

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 173 OF 2004

Jairam B. Desai .. Petitioner
vs.
Hansaben J. Desai and anr. .. Respondents

Mr. Atulkumar B. Kamble for the Petitioner.
None for the Respondents.

CORAM : M. S. SONAK, J.
DATE : 21 DECEMBER 2015.

P.C. :-

- 1] Heard learned counsel for the Petitioner.
- 2] The challenge in this petition is to the judgment and order dated 23 April 2003 made by the Judicial Magistrate First Class, Panvel (JMFC) and judgment and order dated 18 December 2003 made by the Additional Sessions Judge, Raigad awarding maintenance of Rs.1000/- per month to the Respondent-wife under the provisions of Section 125 of Code of Criminal Procedure, 1973 (Cr.PC.).
- 3] The JMFC as well as the Additional Sessions Judge have recorded concurrent findings of fact to the effect that the Petitioner has refused and neglected to maintain the Respondent-wife; the Respondent-wife is unable to maintain herself and the Petitioner has

sufficient means to maintain the Respondent-wife. Upon consideration of material on record, the JMFC awarded maintenance at the rate of Rs.1000/- per month to the Respondent-wife. The Additional Sessions Judge, refused to interfere with the order made by the JMFC in Criminal Revision Application No. 90 of 2003 disposed of by the judgment and order dated 18 December 2003. No case is made out to interfere with the concurrent findings of fact recorded by the two Courts.

4] The learned counsel for the Petitioner has submitted that the Family Court in M.J. Petition No. A-1231 of 1999 had already decided the claim of Respondent-wife on merits. Such decision was binding upon the JMFC. This is because the proceedings under Section 125 of Cr.P.C. before the JMFC are summary in nature whereas the proceedings under the Hindu Marriage Act are substantive in nature. The learned counsel further submitted that the JMFC has virtually sat in appeal over the decision of the Family Court and this is an error of jurisdiction.

5] There is no necessity to go into the contention because this Court in its order dated 8 August 2014, has recorded the statement

that the appeal filed by the Respondent-wife has already been allowed by the Division Bench of this Court. the order dated 8 August 2014, reads thus:-

1) Learned counsel for the respondent submits the Judgment and Order passed by the Family Court under section 13 (1a) of the Hindu Marriage Act, 1955 was challenged before the Hon'ble Division Bench of this Court by filing Family Court Appeal No. 87/2006. He has fairly submitted that Hon'ble Division Bench (Coram: A. S. Oka & M. S. Sonak, JJ) by Judgment and Order dated 27/02/2014 has been pleased to allow the appeal filed by the respondent. The Hon'ble Division Bench, by an order dated 23/12/2013 observed that "Since July 2010 respondent husband has not paid maintenance as directed under order dated 17/10/2006."

2) Learned counsel for the respondent who is appearing for the petitioner in the present case, upon instructions has stated that the entire arrears of maintenance payable till 31/12/2013 were to be paid within 2 weeks from 23/12/2013. Both the counsel agree that the said arrears had been paid. Learned counsel for the respondent seeks time to place on record the copy of Judgment passed by Hon'ble Division Bench in the Family Court Appeal.

Stand over to 15/09/2014.

6] In view of the aforesaid, there is no reason to interfere with the impugned judgments and orders. Accordingly, this petition is dismissed.

(M. S. SONAK, J.)