

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2207 OF 2005**

Tarange Chimaji Rao

.. Petitioner

VS.

Tarange Devakabai Chimaji

.. Respondent

Mr Uday P. Warunjkar for Petitioner.

Mr. K. P. Shah for Respondent no. 1.

CORAM : M. S. SONAK, J.

DATE : 3 DECEMBER, 2015.

P.C. :-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to the orders dated 26th April, 2002 made by the JMFC and order dated 1st August, 2005 made by the 3rd Addl. Sessions Judge, Baramati both of which have the fact of awarding the respondent maintenance @ of Rs.1200/- per month u/s.125 of the Cr.PC.
3. Mr. Warunjkar, learned Counsel for the petitioner has submitted that the material on record very clearly establishes the respondent had deserted the petitioner without any sufficient cause. The petitioner had also instituted petition for restitution of conjugal rights. However, the same was dismissed for default.
4. Mr. Warunjkar has submitted that both the petitioner as well as respondent are retired teachers drawing pension. In these circumstances

there was no warrant for requiring the petitioner to pay any maintenance to the respondent.

5. Mr. K. P. Shah, learned counsel for the respondent on the other hand has submitted that this is case where there are concurrent findings of facts recorded by JMFC and Sessions Court. There is absolutely no perversity in the record on concurrent findings of fact. For these reasons Mr.Shah submitted that this petition be dismissed. Mr. Shah learned Counsel for the respondent also submitted that some settlement may have been arrived at between parties, that he has no clear instructions in this regard. Mr.Warunjikar, learned counsel for the petitioner also stated that he has no instruction in this regard, he also made efforts to contact the petitioner in the matter.

6. Having heard learned counsel for the parties and perused material on record in my judgement, there is no case made out to interfere with the impugned orders. Both the JMFC as well as Sessions Court recorded concurrent finding of fact that the respondent is the legally wedded wife of the petitioner and that she is unable to maintain herself.

7. The two Courts have addressed this to the issue of ability on the part of the petitioner to bear the maintenance. The two courts have taken into consideration the income of the Petitioner and the respondent and only there after made an award for maintenance. Material on record does not establish that the respondent has deserted the petitioner without any reasonable cause. Since the petition for restitution of conjugal rights was dismissed for non prosecution, the petitioner cannot draw any mileage from the circumstance that such petition had in fact been instituted.

8. Therefore, on cumulative of consideration of all the aforesaid facts and the circumstances there is no case made up to interfere with the impugned order.

9. This petition is therefore dismissed. There shall be no order as to costs. It is however made clear that in case the parties have actually settled the dispute among themselves then such settlement shall not be reopened or varied on the basis of dismissal of this petition.

10. All concerned to act on the authenticated copy of this order.

(M. S. SONAK, J.)

rajeshwari