

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

Criminal Writ Petition No.190 of 2003

* Rahul Nandkumar Mirvankar,
Age 32 years,
Occupation : Medical Practitioner
R/o B-46, 1st Floor,
Shri Anandnagar Coop. Housing
Society, Raghunath Nagar,
Thane (West). **.. Petitioner.**

Versus

- 1) Sunita Rahul Mirvankar,
Age 31 years,
Occupation : Medical Practitioner,
- 2) Siddhi Rahul Mirvankar,
Age 3.5 years,
Occupation : Nil
- 3) Yeshodar Rahul Mirvankar,
Age 1.5 years,
Occupation : Nil

Nos.2 and 3 both are minors
Through their natural
guardian Opponent No.1.
All are at present
R/o Indiranagar, Newasa Road,
Shrirampur,
Taluka Shrirampur,
District Ahmednagar.

.. Respondents.

Shri. Vishnu Madan, Advocate, holding for Shri. B.V.
Wagh, Advocate, for petitioner.

Shri. Deelip Patil Bankar, Advocate, for respondent Nos.1
to 3.

CORAM: T.V. NALAWADE, J.

DATE : 2nd JULY 2015

JUDGMENT:

1) The petition is filed to challenge the judgment and order of Criminal Revision No.113/2002 which was pending in the Sessions Court Shrirampur, District Ahmednagar. The petitioner had challenged the decision of the Judicial Magistrate given in Criminal Misc. Application No.250/2001 filed under section 125 of the Code of Criminal Procedure by present respondent. The revision is dismissed by the Sessions Court. Both the sides are heard.

2) Respondent No.1, Smt. Sunita is the wife of the petitioner. Their marriage took place in the year 1996 first as per Registration Act and then as per Hindu Rites and Custom. It was inter caste marriage. The wife has made allegation that right from beginning there was ill-treatment to her from the relatives of the husband and they were saying that sufficient dowry, gift articles and ornaments were not given by her father to them.

3) After the marriage, both, the husband and wife completed their internship in one hospital and they were staying in residential quarters provided for the doctors of the hospital. Both of them are M.B.B.S. She has contended that by visiting this place, the relatives of the husband were harassing her on aforesaid counts and on many occasions even beating was given to her.

4) It is the case of the wife that ultimately the husband left her company and went to Thane and he started living there. She has contended that on 26-2-1998 the husband asked her to come with Rs. one lakh as his brother-in-law was arrested by police and the amount was required for his release. It is her case that her father some how arranged for Rs.25,000/- and the amount was given to the husband but the husband was not satisfied. It is her case that her father had supplied furniture and grocery items for the livelihood of the family of the petitioner but the petitioner didn't stop giving harassment to her. It is contended that quarrel was picked up even at the time of naming ceremony of her kids. Respondent Nos. 2 and 3 are her issues born from the petitioner.

5) It is the case of the wife that father of the petitioner then demanded Rs.2 lakh as the husband wanted to start separate dispensary. It is contended that her parents could not meet this demand. It is her case that she went to the husband many items to resume cohabitation but the husband refused to accept her in the matrimonial house. It is her case that ultimately she was required to give report to police on 25-2-2001 for offence under section 498-A of IPC and a case is filed against the husband.

6) It is the case of the wife that the husband has not made any provision for her maintenance and she has no source of income to maintain herself and the kids. It is her case that at present she has no job though in the past she was working on internship basis. It is her case that the husband is practicing medicine and getting income more than Rs.15,000/- per month. It is her case that the husband is having immovable property in Thane and he gets income from rent. In the proceeding she had prayed for maintenance of Rs.1500/- for each of the respondents.

7) The husband filed say and he denied the allegations of ill-treatment. He has admitted that they were doing internship together in one hospital. It is his case that he required more time to complete internship and MBBS course due to the marriage. It is his case that he could not get certificate and so he is not able to practise as a doctor. It is his case that he is the only issue to his parents and he needs to stay with the parents. It is his case that it is desire of the wife and her parents that he should live in Shrirampur with them. It is his case that he refused for this and so false case against him is filed to pressurize him. It is his case that on her own the wife had left the matrimonial house.

8) It is the case of the husband that the wife is practicing in medicine and she is earning Rs.2,000/- per month so there is no need to give maintenance to her.

