

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application No.1365 of 2010

(Sau. Kalpana w/o Shyam Shirsole
vs.
Shyam Dattatray Shirsole)

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Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

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Court's or Judge's Orders

Mr. A.L. Deshpande, Advocate for the Applicant.

CORAM : N.W. SAMBRE, J.

DATE : OCTOBER 7, 2015.

The present application is filed by the applicant-wife,
whose prayer for maintenance from her husband was refused by
both the Courts below.

02] Mr. Deshpande, learned Counsel for the applicant
submitted that minor daughter of the applicant was granted
maintenance of Rs.500/- per month, whereas the prayer of the
applicant herein for grant of maintenance was refused.
According to him, he has raised a specific ground as 'Ground-C'
in the criminal revision filed before the Additional Sessions
Judge, Khamgaon pointing out that the proceeding vide Reg. Cri.
Case No.33/2001 under Section 494 of the Indian Penal Code at
the behest of the present applicant is pending before the trial
Court. According to him, the said aspect was not dealt with or
not taken into account by the Court below as the documents to

that effect were not filed on record. He has further submitted that the proceeding for restitution of conjugal rights preferred by the present non-applicant under Section 22 of the Special Marriage Act, 1954 vide Special Marriage Act Case No.1/1997 before the learned District Judge, Buldana is already dismissed for want of prosecution. In the above referred background, the learned Counsel for the applicant submitted that the applicant is entitled for maintenance, as prayed for or in alternate submitted that the matter may be remanded back to the learned Magistrate for fresh consideration.

03] None appears for the non-applicant though served on merit.

04] The present application is pending since 2010. In the above referred background i.e. dismissal of proceeding for restitution of conjugal rights initiated at the behest of non-applicant/husband and admission of relationship, after perusal of the orders passed by the Courts below, which is impugned in the present application, I am of the considerate view that the matter needs to be remanded back to the Court of learned Judicial Magistrate First Class, Khamgaon by setting aside the orders dated 16/02/2002 and 26/06/2009 passed in Misc. Criminal Case No.84/1998 and Criminal Revision No.30/2002 respectively.

05] In view of the above, this Court proceeds to pass the following order.

- The orders dated 16/02/2002 passed in Misc. Criminal Case No.84/1998 refusing maintenance in favour of the applicant and further confirmed in the Criminal Revision No.30/2002 by the learned Ad hoc Additional Sessions Judge-2, Khamgaon on 26/06/2009 are hereby quashed and set aside.
- The proceedings be restored to the file of learned Judicial Magistrate First Class, Khamgaon, who is directed to restrict the proceedings to the extent of claim for maintenance made by the present applicant.
- The proceedings before the learned Magistrate be expedited.

JUDGE

**sdzw*