

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.**

Criminal Writ Petition No.1474 Of 2014.

Shivnanda w/o Dhanraj Kadam

Age : 28 Years., Occ.: Household.

R/o.: Borgaon (Telang), Tal. & Dist. Nanded. :: **Petitioner.**

Versus

Dhanraj s/o Dadarao Kadam.

Age : 34 Years., Occ.: Agriculturist.

R/o.: Somthana, Tal. Naigaon, Dist. Nanded. :: **Respondent.**

Appearance =>

Mr. Shaikh Mujtaba Gulam Mustafa, Advocate for the Petitioner.

CORAM : V.M. DESHPANDE, J.

DATE : 3rd FEBRUARY, 2015.

PER COURT :-

Heard Mr. Shaikh Mujtaba Gulam Mustafa, learned counsel for the petitioner.

[2] Exception is taken to the Judgment and order passed by the learned Sessions Judge, Nanded on 8th November 2013 in Criminal Revision Application No.178 Of 2009, whereby, the learned Sessions Judge allowed the Criminal Revision Application filed on behalf of the present Respondent – husband and, thereby set aside the order passed by the learned Judicial Magistrate, First Class, Court No.VII, on 8th December, 2009 in Criminal Misc. Application No.290 Of 2008, whereby, the learned Magistrate was pleased to partly allowed the Application filed on behalf of the petitioner –

wife filed under Section 125 of the Code of Criminal Procedure and directed the Respondent to pay the maintenance allowance @ Rs.800/- per month from the date of filing of the Application.

[3] The relationship between the petitioner and the respondent, as wife and husband is not disputed. The question which is involved is, “whether the wife is responsible for desertion.?” The consequent question is that, “If wife is responsible for desertion on her own; whether such wife is entitled to claim maintenance allowance from her husband. ?

[4] The learned counsel for the petitioner has not raised any dispute in respect of the findings recorded by the learned Revisional Court to the extent that, the Petition filed under Section 9 of the Hindu Marriage Act, 1955 which was filed on behalf of the Respondent before the competent court for restitution of conjugal rights. In the said Petition, the wife was duly served. She appeared in the said proceeding however, for the reasons best known to her subsequently, discontinued her participation from said proceedings. Consequently the learned Judge of court below, which was seisin with the matter under Section 9 of the Hindu Marriage Act, recorded the findings that it is the present petitioner – wife, was responsible for desertion and she on her own, without there being any reasonable cause, has deserted and parted with the company from her husband.

[5] Though it was open for the wife to challenge the said Judgment, delivered in the proceedings under Section 9 of the Hindu Marriage Act, the said Judgment was not challenged and thus, said judgment has attended the finality. Once that judgment has attended the finality, findings recorded by the competent Civil Court will prevail and the learned revisional court has rightly recorded in the impugned judgment that the

learned Magistrate while granting maintenance allowance in favour of the wife has not considered this aspect at all.

[6] It is to be noted that the proceedings under Section 9 of the Hindu Marriage Act was filed on 28th March, 2008 and it was decided on 2nd August, 2008 where-as, Application under Section 125 of the Code of Criminal Procedure was filed by the Petitioner before the learned Magistrate on 10th November, 2008 i.e. after proceedings under Section 9 of the Hindu Marriage Act were decided.

[7] Further inspite of the decree of restitution of conjugal rights, wife chose not to join the company of her husband and, therefore, husband has filed Petition for divorce on the said ground.

[8] Section 125 of the Code of Criminal Procedure clearly shows that wife is entitled to claim maintenance allowance from her husband, if she is able to demonstrates that she is refused and neglected by her husband without sufficient cause. Therefore, the burden is on the wife to prove the said aspect.

[9] In the present case, as rightly observed by the learned revisional court, the wife was responsible for parting with the company from the respondent and attitude of the husband was not of neglect towards the present petitioner – wife. In that view of the matter, there is no merit in the Writ Petition. Writ Petition is summarily rejected.

(V.M. DESHPANDE, J.)