

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.520 OF 2002

Eknath Zumber Dokhe,
age : 32 years,
occup : Seasonal employment,
r/o Gardani, Tq. Akole,
Dist. Ahmednagar

..PETITIONER

VERSUS

1. Sau. Lata Eknath Dokhe,
age : 29 years, occup : Household,
r/o Dad Bk., Tq. Rahata,
Dist. Ahmednagar
2. The State of Maharashtra ..RESPONDENTS

Mr S.T. Shelke, Advocate for petitioner;
Mr S.V. Suryawanshi, Advocate holding for Mr P.B. Shirsath, Advocate for
respondent no.1;
Mrs B.B. Gunjal, A.P.P. for respondent no.2

CORAM : N.W. SAMBRE, J.

DATE : 10th September, 2015

ORAL JUDGMENT

By the instant petition, the petitioner – husband challenges the judgment and order dated 8th October, 2002, rendered by learned 2nd Additional Sessions Judge, Shrirampur, in Criminal Revision Petition No.101 of 2001, whereby revision preferred by respondent no.1 – wife,

seeking maintenance, came to be allowed by directing the present petitioner to pay maintenance of Rs.500/- per month to respondent no.1, which claim had been dismissed by the learned Judicial Magistrate First Class, Shrirampur, vide judgment dated 26th September, 2001, passed in Criminal Misc. Application No.632 of 1998.

2. Mr Shelke, learned Counsel appearing on behalf of the petitioner would urge that the learned Judicial Magistrate First Class has turned down the prayer for grant of maintenance, in view of provisions of section 125 of the Code of Criminal Procedure, as the claim of the present petitioner – husband, that respondent no.1 – wife was living an adulterous life, was accepted. According to him, the revisional court has committed an error by appreciating the evidence, which is not permissible in the revisional jurisdiction, and has reversed the findings and ordered payment of maintenance of Rs.500/- per month to respondent no.1. Consequently, he prayed to set aside the impugned judgment and order.

3. While countering the above referred contentions, learned Counsel appearing on behalf of respondent no.1 would urge that the revisional court has rather exercised the jurisdiction vested in it by analyzing and evaluating the evidence brought before the Court, so as to draw appropriate inference as regards, whether present respondent no.1 was living adulterous life or not. According to him, the writ petition sans merit

and is liable to be dismissed.

4. With the assistance of both the learned Counsel, I have perused the record and judgments rendered by the Courts below.

5. From the record of the revisional court, it is noticed that the revisional court has appreciated the evidence in entirety, including that of the allegation of adultery and has reached to a conclusion that the present petitioner was duty bound to prove the same, but has failed to do so. For the said purpose, the revisional court has gone into entire set of evidence and has noticed that the plea, as was sought to be raised by the present petitioner, was not proved. While doing so, the revisional court has taken into account Exh.50 – missing report given by the petitioner on 23rd March, 1998, whereas it is claimed that respondent no.1 was not traceable since 1997 and Suresh Kotwal had kidnapped her.

6. So as to establish the said fact, though the petitioner has examined himself and has placed on record the complaint and the investigation papers, yet the same was not properly proved, as is apparent from appreciation of the evidence.

7. In view of above, no case for interference in extra-ordinary jurisdiction of this Court is made out. Thus, the Criminal Writ Petition fails and stands dismissed. Rule stands discharged.

(N.W. SAMBRE, J.)

amj