

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 113 OF 2007

1. HARISHCHANDRA DEVIDAS MARKAD
Age: 35 years, Occ: Service,
R/o. Songiri, Tq. Bhoom,
Dist. Osmanabad at present
CRPFA COU 92 BN CO SGAPO. ...Petitioner
(Org. Opponent)

VERSUS

1. TARAMATI HARISHCHANDRA MARKAD
Age: 26 years, Occ: household,
R/o. Songiri, at present Kelwadi,
Tq. Washi, Dist. Osmanabad.
2. Mohini Harishchandra Markad
Age: 6 years, Minor through
U/g of her real mother
Respondent No. 1. ...Respondents
(Org. Petitioners)

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Advocate for Petitioner : Ms Sheetal Salunke h/f V D
Salunke

Advocate for Respondents : Mr. A S Barlota

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CORAM : V.K. JADHAV, J.

Dated: September 22, 2016

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JUDGMENT :-

1. Being aggrieved by the judgment and order passed
by the Adhoc Additional Sessions Judge, Osmanabad
dated 13.12.2006 in Criminal Revision No.95/2002 the
original opponent husband in maintenance proceedings

has preferred this criminal writ petition.

2. Brief facts, giving rise to the present criminal writ petition are as follows :-

Respondent no.1-wife has filed a Misc Application No.29/2001 for grant of maintenance under section 125 (1) of the Code of Criminal Procedure against the petitioner-original opponent husband contending therein that she is legally wedded wife and that respondent no.2 daughter born to them out of their marital wedlock. Their marital relations are still existing. After marriage, she was treated well for a period of two years and thereafter subjected to ill-treatment on account of the non-fulfillment of certain demands of golden ring and cash amount. She was subjected to ill-treatment and beating by the opponent husband. She was finally driven out of the house by the opponent-husband. Since then, she is residing with her parents. She has no independent source of income. She is unable to maintain herself and her minor daughter applicant no.2. She thus constrained to file the aforesaid application for grant of maintenance with

the averments in the application that the husband though getting a monthly salary and also an additional income from the irrigated land, refused and neglected to maintain the applicant-wife and her daughter.

The opponent husband has strongly resisted the said application by filing his say. It has contended that the opponent-husband was serving in SRP Shrinagar and though the applicant wife resided with him at other places of his posting, the officers did not permit him to stay alongwith family for the reason that Shrinagar is a sensitive place. Thus, the opponent-husband was compelled to keep his wife at Songiri. However, the applicant-wife was insisting him to take her to his place of posting at Shrinagar and for this reason she started living with her parents. The opponent-husband tried his level best for further cohabitation, however, the applicant-wife has not given response to it.

Both the parties lead their oral and documentary evidence in support of their rival contentions. The learned Magistrate found that the applicant no.1 failed to prove the refusal and neglect on the part of the opponent-husband and therefore partly allowed said

application and directed the opponent husband to pay maintenance @ Rs.500/- p.m. to applicant no.2 alone and rejected the application for grant of maintenance filed by the applicant no.1 wife. Being aggrieved by the same, the applicant-wife alongwith the daughter preferred Criminal Revision Application no.95/2002 and the learned Adhoc Additional Sessions Judge, Osmanabad by order dated 13.12.2006 partly allowed the said revision and, accordingly allowed the application for maintenance and directed the opponent husband to pay a maintenance of Rs.1,000/- each to both the applicants from the date of application. Being aggrieved by the same, the original opponent husband has filed present Criminal Application.

3. The learned counsel for the petitioner-original opponent/husband submits that, respondent no.1 original applicant no.1 failed to prove refusal and neglect to maintain on the part of opponent husband. Respondent no.1 has failed to give the details of alleged ill-treatment and the unlawful demands made by the petitioner-original opponent. The learned counsel

submits that, respondent no.1-wife has not given details of her alleged ill-treatment at the hands of petitioner. Learned counsel submits that, in the facts and circumstances of the case, the learned Judicial Magistrate First Class, Bhoom has rightly recorded the findings in the negative to point no.1 and accordingly partly allowed the application and thereby directed the opponent to pay maintenance to minor daughter alone. Learned counsel submits that, the Adhoc Additional Sessions Judge has not correctly appreciated the evidence on record and thereby arrived at a erroneous conclusion.

4. The learned counsel for respondent-wife submits that, respondent no.1 wife has deposed about unlawful demands made by the petitioner-husband and also deposed about the ill-treatment extended to her on account of unlawful demand of golden ring and cash amount of Rs.50,000/-. Even respondent no.1 wife also filed the complaint against the petitioner-husband for giving threats to kill her. The learned counsel submits that, there is enough evidence on record to infer that

respondent-wife has just cause to live separate and claim the maintenance. Admittedly, the petitioner-husband is serving in SRP on monthly salary. Besides that he has also agricultural land. He has sufficient means to pay the maintenance as granted by the courts below. Learned counsel submits that, respondent wife has proved the refusal and neglect on the part of the petitioner-husband and the same is also evident from the facts that even though this court has directed the petitioner-husband to pay interim maintenance, petitioner-husband has failed to comply with the said order. The learned counsel submits that, no interference is required and Criminal Writ Petition is liable to be dismissed.

5. On careful perusal of the evidence, it appears that respondent-wife has deposed before the Magistrate about the ill-treatment extended by petitioner-husband on account of non-fulfillment of the demand of cash amount and 10 grams golden ring. She had also deposed before the Court that, she stayed at Pune alongwith her parents as petitioner-husband left her at

Pune as no proper residence was available at his place of posting at Shrinagar. It further appears that the learned Magistrate has discarded her evidence on the ground that she failed to give the date and details of the alleged incident of ill-treatment and unlawful demands made by the petitioner-husband. Learned Adhoc Additional Sessions Judge, Osmanabad, has, therefore, rightly allowed the revision and also granted the maintenance to the respondent-wife. There is enough evidence on record to show that respondent wife has just cause to live separate and claim maintenance. It further appears from the evidence lead by the parties that, petitioner-husband though having sufficient means refused and neglected to maintain his wife and minor daughter. Even though, respondent-wife is educated up to 8th standard, the petitioner-husband has suggested to her that she is doing tailoring work and getting Rs.50/- per day. It is difficult to accept that only because the petitioner-husband had not taken her to Shrinagar because said place is sensitive, the respondent-wife has taken such extreme decision to abandon him and started living with her parents. It

further appears that the approach of the Magistrate rejecting the application of respondent-wife for grant of maintenance is not proper, correct and legal. The learned Sessions Judge, has, therefore, rightly interfered in the order passed by the Magistrate. I do not find any merit in the writ petition and thus proceed to pass the following order.

O R D E R

- I. Criminal writ petition is hereby dismissed.
- II. Rule discharged.

sd/-
(V.K. JADHAV, J.)

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aaa/-