

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 204 OF 2004

Sou. Vaishali A. Waghmare	.. Petitioner (Org. Applicant)
vs.	
Anil P. Waghmare and anr.	.. Respondents

Mr. D.S. Sawant for the Petitioner-Org. Applicant (Vaishali).
Ms Tejasweeta Bhosale h/f. Mr. R.S. Kate for Respondent No.1
(Anil).

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 03 December 2015.
Date of Pronouncing the Judgment : 10 December 2015.

JUDGMENT :-

1] The challenge in criminal revision application is to the judgment and order dated 29 March 2004 made by the Additional Sessions Judge, Karad setting aside the judgment and order dated 9 April 2003 made by the Judicial Magistrate First Class, Karad (JMC), by which, the JMFC has awarded maintenance of Rs.600/- to the Applicant (Vaishali).

2] The Additional Sessions Judge had denied the maintenance to the Applicant (Vaishali) after recording the finding that the Applicant-Petitioner (Vaishali) had deserted the Respondent as well as three children, without any reasonable cause. The Additional Sessions Judge has also recorded a finding that it is Respondent No.1 (Anil) who is required to bear the responsibility of three children as well as his own aged mother and therefore, it would not be appropriate to burden the Respondent No.1 with any further

financial responsibilities, in a situation where the Applicant has abandoned him without sufficient cause.

3] Mr. Sawant, learned counsel for the Petitioner-Applicant(Vaishali), submitted that the evidence on record does establish that the Applicant was harassed and therefore, compelled to live away from the Respondent No.1 and her own children. Besides, the material on record very clearly establishes that the Applicant is unable to maintain herself. In these circumstances, the Respondent No.1 was duty bound to maintain the Applicant. The Additional Sessions Judge exceeded the bounds of revisional jurisdiction in interfering with well reasoned decision of the JMFC awarding maintenance to the Applicant at the rate of Rs.600/- per month.

4] Ms Bhosale, learned counsel for the Respondent No.1- Anil, on the other hand, submitted that the Additional Sessions Judge, upon proper appreciation of the material on record has rightly held that the Applicant has abandoned the Respondent and her children without reasonable cause. Ms Bhosale pointed out that one of the daughters was physically challenged and despite the same, the Applicant chose to abandon the Respondent No.1 and children. The Respondent No.1 had to bear, *inter alia*, the financial responsibilities of not only the three children, but also his own aged and ill mother. In such circumstances, the Additional Sessions Judge was right in denying maintenance to the Applicant.

5] The rival contentions now fall for determination.

6] The material on record does establish that the Applicant and the Respondent No.1 have not been living together for considerable period. The material on record also substantially establishes that the Applicant is unable to maintain herself. The JMFC as also the Additional Sessions Judge have really not disagreed with each other insofar as these basic facts are concerned. The disagreement is, however, on the issue as to whether there was any real cause for the Applicant to stay away from Respondent No.1 as also their children. The JMFC has accepted the Applicant's case that the circumstances were created by the Respondent No.1, which made it very difficult for the Applicant to stay with Respondent no.1 and that this constitutes sufficient cause for the Applicant staying away. The Applicant, in such circumstances, cannot be denied with maintenance. On the other hand, the Additional Sessions Judge has held that there was no reasonable cause for the Applicant to stay away from the Respondent No.1 and her children, on this ground, denied maintenance to the Applicant.

7] The scope of revisional jurisdiction, which came to be exercised by the Additional Sessions Judge is quite limited. The same, does not normally extend to reassessing the entire material on record with a view to examining whether some different view is plausible. As long as it is not established that the view taken by the JMFC was not a plausible or a reasonable view to take on the basis of material on record, the Additional Sessions Judge, in the exercise of revisional jurisdiction, could not have interfered with the same. To this extent, Mr. Sawant, the learned counsel for the Applicant, is right in his submission that the Additional Sessions Judge has

exceeded jurisdiction.

8] In this case, the material on record, did suggest that there was cause for the Applicant to stay away from her husband. The cause was that the Applicant had delivered a female child and this was not appreciated by the Respondent No.1 and her family members. There is some evidence that the Applicant had to be admitted in the hospital on account of physical abuse. Though, in the proceedings before the JMFC, the Respondent No.1 in his reply had stated that he was willing to cohabit with the Applicant, there is no material on record to indicate about the steps taken by the Respondent No.1 to get the Applicant back from her parents home, despite lapse of considerable period. The JMFC, who perhaps had the occasion to appreciate the demeanor of the Applicant, relying upon the oral evidence, has accepted the Applicant's version with regard to her ill-treatment. The Additional Sessions Judge, has virtually reassessed the material on record and purported to exercise the appellate jurisdiction, when in fact, revisional jurisdiction was invoked and substituted its own findings in place of those recorded by the JMFC. Such an exercise cannot be sustained. On this short ground, interference is warranted.

9] However, this is not a case where maintenance at the rate of Rs.600/- per month can be awarded to the Applicant from the date of her application. The reason for this is that the Respondent No.1, throughout, has had to bear the financial responsibilities of the three children and his aged mother. There is record that one child was physically challenged and required constant medical attention. At

the relevant time, the Additional Sessions Judge had recorded that the total salary of the Respondent No.1 was Rs.4726/- per month. This was the position in the year 2004. By now, however, the position is bound to have undergone a substantial change. Not only, the salary of the Respondent No.1 is bound to have increased, but further, the financial responsibilities of the Respondent No.1 may have also abated to some extent. The interest of justice would, therefore, be met if maintenance at the rate of Rs.600/- per month is awarded to the Applicant from beginning of this year, i.e., from 1 January 2015. For the period between the date of lodging of maintenance application and 1st January 2015, it would be appropriate if the Respondent No.1 is directed to pay lumpsum amount of Rs.50,000/- in full and final discharge of maintenance obligations under the provisions of Section 125 of the Cr.PC. This amount can be paid in lumpsum or within installments spread over four months. The choice in this regard is left to the Respondent No.1.

10] Accordingly, this criminal revision application is disposed of with the following order:

- a] The impugned judgment and order dated 29 March 2004 is set aside;
- b] The judgment and order dated 9 April 2003 made by the JMFC is, however, modified;
- c] The Respondent No.1-Anil is directed to pay maintenance amount of Rs.600/- per month to the

Applicant-Vaishali with effect from 1 January 2015. The arrears between 1 January 2015 and the date of this judgment and order to be cleared within a period of one month from today;

d] Towards maintenance from the date of application till 1 January 2015, the Respondent No.1-Anil is directed to make payment of Rs.50,000/- to the Applicant-Vaishali, in lumpsum or in installments, within a period of four months from today;

11] The criminal revision application is allowed to the aforesaid extent.

12] There shall, however be no order as to costs.

(M.S. SONAK, J.)