

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

Criminal Writ Petition No.557 of 2013

* Pushpa @ Shobha w/o Babasaheb Hapse
Age 35 years,
Occupation : Nil,
R/o Jhapwadi, Taluka Newasa,
District Ahmednagar. **.. Petitioner.**

Versus

- 1) Babasaheb s/o Shrirang Hapse,
Age 40 years,
Occupation : Business & Agril
R/o Ghodegaon, Taluka Newasa,
District Ahmednagar.
- 2) The State of Maharashtra. **.. Respondents.**

Shri. H.D. Deshmukh, Advocate, for petitioner.
Shri. K.B. Autade, Advocate, for respondent No.1.
Shri. P.N. Mule, Additional Public Prosecutor, for
respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 11^h JUNE 2015

JUDGMENT:

- 1) Rule. Rule made returnable forthwith. Heard both the sides by consent for final disposal.
- 2) The petition is filed to challenge the judgment and order of Criminal Revision No.13 of 2009 which was pending in the Court of the Additional Sessions Judge,

Shrirampur. The revision was filed by the present respondent-husband against the decision of Criminal Misc. Application No.72/2007 which was pending in the Court of the Judicial Magistrate, First Class, Newasa. The Judicial Magistrate had granted maintenance at the rate of Rs.700/- per month to the present petitioner, wife. The maintenance was granted to the issues of the petitioner also. The revisional Court has set aside the order of maintenance made in favour of the present petitioner, wife. Both the sides are heard.

3) The petitioner was given in marriage to respondent-husband about 15 years prior to the year 2007, the year of filing of the proceeding under section 125 of the Code of Criminal Procedure. During cohabitation, birth was given to two daughters by the petitioner. It is the case of the wife that after the birth of the two daughters ill-treatment was started to her and she was driven out of the house by the husband by saying that he wanted to marry second wife. She had then filed the proceeding for maintenance. Maintenance was granted under section 125 of the Cr.P.C. and it was also enhanced

in the proceeding filed for enhancement. The wife then filed a civil suit against the husband for relief of declaration. She contended that 25 R portion of land Gat No.142 situated at Zapwadi was given to her by the husband in lieu of her maintenance. She contended that possession was also given to her. In the said suit compromise pursis was filed. It was informed to the Court that the wife had returned to the matrimonial house for resuming cohabitation. It was also informed to the Court that the suit land and one room present in the land were given to the wife for her maintenance and there was no objection of the husband for entering name of the wife in the record of rights. Accordingly entry was made in the revenue record of the land in favour of the wife.

4) After the aforesaid development application was moved for cancellation of the aforesaid maintenance order made under section 125 of the Cr.P.C. This application was allowed and the order was cancelled in the year 2006. The wife again filed application for maintenance bearing Criminal Misc. Application No.72 of 2007 and she contended that ill-treatment was given to

her when she resumed cohabitation and she was again driven out of matrimonial house. She contended that the husband is not allowing her to cultivate the land and he has not made any provision for her maintenance. The husband denied the allegations. Both sides gave evidence. The aforesaid record of the civil suit etc. was produced before the trial Court and the Judicial Magistrate granted maintenance to the wife.

5) The Sessions Court set aside the order made in favour of the wife by observing that, 25 R of agricultural land was given to the wife as per compromise which was recorded in the aforesaid civil suit and so she was not entitled to get maintenance. It is observed that it needs to be presumed that the maintenance in *lump-sum* was given.

6) The submissions made show that husband is resident of Ghodegaon, Tahsil Newasa and the wife is living in the house of her father at Zapwadi, Tahsil Newasa. The distance between two villages is around 4 to 5 kilometers. In the 7/12 extract of the land name of the wife is entered as owner. From the 7/12 extract it cannot

be said that she is personally cultivating the portion which is handed over to her. 7/12 extract for 2012-13 is produced on record. During arguments learned counsel for the wife made statement that the wife is not in possession and the husband is in possession and he is cultivating the land. He made statement that the wife has no objection to continue the possession of the land with the husband.

7) The aforesaid record shows that the wife had made every attempt to settle the dispute. Even after getting maintenance order in her favour she had returned to the matrimonial house. The wife is required to maintain two daughters who have reached marriageable age. Thus it does not look probable that on her own the wife left the company of the husband. Admittedly the husband has not given any amount for the maintenance of the wife as he has contended that he has given land of 25 R portion. In view of the aforesaid circumstances and the statement made during arguments by the learned counsel for the wife this Court holds that the wife is entitled to maintenance. She is not making income from the land and

according to her, the husband is cultivating the land and making income. In view of the capacity of the husband and the status of the parties, the Judicial Magistrate had granted maintenance at the rate of Rs.700/- per month. The submission made shows that the husband is not ready to take the wife back to the matrimonial house and there is allegation that the husband has married second wife. This Court has no hesitation to hold that the learned Sessions Judge has committed error in setting aside the order made by the learned Judicial Magistrate, First Class. The order of the trial Court needs to be restored.

8) In the result, the petition is allowed. The judgment and order of Criminal Revision Application No.13 of 2009 delivered by the Additional Sessions Judge Shrirampur is hereby set aside and the order of maintenance granted in favour of the wife in Criminal Misc. Application No.72/2007 by the Judicial Magistrate First Class is restored. Rule is made absolute in the aforesaid terms.

Sd/-
(T.V. NALAWADE, J.)

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