the claimant-wife was subjected to cross-examination at the behest of petitioner and at that point of time, the petitioner had not raised any objection, particularly in the backdrop of Section 126 (2) of the Cr.P.C. Though the learned Counsel for the petitioner has made a statement that the point as is based on Section 126 (2) of the Cr.P.C. is an illegal issue, I am afraid the said submission cannot be entertained, as the wife has submitted her examination-in-chief in the form of affidavit, which was further affirmed by her before the Court. The support sought to be drawn by learned Counsel for the from case of Ramesh Vs. Mrs Jayshreeben (cited supra) is wholly misplaced.

8. One more aspect of which this Court may take judicial note is, the present petitioner is avoiding payment of maintenance since 29th June 2011 to his wife and minor daughter Vaishnavi.

8. The petition being devoid of merit, stands dismissed.

(N.W. SAMBRE, J.)

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