

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

CRIMINAL WRIT PETITION NO. 1076 OF 2013

Asifiya Khatun w/o. Kazi
Mohd. Zabairuddin

**....Petitioner.
(Ori. Petitioner)**

Versus

Kazi Mohd. Zabairuddin s/o.
Mohd. Zahiroddin

**....Respondent.
(Ori. Respondent)**

Mr. S.S. Rathi, Advocate for petitioner.
Mr. M.M. Joshi, Advocate for respondent.
Mrs. R.K. Ladda, APP for State.

WITH
CRIMINAL WRIT PETITION NO. 1052 OF 2013

Kazi Mohd. Zabairuddin s/o.
Mohd. Zahiroddin

**....Petitioner.
(Ori. Respondent)**

Versus

Asifiya Khatun w/o. Kazi
Mohd. Zabairuddin & Anr.

**....Respondents.
(Ori. Petitioners)**

Mr. M.M. Joshi, Advocate for petitioner.
Mr. S.S. Rathi, Advocate for respondent No. 1.
Mrs. R.K. Ladda, APP for State.

CORAM : T.V. NALAWADE, J.
DATED : 15th July, 2015.

ORDER :

1. Both the petitions are filed to challenge the judgments and orders of Sessions Court, Parbhani in Criminal Revision Nos. 8/2013 and 6/2013. In a proceeding filed by the

wife and son under section 125 of Criminal Procedure Code bearing Criminal Misc. Application No. 287/2011 in the Court of Judicial Magistrate, First Class, Parbhani, maintenance is refused to the wife and so, she filed one revision in Sessions Court. As the maintenance at the rate of Rs. 5000/- per month is granted in favour of minor son, the said decision was challenged by the father by filing other revision. Both the revisions are dismissed by Sessions Court. Both the sides are heard.

2. In Criminal Misc. Application No. 287/2011 the J.M.F.C., Parbhani has held that the wife failed to prove that she is deserted by the husband. It is also held that the husband had taken steps to settle the dispute and bring back the wife to matrimonial house. The circumstance that in a civil suit filed by husband for restitution of conjugal rights, the decree was passed in his favour by the Civil Court is considered by the J.M.F.C. and the admission given by the wife that she is willingly living at Basmat and she is enjoying the property left behind by her parents is also considered by the J.M.F.C.

3. It is the case of wife that she was driven out of matrimonial house by the husband as she refused to transfer the property received by her from her mother in favour of husband.

It is her case that she was driven out of matrimonial house when she was carrying second time and she was pregnant of seven months. It is contended that due to ill health, the child died in the womb. It is her case that she made many attempts to return to matrimonial house, but the husband has refused to accept her back in the matrimonial house. It is her case that the husband has not provided anything for her maintenance and maintenance of the minor son. It is her case that the husband is serving with Dr. Zakir Husain School at Gangakhed and his monthly salary is between Rs. 18,000/- and Rs.20,000/-. The wife and son each had claimed monthly maintenance of Rs. 5000/- each.

4. The husband resisted the claim by contending that the wife had left the company on her own. It is his case that out of love and affection towards wife, he had purchased some house property in the name of wife and mother of the wife and the wife is now contending that the property is purchased by her. It is his case that he approached Mahila Dakshata Samiti to settle the dispute, but wife did not give response. It is his case that Regular Civil Suit No. 252/2009 was filed by him for restitution of conjugal rights and this proceeding is decided in his favour. It is his case that even after decision of the suit, the wife did not return to matrimonial house.

5. Both the sides gave evidence before J.M.F.C. The evidence of examination in chief of wife was consistent with the aforesaid contentions. In the cross examination, the wife admitted that the matter filed for restitution of conjugal rights is decided against her. In this proceeding, a copy of judgment delivered by the Appellate Court is produced and it shows that appeal filed by the wife is also dismissed. The wife has admitted that her parents have left behind some landed property. She has given clear admission that she is willingly living at Basmat and she is enjoying the property left behind by her parents. She has admitted that she has obtained heirship certificate for getting the property left behind by the parents. She has gone a step ahead and she has admitted that now she is using name of her father instead of using the name of her husband. Her evidence shows that one licence of foreign liquor shop was standing in the name of her mother and she had taken steps to see that it is transferred in her name. Copy of licence is produced on record and it shows that after making payment of fees, the licence was renewed after the death of parents. Though there is one more person shown as licence holder of the licence, the fact remains that the wife is having licence of foreign liquor shop and she is making income from it. She has not given particulars of that

income. This circumstance also needs to be considered against her.

6. The husband has denied that he has given illtreatment to the wife. He has denied that he is pressurizing the wife to transfer the property in his name. Brother of the husband has also given similar evidence.

7. The learned counsel for wife placed reliance on the case reported as **1981 CRI.L.J. 754 (1) [Mst. Zohara Khatoon Vs. Mohd. Ibrahim]**. The case is altogether on different point. In this case, the Apex Court has laid down that even a woman obtaining decree of dissolution of marriage under Dissolution of Muslim Marriage Act, 1939 can get the maintenance. Law is settled on this point and even after the enactment of Muslim Woman (Protection of Rights on Divorce) Act, 1986, it is laid down that the husband is expected to make provision of maintenance during Iddat period, if he gives divorce and provision must be such that it is sufficient for remaining period of life of the wife or till she remarries. This point is not involved in the present matter.

8. The learned counsel for husband placed reliance on

two cases reported as **1978 Mh.L.J. 123 [Sharadchandra Satbhai Vs. Indubai Satbhai and Anr.]** (which is decision given by Division Bench of this Court (Principal Seat) in Criminal Appln. No. 3237/1976) and **2009 (5) Mh.L.J. 859 [Manju Kamal Mehra Vs. Kamal Pushkar Mehra] (Division Bench)**. In the second case cited supra, this Court has held that when the decree of restitution of conjugal rights is given in favour of husband, maintenance after the date of decision cannot be given to the wife if she has not taken steps to join the company of the husband after such decree. In the present matter also, the finding of the Civil Court is considered by the J.M.F.C. and there is no evidence from the wife to the effect that after decision of the suit filed by the husband, she has made attempts to return to the matrimonial house. The first case cited supra also involved similar point. It is settled law that the wife is required to prove that there is sufficient reason for her for separate residence from husband.

9. In addition to the aforesaid circumstances, there is the evidence on the income of the wife. It was responsibility of the wife to give evidence on exact income from foreign liquor shop. Such evidence is not given. Even if it is presumed that the monthly income of husband is Rs. 20,000/-, the maintenance at

the rate of Rs. 5,000/- is granted in favour of minor issue and that will be given in the hands of the wife. This maintenance is as per the status of the parties. This Court holds that there is no reason to interfere in the decision given by the learned J.M.F.C. and Sessions Court.

10. In the result, both the proceedings stand dismissed.

[T.V. NALAWADE, J.]

ssc/