9) Before the Magistrate the wife gave evidence. She was cross examined by the counsel appointed by the husband. Then the husband sought adjournments to lead his evidence. Cost of Rs.100/- was imposed by the

Magistrate on one occasion. Again application was moved by husband for adjournment. The Magistrate observed that the husband had no interest in leading evidence and orders were made accordingly. Application was again moved for permission to lead oral evidence and the learned Magistrate had expressed that permission will be granted to lead evidence subject to deposit of cost imposed. The husband did not deposit the cost on that occasion also. Then the husband filed transfer application in the Sessions Court but the transfer application came to be rejected. Thus, he did not lead evidence in defence.

10) The evidence of the wife is in accordance with the aforesaid contention made in the application. In addition to that, she produced some documents like copy of anticipatory bail application filed by the husband in the crime registered for offence under section 498-A IPC. Husband had contended he is having property in Mumbai and Thane and he is practicing in medicine. As the husband did not step in the witness box to rebut the things, the learned Judicial Magistrate accepted these contentions. As there is nothing in rebuttal, the Judicial

Magistrate has held that the wife and the issues are entitled for maintenance. Maintenance at the rate of Rs.1500/- per month is granted to the wife and at the rate of Rs.1000/- each per month to the two issues. This order was made on 4-10-2002.

11) The husband then filed revision to challenge the aforesaid decision. It appears that when the Sessions Court expressed that the husband will be required to deposit some amount for getting stay, the husband withdrew the revision. The husband then filed one more revision, decision of which is under challenge in the present petition. The Sessions Court has held that second revision cannot be entertained against the same decision and the Sessions Court has dismissed the revision.

12) It appears that the Sessions Court has not considered the revision on merit due to the provision of section 397(3) of the Code of Criminal Procedure. Section 397(3) runs as under :-

"397 - Calling for records to exercise powers of revision :

(1)

(2)

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the either of them."

13) It can be said that when revision is filed in Sessions Court by a party and it is decided on merits then it will not be proper on the part of this Court to entertain revision by the same party against the decision given in revision by Sessions Court. The revision which was before the Sessions Court bearing No.113/2002 cannot be called as second revision as mentioned in section 397(3) of the Code. The previous revision was withdrawn and it was not decided on merits. Thus, it was necessary for the learned Judge of the Sessions Court to decide the aforesaid revision on merits.

14) The learned counsel for the petitioner placed reliance on observations of the Apex Court in the case reported as **AIR 2003 SC 4412 (Prasanta Kumar Dey v. State of W.B.)**. In this case when the High Court had

dismissed the revision by holding that it was second revision and it was not tenable, the Apex Court held that in view of provision of section 401 read with section 482 of the Cr.P.C., the High Court ought to have gone into merits of the case and ought not to have dismissed the revision on such technical ground. There cannot be dispute over the proposition made by the Apex Court and the power of this Court under section 482 of the Code.

15) In view of the aforesaid position of law, this Court is deciding the present proceeding and this Court is considering the material which was available before the Sessions Court. It is already mentioned that maintenance at the rate of Rs.1500/- is granted to the wife and the maintenance at the rate of Rs.1000/- each is granted to two minor issues of the present petitioner and the order was made on 4-10-2002. Present petitioner is M.B.B.S. and he avoided to give evidence in rebuttal. The evidence discussed by the learned Judicial Magistrate and the other material show that he took the false defence that the degree is not given to him. He admits that he did internship in the same hospital where his wife was doing

internship. In the other proceeding he did admit that he was practicing as a doctor. There was record before the Judicial Magistrate showing that the present petitioner has contended that he owns landed property at Thane and Mumbai. He did not give opportunity to other side to confront the admissions given in previous proceedings to him and so that record can be considered. All these circumstances are sufficient to infer that present petitioner has capacity to pay separate maintenance. Admittedly a case is filed against the petitioner for offence under section 498-A of the IPC. His defence that the wife wants him to stay in the house of her parents is not probable and acceptable as they lived together and separate from the parents of the wife when they did internship in one hospital. The conduct of the husband during hearing of the proceeding which was filed before the Magistrate is also mentioned. It can be said that he avoided to take decision on the matter in Sessions Court also and he tried to play similar tactics. Thus, it cannot be said that opportunity needs to be given to him to contest the matter by setting aside the decision given against him in the year 2002. Meagre amount of maintenance is

awarded by the Magistrate and considering the status of the parties and the capacity of the husband to earn, this Court sees no reason to interfere in the decision given by the Judicial Magistrate.

16) In the result, the petition stands dismissed.
Rule is discharged.

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

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