

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

CRIMINAL WRIT PETITION NO. 533 OF 2002

Prabhakar Dayanand Athwale

Age : 30 Yrs., Occ. : Education,

R/o : New Bayajipura,

Galli No. 2, Indiranagar,

Aurangabad.

..... PETITIONER/

[ORIGINAL PETITIONER]

V E R S U S

Suman Prabhakar Athwale

Age : 22 Yrs., Occ. Household,

R/o : C/o Abhimanyu Manohar

Lokhande, Motandi Mohalla,

Old Jalna, Tq. & Dist. Jalna.

..... RESPONDENT

.....

Mr. Vilas Sawant h/f Mr. A.M.Gaikwad,

Advocate for Petitioner.

Mr. J.G.Chitnis, Advocate for Respondent.

.....

CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 16th FEBRUARY, 2015

.....

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. By consent of the learned counsel for the petitioner and the learned counsel for the respondent, taken up for final hearing.

2. Heard Mr. Vilas Sawant holding for Mr. A.M.Gaikwad, the learned counsel for the Petitioner Mr. J.G.Chitnis, the learned counsel for the Respondent.

3. The present Writ Petition takes exception to the Order dated 19/11/2002 passed by the learned 3rd Additional Sessions Judge, Jalna in Criminal Revision Petition No. 107/2001. The facts giving rise to the present Writ Petition can be narrated as under :

The present petitioner is husband and the respondent is wife. Their relations are not in dispute. Their marriage took place on 23/09/1999. After marriage, though for some time, she was given good treatment, subsequently she was subjected to all sorts of atrocities requiring her to file First Information Report [hereinafter referred as 'F.I.R.' for

the sake of brevity] against the husband. On the basis of the same, C.R.No. 137/2000 was registered against the petitioner for the offence punishable u/s 498-A, 323, 504, 506 of the Indian Penal Code at police station Jinsi, Aurangabad. The said F.I.R. was lodged on 15/10/2000.

4. After lodging the said F.I.R., on 27/11/2000, the wife presented application u/s 125 of the Code of Criminal Procedure for maintenance before the learned Magistrate. The said application was registered as Criminal Misc. Application No. 506/2000. The said application was contested by the husband.

5. The parties entered into witness box in order to substantiate their pleadings. The learned Magistrate vide Order dated 26/07/2002, partially allowed the application filed on behalf of wife u/s 125 of the Code of Criminal Procedure and directed that the husband/petitioner shall pay ₹ 1200/- [Rupees One Thousand Two Hundred only] per month by way of maintenance.

6. Both husband and wife were dis-satisfied

with such finding and Judgment. The wife preferred Revision against the said order before the Sessions Court. The said Revision was registered as Criminal Revision Petition No. 130/2001 and she claimed enhancement. While husband being dis-satisfied, filed Criminal Revision Petition No. 107/2001. Both the Revisions were taken up simultaneously by the learned 3rd Additional Sessions Judge, Jalna and vide Order dated 19/11/2002 dismissed Criminal Revision Petition No. 130/2001 and partly allowed Criminal Revision Petition No. 107/2001 filed by husband. By partly allowing the Revision Petition preferred by husband, the revisional Court scale down the quantum of maintenance from ₹ 1200/- per month to ₹ 900/- per month.

7. Though the Revision Petition filed by the wife was dismissed by the revisional Court, the wife chose not to prefer any Writ Petition before this Court. Thus, the finding, in so far as maintenance is concerned, has reached its finality.

8. By the present Writ Petition, husband is challenging the quantum of maintenance granted in favour of wife.

9. After having heard Mr. Vilas Sawant, the learned counsel for the petitioner and Mr. Jayant Chitnis, the learned counsel for the respondent, it is clear that both the Courts below were right in recording the finding that it is the husband who has deserted and neglected the wife and failed to provide maintenance. Therefore, to that extent, the Judgment and Order passed by the Courts below are hereby confirmed.

10. In so far as the quantum of maintenance is concerned, it was the case of the wife that the husband is conducting coaching classes by name "Vidyadeep Coaching Classes". She has also filed 'hand bill' on record to prove her claim. The learned revisional Court in paragraph 8 of the impugned Judgment has observed as under :

" It is true that the applicant did not prove the hand bill produced by her along with list Exh. 20. The hand bill was shown to the opponent Prabhakar, but he did not admitted it nor he gave any explanation to it. It is true that when this hand bill is not duly proved it should not be taken into consideration ".

11. In spite of such finding, the learned revisional Court, on the probabilities, has reached to the conclusion that the husband must be running the coaching classes. Such an approach on the part of the learned revisional Court is unacceptable. The learned revisional Court ought to have scanned the evidence in its true perspective and ought to have recorded correct finding.

12. During the course of the hearing, the learned counsel for the wife submitted that parallel proceedings were also initiated by wife by way of filing Suit for the recovery of past maintenance bearing R.C.S. No. 330/2001 and the said Suit is partly decreed by 5th Jt. Civil Judge (Jr.Division), Jalna on 30/12/2002. The said Suit was decreed by the learned civil Court after the decision of the learned revisional Court. In that view of the matter, fair opportunity should be granted to the wife to prove the exact income of her husband. Hence, the matter is remanded back to the revisional Court with liberty to the wife to file the Judgment and decree passed by the learned 5th Jt. Civil Judge (Jr.Division), Jalna in R.C.S. No. 330/2001. Further, the wife will be entitled to file other documents in order to substantiate her claim to prove the

nature of employment of the husband.

13. With this direction, the Judgment and Order passed by the learned 3rd Additional Sessions Judge, Jalna in Criminal Revision Petition No. 107/2001 is allowed only to the extent of quantum.

14. It is made clear that the petitioner being husband is duty bound to pay maintenance to the wife. In that view of the matter, cost is imposed upon the husband and is quantified to the tune of ₹ 5,000/- [Rupees Five Thousand only].

15. With the aforesaid observations, the present Writ Petition is disposed of.

[V.M.DESHPANDE, J.]

KNP/Crim. W.P. 533.2002 - [J]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]