

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

CRIMINAL WRIT PETITION NO. 545 OF 2002

SOW. VANDANA UTTAM GORE

V/S

UTTAM DASHRATH GORE & ANR.

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Mr. N.C.Garud, Advocate for Petitioner.

Mr. Abhijit Choudhary h/f Mr. D.J.Choudhary,
Advocate for R – 1.

Mr. V.P.Kadam, A.P.P. for R – 2 State.

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CORAM : V.M.DESHPANDE, J.

DATE : 12th FEBRUARY, 2015

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PER COURT :

1. Heard Mr. N.C.Garud, the learned counsel for the petitioner, Mr. Abhijit Choudhary holding for Mr. D.J.Choudhary, the learned counsel for respondent No. 1 and Mr. V.P.Kadam, the learned A.P.P. for respondent No. 2 – State.

2. The petitioner initiated proceedings against respondent No. 1 u/s 125 of the Code of Criminal Procedure for maintenance in the Court of the Chief Judicial Magistrate,

Ahmadnagar. This proceeding was registered as Criminal Misc. Application No. 232/2001. The said proceedings were contested by respondent No. 1 mainly on 2 grounds viz. (i) that prior to the marriage with present petitioner on 20/01/1991, he was already married with one Alka on 26/02/1988. Therefore, she being the second wife, is not entitled for maintenance and (ii) the present petitioner executed deed of divorce [Exh.13] and thereby she relinquished her right of maintenance on receipt of ₹ 5,000/- [Rupees Five Thousand only] towards full and final settlement.

3. The learned Chief Judicial Magistrate, Ahmednagar, after considering the pleadings and evidence brought on record, allowed the maintenance proceedings filed on behalf of the petitioner and directed respondent No. 1 to pay ₹ 750/- [Rupees Seven Hundred Fifty only] per month by way of maintenance from the date of the application. Respondent No. 1 was dis-satisfied with such verdict and, therefore, he filed Revision before the Sessions Judge, Ahmadnagar. The said Revision was allotted on the file of 3rd Ad-hoc Additional Sessions Judge, Ahmadnagar as Criminal Revision No. 122/2002.

4. The said Revision was allowed by the learned revisional Court and thereby the order of maintenance was revoked by dismissing the application for maintenance.

5. The present Writ Petition is against the order

passed by the revisional Court, by which the maintenance granted in favour of the petitioner was revoked.

6. Perusal of the Judgment shows that the Revision was decided in absence of the present petitioner. It has been mentioned in paragraph 6 of the said Judgment that in spite of the service, the present petitioner/wife chose not to remain present before the Court.

7. Mr. N.C.Garud, the learned counsel for the petitioner submitted that though the maintenance was granted in favour of the petitioner by the learned trial Court, the said order was not obeyed by the husband and no amount of maintenance was given, with the result the petitioner was in financial crunches and, therefore, it is possible that she was unable to appear before the revisional Court.

8. With the assistance of both the learned counsel and the learned A.P.P., this Court has an opportunity to verify the record of the revisional Court. Roznama of the said Revision shows that Exh. 8 is notice issued to the present petitioner. The said notice [Exh. 8] is available on record. Bare perusal of the said notice does not reflect the clear-cut signature of the petitioner. Though on the back side of Exh. 8, there appears to be some writing like signature, however, it is difficult to reach to the conclusion that the notice was served upon the petitioner. Further, Mr. Garud, the learned counsel to some extent is right in advancing the submission that for paucity of funds, there was likelihood that she was unable to

remain present before the revisional Court.

9. Surely, the Revision was not decided by the revisional Court after hearing the petitioner. The order which was granted in favour of the petitioner was set aside by the revisional Court. Since the Revision is not decided on its merit and since there is little doubt as to whether really the petitioner was duly served upon, in the fitness of things, without expressing anything on the merits and demerits of the matter, it is expedient to remand the matter to the revisional Court for fresh decision.

10. Since the petitioner is being represented by her Advocate before this Court, there is no necessity of fresh notice of Revision.

11. Hence, I propose to pass the following order :

- (1) The present Criminal Writ Petition is allowed.
- (2) The Judgment and order dated 21/09/2002 passed by the learned 3rd Ad-hoc Additional Sessions Judge, Ahmadnagar in Criminal Revision No. 122/2002 is hereby set aside.
- (3) Criminal Revision No. 122/2002 is remanded to the file of the 3rd Ad-hoc Additional Sessions Judge, Ahmadnagar. Both the petitioner and respondent viz. wife and husband agreed to

appear in the Court of 3rd Ad-hoc Additional Sessions Judge, Ahmadnagar on 07/04/2015.

- (4) The learned 3rd Ad-hoc Additional Sessions Judge, Ahmadnagar is directed to decide Criminal Revision No. 122/2002 afresh by giving opportunity of hearing to both the sides in accordance with law.
- (5) Since the matter is old, it is expected from the learned 3rd Ad-hoc Additional Sessions Judge, Ahmadnagar to decide the same within a period of six months from the date of appearance of the parties.
- (6) The Registrar [Judicial] of this Court is directed to remit the record forthwith.

[V.M.DESHPANDE, J.]