

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

CRIMINAL WRIT PETITION NO. 457 OF 2002

Bapu S/o Babulal Thakur

Age : 31 Yrs., Occ. : Labour,

R/o : Koli Galli, Parola,

Tq. : Parola, Dist. : Jalgaon.

..... PETITIONER

V E R S U S

Sulakshanabai D/o Prabhakar Thakur

Age : 27 Yrs., Occ. Tailoring,

R/o : Laxmiwadi, C/o Railway gate,

Milk Dairy Road, Dhule,

Dist. Dhule.

..... RESPONDENT

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Mr. B.R.Warma, Advocate for the Petitioner.

None for the Respondent.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 9th FEBRUARY, 2015

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ORAL JUDGMENT :

1. Heard Mr. B.R.Warma, the learned counsel for the Petitioner. None for the respondent though served.

2. The petitioner has challenged the order dated 08/04/2002 passed by the learned 3rd Additional Sessions Judge, Dhule in Criminal Revision Application No. 147/2001, by which the learned revisional Court dismissed the Revision filed by the present petitioner and thereby confirmed the order dated 23/05/2001 passed by the learned Judicial Magistrate First Class, Dhule in Criminal Misc. Application No. 98/1999, filed for cancellation of maintenance amount u/s 127 (3) of the Code of Criminal Procedure.

3. The proceedings u/s 125 of the Code of Criminal Procedure were filed by the present respondent against the petitioner for maintenance. Those proceedings were registered as Criminal Misc. Application No. 231/1997 in the Court of the Judicial Magistrate First Class, Dhule. The learned Magistrate allowed the said application and granted maintenance @ ₹ 250/- [Rupees Two Hundred Fifty only] per month in favour of the respondent on 08/12/1997. The

said order was not challenged by the petitioner.

4. Subsequently, an application was filed by the petitioner u/s 127 (3) of the Code of Criminal Procedure on 10/05/1999. The said proceedings were registered as Criminal Misc. Application No. 98/1999. According to the said application, after the maintenance proceedings u/s 125 of the Code of Criminal Procedure were decided, there was compromise between the petitioner and the respondent and they executed mutual divorce deed on 28/10/1998. According to the petitioner, on the said date, ₹ 15,000/- [Rupees Fifteen Thousand only] were taken by the respondent and thereby she relinquished her past and future right of maintenance. Therefore, on this premise, application u/s 127 (3) of the Code of Criminal Procedure was filed.

5. The said proceedings were contested by the respondent by filing Written Statement. She denied the execution of the divorce deed. According to her, her signature and her parents' signatures were obtained on the said deed of divorce under coercion.

6. The petitioner entered into witness box. From the witness box, during the cross examination, the petitioner has admitted that after the said divorce deed in his favour, the respondent/wife has filed report against him in the police station alleging therein that her signatures were obtained under coercion. He further admitted in the cross examination that the wife has filed proceedings for restitution of conjugal rights and also filed proceedings for revocation of the divorce deed.

7. Both the Courts below had considered this aspect in correct perspective. Since the basis of moving an application u/s 127 (3) of the Code of Criminal Procedure was divorce deed, which was under scrutiny before the Civil Court as well as whether the said divorce deed was executed under coercion, was pending before the competent Court. Both the Courts below have rightly observed that till these proceedings are decided, the petitioner can not take advantage of the said divorce deed. In that view of the matter, no perversity can be attributed to the impugned orders.

8. Hence, the present Writ Petition is dismissed.
Rule discharged.

[V.M.DESHPANDE, J.]

KNP/Crim. W.P. 457.2002 - [J]

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