

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1049 OF 2003

Mrs. Manisha Satish Bhapkar.	]	... Petitioner
Versus		
1. Shri Satish Haribhau Bhapkar,	]	
2. State of Maharashtra.	]	... Respondents

Mr. G. M. Savagave for Petitioner.
 Mr. N. V. Bandiwadekar for Respondent No.1.

CORAM :- M. S. SONAK, J.
DATE :- DECEMBER 09, 2015

P. C. :-

1. The challenge in this petition is to the order dated 12/05/2003 made by the IV Additional Sessions Judge, Kolhapur ('ASJ'), by which the learned ASJ has set aside the Judgment and Order dated 31/10/2002 made by the JMFC, Kolhapur, awarding maintenance at the rate of Rs.1,000/- per month.

2. The impugned Judgment and Order has denied maintenance to the petitioner, primarily after record of findings that the petitioner was not the legally wedded wife of the respondent no.1.

3. The respondent no.1 had instituted Petition No.A-55 of 2000 before the Family Court at Pune seeking declaration under

Section 11 of the Hindu Marriage Act, 1955 to the effect that the petitioner was not his legally wedded wife. By Judgment and Decree dated 29/11/2002, the Family Court at Pune has dismissed the suit.

4. The petitioner, it appears, suppressed the Judgment and Decree dated 29/11/2002 at the time of institution of Criminal Revision Application No.18 of 2003 on 10/01/2003, in which the impugned Judgment and Order came to be made. It is quite surprising that even the petitioner herein failed to place the Judgment and Decree dated 29/11/2002 before the ASJ who has made the impugned Judgment and Order.

5. The Judgment and Decree dated 29/11/2002 is a very relevant and vital material insofar as decision in Criminal Revision Application No.18 of 2003 is concerned. The said Judgment and Decree is relevant, notwithstanding that the same has been appealed against by the respondent no.1 herein. Accordingly, it would be appropriate if the impugned Judgment and Order dated 12/05/2003 made by the learned ASJ is set aside and the Criminal Revision Application No.18 of 2003 is restored to the file of the learned ASJ for fresh decision in accordance with law and on its own merits. Accordingly, the impugned Judgment and Order dated 12/05/2003 is set aside and the matter is remanded to the learned ASJ for fresh decision in accordance with law and on its own merits.

6. Normally, upon setting aside the impugned Judgment and Order made by the learned ASJ, the order dated 31/10/2002 made by

the learned JMFC would revive. However, this Court, by order dated 06/08/2004, whilst issuing rule in the present petition, had directed the respondent no.1 to pay to the petitioner maintenance of Rs.500/- per month till the disposal of the petition. There is no dispute that the said amount has been paid and continues to be paid till today. Therefore, until the Criminal Revision Application No.18 of 2003 is finally disposed of, there shall be no obligation on the part of the respondent no.1 to pay arrears of maintenance from the date of impugned Judgment and Order dated 12/05/2002 till today. This obligation shall, therefore, stand suspended until the date of disposal of Criminal Revision Application No.18 of 2003. This concession is being granted to the respondent no.1, because it is further directed that even if the Criminal Revision Application No.18 of 2003 is ultimately decided in favour of the respondent no.1, the respondent no.1 shall not seek any recovery of adjustment of the amount paid by the respondent no.1 in pursuance of the interim direction of this Court made on 06/08/2004. However, from 01/01/2016, the respondent no.1 shall be liable to pay maintenance to the petitioner at the rate of Rs.1,000/- (Rupees One Thousand Only) per month, in terms of the learned JMFC's order dated 31/10/2002.

7. The learned ASJ is directed to dispose of Criminal Revision Application No.18 of 2003 as expeditiously as possible and in any case, within a period of four months from the date of production of authenticated copy of this order.

8. Parties are directed to appear before the learned ASJ on 11/01/2016 and file authenticated copy of this order.
9. All contentions of all parties are left open for adjudication by the learned ASJ.
10. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.
11. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)