

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 10 OF 2005

Raju Waman Kakade
Age 30 years, Occ. labour
R/o Nachankheda, Tq.Burhanpur,
District Khandawa (MP). ..Petitioner

Versus

Sau. Ashabai Raju Kakade
Age 23 years, Occ. Labour
R/o Khirdi (Kd.), Tq. Raver,
District Jalgaon. ..Respondent

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Advocate for Petitioner : Shri Vilas M.Humbe
Respondent : Served

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 23, 2016

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ORAL JUDGMENT :-

1. Learned Advocate for the petitioner has strenuously criticized the judgment of the learned Magistrate dated 31.12.2002, directing the petitioner to pay maintenance allowance of Rs.500/- to the respondent and the judgment dated 7.8.2003, by which the learned Additional Sessions Judge, Jalgaon has dismissed the revision petition of the petitioner.

2. Shri Humbe, learned Advocate has vehemently submitted that both the impugned orders deserve to be quashed and set aside considering the fact that he had filed a petition under Section 9 of the Hindu Marriage Act, seeking restitution of conjugal rights and by judgment dated 20.2.2001, delivered by the learned Court, the respondent was directed to start living

in the marital home of the petitioner.

3. He, therefore, submits that this judgment would establish that the petitioner desired to continue his marital life with the respondent and she refrained from joining him in his marital home. He further submits that his petition seeking divorce was allowed by the judgment and order dated 13.1.2004 and he, therefore, separated from his wife by virtue of the said order. He, therefore, submits that considering the judgment dated 20.2.2001, the case of the petitioner would squarely fall under Section 125(4) of the Cr.P.C. by which the wife would not be entitled for maintenance as she has voluntarily deserted the petitioner.

4. He further submits that the above facts were not considered by the learned Magistrate as well as by the learned revisional Court. The grant of maintenance of Rs.500/- from the date of the application was, therefore, impermissible and the said application deserve to be rejected. It is hence contended that that the impugned orders are perverse and erroneous.

5. None has appeared on behalf of the respondent, though served.

6. This Court while admitting the petition on 29.6.2005 had directed the petitioner to pay maintenance till the disposal of the petition and deposit the entire arrears in this Court. Since these directions were not complied with, the respondent was granted liberty on 18.7.2006 to execute the impugned order. Interim relief was, therefore, refused to the petitioner.

7. It cannot be ignored that the respondent had preferred her application under Section 125 of the Cr.P.C. on 25.9.2000. The petitioner had, therefore, approached the Court at Burhanpur by lodging his application under Section 9 of the Hindu Marriage Act. The proceedings initiated by the petitioner were conducted before the Court at Burhanpur and the proceedings initiated by the respondent were conducted before the Court at Raver and then at Jalgaon.

8. The learned Magistrate, while delivering the impugned order, dated 31.12.2002 had concluded that the petitioner could not indicate the efforts he had put in to get the respondent back to the marital home. It was noticed that after the respondent initiated the proceedings for maintenance, the petitioner lodged his application under Section 9 of the Hindu Marriage Act seeking restitution of his conjugal rights.

9. The evidence analyzed by the learned Magistrate in the impugned order would indicate that the respondent was neglected and was not maintained by the petitioner pursuant to the marital discord. The contention of the respondent was accepted that the petitioner was operating a poultry farm and a kirana shop.

10. The conclusions arrived at by the learned Magistrate were sustained by the revisional Court.

11. It is trite law that merely because a second view is possible on the same facts, interference in the impugned judgment is uncalled for.

12. Considering the fact situation as above and taking into account that the petitioner had lodged his application under Section 9 of Hindu Marriage Act only to counter the claim of the respondent, that both the Courts below had refused to lend much importance to the lodging of the Hindu Marriage petition.

13. As such, I do not find any perversity or error in the impugned orders. This petition being devoid of merits is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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