

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

CRIMINAL WRIT PETITION NO. 789 OF 2012

Shaikh Sameer s/o Shaikh Nasir,
age 28 years, occ. Business,
r/o Police Quarters, Ambajogai,
Tq. Ambajogai, Dist. Beed,
at present residing at Maikhan Nagar,
Mumbai

...Petitioner
[Original Revision Petitioner]

VERSUS

Shahanabegum w/o Shaikh Sameer,
aged 24 years, occ. Household,
r/o Maikhan Nagar, Mumbai,
at present residing at Peth Mohalla,
Parli Vaijnath, Tq. Parli Vaijnath,
Dist. Beed

...Respondent
[Orig. Respondent]

.....
Shri M.K.Deshpande, advocate for petitioner
Shri S.V.Suryawanshi, advocate for respondent
.....

CORAM : V.M.DESHPANDE, J.

DATED : 8th January, 2015

ORAL JUDGMENT : -

1] Rule. Rule made returnable forthwith. Heard finally
with the consent of the parties.

2] The present Writ Petition is filed by original non-applicant, who is the husband of present respondent. The petitioner suffered an order from the learned Judicial Magistrate, First Class, Parli Vajnath on 1.11.2011 in Miscellaneous Application No. 1 of 2010, which was filed by the present respondent/wife against the petitioner/husband under Section 125 of the Criminal Procedure Code for grant of maintenance. By the order, dated 1.11.2011, the application filed on behalf of the wife was allowed and maintenance at the rate of Rs.5,000/- per month from the date of the application was granted in favour of the wife.

3] Being dissatisfied with the aforesaid order, a Revision was carried before the Sessions Court by the petitioner/husband. The said Revision was registered as Criminal Revision Petition No. 87 of 2011 and it was allotted to the court of learned Additional Sessions Judge, Ambejogai. By order dated 24.7.2012 the learned Revisional Court dismissed the said Revision.

4] Feeling aggrieved thereby the petitioner/husband is before this court.

5] The contention of the learned counsel Shri M.K.Deshpande on behalf of the petitioner/husband is that the

respondent/wife has utterly failed to prove the quantum of income on the part of the present petitioner, and therefore, the order passed by the learned Magistrate is excessive.

6] The application under Section 125 of the Criminal Procedure Code states that the petitioner is a contractor and he is engaged in the contract with Thermal Power of Parli Vaijnath and he also took the contract of road construction at Ambejogai. She has further stated in her application that the petitioner is having irrigated land to the extent of 15 acres and is having bungalows and flats at Bombay and Ambajogai. These statements of fact are not specifically denied in the written statement filed on behalf of the petitioner/husband.

7] The respondent/wife entered into the witness box and proved her case. The petitioner, though filed the affidavit for evidence he chose not to remain present and he did not offer himself for cross-examination.

8] The learned Magistrate, therefore, after considering the material available on record has passed the order on 1.11.2011. The contention of the learned counsel for the petitioner cannot be considered that the wife did not prove the income of the present petitioner, for the simple reason, the statements of fact asserted in paragraph 8 of the application

filed by the respondent/wife under Section 125 of the Criminal Procedure Code are not denied at all. In that view of the matter, it is not open for the petitioner to raise the dispute at the stage when both the courts below have considered the said aspect in detail. The learned counsel for the petitioner was unable to point any perversity in any of the order impugned in this Writ Petition. Hence, the Writ Petition is dismissed. Rule discharged.

[V.M.DESHPANDE, J.]

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