

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.649 OF 2014

Bastiram s/o Vishwanath Pathe,
Age : 52 years, Occ. Labour,
R/o Pakhora, Tq. Gangapur,
Dist. Aurangabad

..PETITIONER

VERSUS

1. Seetabai w/o Bastiram Pathe,
Age : 51 years, occ. Household,
2. Ravi s/o Bastiram Pathe,
Age : 16 years, Occu. Education
U/g of Resp. No.1
3. Kum. Pooja d/o Bastiram Pathe,
Age : 14 years, Occu. Education,
U/g of Resp. No.1
4. Avinash s/o Bastiram Pathe,
Age : 10 years, Occ. Education,
U/g of Resp. no.1

All R/o Pakhora, Tq. Gangapur,
Dist. Aurangabad

..RESPONDENTS

Mr V.R. Langhe, Advocate for petitioner;
Ms A.V. Thole, Advocate holding for Mr V.I. Thole, Advocate for
respondents

CORAM : N.W. SAMBRE, J.

DATE : 31th August, 2015

ORAL ORDER :

The petitioner, claiming to be a labour, has questioned the legality and validity of the order passed by the Judicial Magistrate First Class, under section 125 of the Code of Criminal Procedure, awarding maintenance of Rs.900/- per month to wife and Rs.600/- per month to each children, to be paid from 10th June, 2011, which was subsequently upheld in Revision No.14 of 2013, which was preferred by the petitioner.

2. Both the Courts below have noticed that the petitioner herein has neglected to maintain respondent no.1 wife and the children.

3. Learned Counsel appearing on behalf of the petitioner made two-fold contentions; (a) that in view of filing of the proceedings for restitution of conjugal rights, the Court below has committed an error in reaching to a conclusion that there was act of neglect to maintain and pay maintenance on the part of the petitioner and (b) that the Courts below have lost sight of the individual source of income of respondent no.1 – wife.

4. In support of the said contentions, learned Counsel appearing on behalf of the petitioner has placed reliance on the following judgments :-

- (i) Sow. Sumanbai Ramesh Garje & anr. vs. Ramesh Dagadu Garje, reported in 2014 ALL MR (Cri) 3710;

- (ii) Ramkrushna Somaji Nadekar vs. Manjusha Ramkrushna Nadekar & anr., reported in 2011 (3) Bom. C.R. (Cri.) 680;
- (iii) Dattatrey s/o Champatgir Giri vs. State of Maharashtra & anr., reported in 1993 Cri. L.J. 2181;
- (iv) Shri Glorio Fabiano Dias vs. State of Goa & anr, reported in 2012 ALL MR (Cri) 3867;
- (v) Sanjay Sudhakar Bhosale vs. Khristina w/o Sanjay Bhosale, reported in 2008 ALL MR (Cri) 1244; and
- (vi) Deorao s/o Ramaji Waikar vs. Ku. Shobha w/o Deokar Waikar & anr., reported in 2006 ALL MR (Cri) 1036.

5. While relying on the judgment in the matter of Shri Glorio Fabiano Dias vs. State of Goa & anr (cited supra), the learned Counsel would urge that in view of independent source of income of respondent no.1 and admission of the fact about initiation of proceedings about restitution of conjugal rights, the petition is liable to be allowed by quashing the impugned orders.

6. Learned Counsel appearing on behalf of respondents – wife and children, would urge that even if it is presumed that there was proceedings for restitution of conjugal rights, however, the fact remains that the present

petitioner has not paid maintenance and has neglected to maintain his own wife, as is apparent from the facts. He would further urge that the source of income, i.e. from the flour mill and 2 Acres of agricultural land, in any case is not sufficient to maintain the respondents and further submits that in view of concurrent findings recorded by both the Courts below, the petition is liable to be dismissed.

7. Having considered the rival contentions, it is not in dispute that the respondents have received maintenance of Rs.47,200/- and amount of Rs.88,000/-is outstanding.

8. Apart from above, a note is required to be taken of the fact that even though presuming that there is some source to respondent no.1 – wife, yet there appears to be a case of neglect to maintain children, as the petitioner has not voluntarily come out with a case, that he was ready and willing to pay maintenance to the children or has maintained them.

9. Apart from above, the Sessions Court has taken into account the independent source of income of respondent no.1 and has recorded a finding as regards payment of maintenance.

10. It is required to be appreciated that the learned Judicial Magistrate First Class, while allowing the claim for maintenance, has ordered

payment of Rs.900/- an Rs.600/- per month, to respondent no.1 wife and children, respectively. The maintenance was to be paid from 10th June, 2011.

11. Even if, during the course of pendency of the proceedings any of the applicants attains majority, that could hardly be a ground to interfere, when particularly, appropriate remedy is available in law.

12. Apart from above, the present petitioner has not entered the witness box to demonstrate that the present respondents are not entitled for maintenance and have rather sought to rely upon admissions given by respondent no.1 in the evidence.

13. In my opinion, in view of admitted relationship between the petitioner and respondents, based upon the evidence brought on record by respondent no.1 – wife, the learned Magistrate has rightly inferred the claim for entitlement of maintenance. No error could be noticed in the impugned orders. Criminal Writ Petition thus fails and stands dismissed.

(N.W. SAMBRE, J.)

amj