

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 365 OF 2012

Shekhar s/o. Bhimaji Shinde **....Petitioner.**

Versus

Swati w/o.Shekhar Shinde **....Respondent.**

Mr. S.N. Patil, Advocate for petitioner.

Mr. V.P. Latange, Advocate for respondent.

CORAM : T.V. NALAWADE, J.

DATED : 15th July, 2015.

ORDER :

1. The petition is filed to challenge the judgment and order of Criminal Revision No. 146/2007 which was pending in the Court of Ad-hoc Additional Sessions Judge, Ahmednagar. The petition filed by the present respondent/wife to challenge the decision given by Judicial Magistrate, First Class, Karjat, by which the maintenance order was cancelled, was allowed by the Sessions Court. Both the sides are heard.

2. Respondent/wife had filed maintenance proceeding against the petitioner/husband in the year 1997 and the maintenance at the rate of Rs. 250/- per month was granted in her favour and the maintenance at the rate of Rs. 125/- per

month was granted in favour of minor issues of respondent. In another proceeding filed for enhancement, the maintenance was enhanced to make it Rs. 550/- in favour of wife and Rs. 350/- in favour of each issue, daughters. The husband then filed proceeding for divorce under section 13 (1) (a) (ii) of Hindu Marriage Act, 1955. This petition came to be decided exparte on 1.3.2003 and divorce is granted in favour of the petitioner. The petitioner/husband then filed proceeding under section 127 of Cr.P.C. in the year 2005 to challenge the aforesaid order of maintenance made in favour of wife.

3. The J.M.F.C. allowed the proceeding filed by husband by giving reasons that the wife was working as Anganwadi Sevika and she was getting atleast Rs. 740/- as allowance, honourarium. The J.M.F.C. has held that the petitioner is earning Rs. 6000/- by way of salary as he is working in military. As the wife is making some income, the maintenance order was cancelled by J.M.F.C. In the revision, Sessions Court has observed that only because the wife is making some income, husband cannot say that he is not bound to pay maintenance to her. The circumstance of divorce given by the husband is also considered by the Sessions Court.

4. The record shows that the husband has contended that his income was Rs. 6000/-, but no record of salary and about the other allowances is produced. The wife is working on honorary post and she is required to maintain her two daughters, who are getting maintenance at aforesaid rate. As the husband has taken divorce, the ground that the wife is not ready to cohabit with him is no more available to him and so, he was required to prove that as per the status of the parties, the wife is not entitled to get maintenance from him. In the year 1997 also, he was working in military and when the maintenance was cancelled, he was working in military. This Court has no hesitation to hold that the husband has hidden the real income from the Court. Even if it is presumed that the wife was earning Rs. 740/- per month by working as Anganwadi Sevika, this amount was not sufficient for livelihood in the year 2007. As per the status of the parties, the wife is entitled to get more amount for her maintenance. The learned J.M.F.C. has not considered the status of parties and actual earning of the parties while deciding the proceeding in favour of husband. Meagre amount of maintenance, of Rs. 550/- was granted to the wife and thus, her total income will be hardly Rs. 1300/- per month if the maintenance granted in the past in her favour is continued. As there was no case made out by the husband for cancellation,

this Court holds that Sessions Court has not committed any error in setting aside the order of J.M.F.C.

5. In the result, the petition stands dismissed.

[T.V. NALAWADE, J.]

ssc/