

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 739 OF 2012

Pooja w/o. Laxmikant Mathesul
and another

....Petitioners.

Versus

Laxmikant Purushottam Mathesul
and another

....Respondents.

Mr. V.S. Bedre, Advocate for petitioners.

Mr. L.P. Methesul, party in person, respondent No. 1, present.

Mr. P.N. Mule, APP for respondent/State.

CORAM : T.V. NALAWADE, J.

DATED : 15th July, 2015.

ORDER :

1. The petition is filed to challenge the judgment and order of Criminal Revision No. 242/2008 which was pending in the Sessions Court, Ahmednagar. The learned counsel for petitioner is heard and the respondent No. 1, party in person, is heard.

2. Petitioner No. 1 is wife of respondent No.1 and petitioner No. 2 is her minor son born from the respondent No. 1. They had filed maintenance proceeding against respondent no. 1 in the year 2005 and by order dated 30.12.2005, the

maintenance at the rate of Rs. 1000/- was granted in favour of wife and the maintenance at the rate of Rs. 500/- per month was granted in favour of the son. This decision was challenged by husband by filing revision, but the revision was dismissed. Subsequent to the order of maintenance made in favour of wife, the wife obtained LL.B. Degree and she started practicing as an advocate.

3. The husband then filed proceeding under section 127 of Cr.P.C. bearing No. 662/2007 in the Court of Chief Judicial Magistrate, Ahmednagar. He contended that as the wife is now practicing advocate and she is making income for livelihood, there is no need to grant maintenance to her. He contended that she was earning atleast Rs. 5000/- per month and she was having one motorcycle bearing No. MH-16/Z-1177 which was purchased by her by taking loan from City Finance Company. He contended that his income has also come down and he is not in a position to pay maintenance to wife. He prayed for cancellation of relief of maintenance made in favour of wife which was at the rate of Rs. 1000/- per month.

4. The wife contested the proceeding. She contended that the motorcycle, which she is using, is purchased from

income of her brother and parents and brother is spending on the maintenance of motorcycle. She contended that only because she is practicing advocate, it cannot be inferred that she is making some income. She contended that she is still working as a junior advocate and she has not conducted matters independently. She contended that she needs maintenance amount for her livelihood.

5. The learned J.M.F.C. rejected the application by holding that change in circumstance has not been proved. In Revision No. 242/2008 filed by the respondent, the Sessions Court has set aside the decision of the C.J.M. and has cancelled the order of maintenance.

6. The Sessions Court has considered following circumstances.

(i) The wife is practicing advocate. In one proceeding filed for restitution of conjugal rights in the year 2005, decree was given in favour of wife and it is the husband, who had applied for execution of the decree in the year 2008. The wife has not responded in any way in execution proceeding. Thus, the husband has taken steps to settle the dispute and to take back

the wife for resumption of cohabitation.

(ii) The wife had filed HMP No. 32/2009 for divorce, but petition came to be dismissed and it is held that the wife has failed to prove cruelty and desertion.

7. The Sessions Court has considered the provision of section 127 of Cr.P.C. and also the circumstance that the Civil Court has given findings with relation to desertion and cruelty. The Sessions Court has observed that aforesaid circumstances are not considered by the Magistrate and in view of the aforesaid circumstances, the wife is not entitled to get maintenance and the order made in her favour needs to be cancelled.

8. The submissions made show that both the sides could not produce independent evidence to prove the income of rival sides. It is admitted that in the past, the husband was working in one factory, but he lost that job and he is doing some business. It is his contention that he has opened a workshop, but he is not getting sufficient income. It is contended by the wife that husband is in the business of utensils. On the other hand, the wife has admitted that she is practicing as an advocate, but she has denied that she is getting income of Rs. 5000/- per

month. Those contentions were made in the year 2007. When there is no evidence from either side on exact income of the rival side, then the Court is expected to consider the capacity of both the sides to make income. The wife is an advocate, but the husband is not that highly educated and he is required to do something to earn livelihood. There is no evidence on his property or source of income. The circumstance that the wife tried to get divorce by filing divorce petition needs to be considered against her. Other circumstance like the steps taken by the husband to bring back the wife to matrimonial house also needs to be kept in mind. When the wife lives separate and she wants divorce and she failed to prove the ground like desertion and cruelty, it can be said that husband cannot be compelled to pay maintenance to her as inference can be drawn that she is living separate on her own. Thus, the Sessions Court has not committed any error in holding that the maintenance granted in favour of wife needs to be cancelled in view of the change in circumstances.

9. The submissions made show that there is some confusion in the mind of petitioners, who include the minor issue. The petitioners are thinking that maintenance granted in favour of Pushkar is also cancelled. The aforesaid circumstances

and the the contents of the proceeding do not show that present respondent No. 1 had prayed for cancellation of maintenance granted in favour of Pushkar. As there was no prayer, even if the Sessions Court has not specifically mentioned that there was no prayer in respect of Pushkar and the proceeding is allowed by Sessions Court, it cannot be said that the maintenance granted in favour of minor son is cancelled. The order is still there. It is the responsibility of the present respondent No.1 to pay maintenance to his minor son. It appears that respondent No. 1 is trying to recover the money already paid by him due to order of maintenance. When maintenance is cancelled, the cancellation becomes applicable from the date of order and it cannot be given back effect. Even if by mistake after cancellation, some amount is paid, that amount cannot be allowed to be recovered from the relatives like wife. These observations are made as some submissions were made on that line.

10. One more circumstance needs to be noted. The respondent No. 1 has made unwarranted, frivolous and false allegations and contentions in the so called written say filed in the present proceeding. It appears that the previous Court had given directions to delete those allegations and he has tried to

delete some of those contentions. Still there are many contentions which are remaining and which are against the judicial officers like C.J.M., J.M.F.C. and even the Sessions Judge. In such cases, action for criminal contempt of the Court can be taken even when there is no reference from the judges of the subordinate judiciary. When respondent No. 1 was arguing the matter, it was made clear to him that in future if this Court notices that he is making such allegations against judges, action will be taken against him.

11. With the aforesaid observations, the petition stands dismissed.

[T.V. NALAWADE, J.]

ssc/