

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

CRIMINAL WRIT PETITION NO. 75 OF 2003

Shaikh Issak S/o Shaikh Chand

Age : 45 Yrs., Occ. Police

Constable, B. No. 1220,

Gangakhed police station,

Dist. : Parbhani, R/o :

Darga Road, Parbhani.

.... PETITIONER

V E R S U S

1. Munirabegum W/o Shaikh Issak

Age : 38 Yrs., Occ. Household,

R/o : Khaja Colony, Parbhani.

2. Aminabegum D/o Shaikh Issak

Age : 17 Yrs., Occ. Student.

3. Chandpasha @ Hilal S/o Shaikh Issak

Age : 14 Yrs., Occ. Student.

4. Sk. Nihal S/o Shaikh Issak

Age : 10 Yrs., Occ. Student.

R – 2 to 4 are minors, u/g of
real mother R – 1.

.... RESPONDENTS

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Mr. M.B.Bharaswadkar, Advocate for Petitioner.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 20th FEBRUARY, 2015

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ORAL JUDGMENT :

1. Heard Mr. M.B.Bharaswadkar, the learned counsel for the petitioner.

2. The parties in the present Judgment will be referred as husband, wife and children for the sake of convenience.

3. The challenge set by husband in the present Writ Petition is against the Judgment and Order dated 03/01/2003 passed by the learned 3rd Additional Sessions Judge, Parbhani in Criminal Revision No. 175/2001 and Criminal Revision No. 192/2001 together with the Judgment and Order dated 25/09/2001 passed by the Judicial Magistrate First Class, Court No. 1, Parbhani in Misc. Criminal Application No. 252/1998, whereby the learned Magistrate enhanced the

maintenance amount from ₹ 100/- [Rupees One Hundred] per month to ₹ 700/- [Rupees Seven Hundred] per month to each of the child and which is confirmed by the revisional Court.

4. Undisputedly, the wife and children initiated proceedings in the year 1991 against the husband u/s 125 of the Code of Criminal Procedure before the Judicial Magistrate First Class, Parbhani as Criminal Case No. 206/1991. The said application was contested by the husband. The learned Magistrate on 25/08/1993 allowed the application filed by wife and children and granted maintenance to the wife @ ₹ 200/- [Rupees Two Hundred] per month and ₹ 100/- [Rupees One Hundred] per month to each of the child.

5. The husband, wife and children aggrieved by the said order preferred two different Criminal Revisions in the Court of the Additional Sessions Judge, Parbhani. The Revision filed by the husband was registered as Revision Petition No. 147/1993, whereas the Revision filed by the wife was registered as Revision Petition No. 151/1993. On 19/05/1995, both the aforesaid Revision Petitions were dismissed by the revisional Court. No further proceedings

were carried out against the said Judgment by anybody.

6. After the Revisions were dismissed, subsequent event occurred viz. matrimonial relations between husband and wife ceased to exist from 1996.

7. In the year 1998, application u/s 127 of the Code of Criminal Procedure was preferred by the wife and children in the Court of the Judicial Magistrate First Class for enhancement of maintenance amount. The said application was registered as Misc. Criminal Application No. 252/1998. The learned Magistrate on 25/09/2001 allowed the said proceedings. The learned Magistrate rightly pointed out that the wife is not entitled to claim any enhancement in view of the special statute i.e. Muslim Women [Protection of Rights on Divorce] Act, 1986 and enhanced the maintenance in favour of children. The learned Magistrate directed that each of the child will be entitled to the maintenance @ ₹ 300/- [Rupees Three Hundred] per month from 20/08/1998 till 26/12/2000 and it will be @ ₹ 700/- [Rupees Seven Hundred] per month from 27/12/2000 onwards.

8. Again, husband, wife and children preferred 2 different Revisions. The Revision filed by the husband was registered as Criminal Revision No. 175/2001, whereas the Revision filed by the wife was registered as Criminal Revision No. 192/2001. The learned revisional Court delivered common Judgment on 03/01/2003 and dismissed both the Revisions.

9. The Order passed in the Revision filed by the wife and children is not challenged and it has attained finality. However, it is the husband who has filed present Writ Petition.

10. It is the contention of the learned counsel for the husband that during the pendency, the children attended majority and, therefore, they are not entitled for maintenance. Even the said contention was agitated before the revisional Court, but it was not considered properly and, therefore, the order needs to be set aside.

11. The impugned Judgment shows that at the revisional stage, the husband filed school leaving certificates of the children which are at Exh. 21 to 23 to show that the

children have attended majority. After considering the contention before the revisional Court and after verifying the school leaving certificates, the learned revisional Court found that only petitioner No. 2 in Criminal Revision No. 192/2001 by name Aminabegum has attended majority. However, the learned revisional Court has rightly observed that Aminabegum though has attended majority, is an unmarried daughter. Further, it is to be noted that Aminabegum has also disputed the said school leaving certificate showing her date of birth.

12. In that view of the matter, the learned revisional Court has rightly observed that it is for the respondent to take appropriate steps. Since the certificate showing that Aminabegum has attended majority, is being seriously disputed by her unless and until the said is proved. The contention of the learned counsel for the husband holds no water that Aminabegum has attended majority.

All these aspects including the fact that Aminabegum is unmarried daughter, is rightly considered by the learned revisional Court. There is no error apparent on the face of record to exercise extra ordinary writ jurisdiction

under Article 227 of the Constitution of India to upset the concurrent findings of facts.

13. Hence, the present Writ Petition is devoid of any merit and it is dismissed. Rule discharged.

[V.M.DESHPANDE, J.]

KNP/Cr. W.P. 75.2003 - [J]