

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

CRIMINAL WRIT PETITION NO.240 OF 2014

Shaikh Mushtak Shaikh Gani

.. Petitioner

Versus

Anisa @ Mina Shaikh Mushtak Gani
and Another

.. Respondents

Mr.C.R.Deshpande, Advocate for the petitioner
Mr.S.D.Ghayal, APP for the respondent/State
Mr.A.N. Nagargoje, Advocate for the respondent No.1

CORAM : A.V.NIRGUDE, J

DATED : 02.03.2016

P.C. :-

1. The petition challenges the concurrent findings recorded by the Courts below that the petitioner is liable to pay Rs.2,000/- [Rupees Two Thousand] per month as maintenance to his wife and minor child who are respondent Nos.1 and 2 here.

2. The learned Counsel for the petitioner raised only one point. He said that entire proceedings before the Trial Court got vitiated because the learned Magistrate did not record deposition of respondent NO.1, but allowed her to file an affidavit. This according to him was illegal and therefore the case ought to go back to the Lower Court. He places reliance on judgment of

this Court in the case of Ramesh Laxman Contractor Vs. Mrs. Jayshreeben Ramesh Contractor reported in 1982 CRI.L.J. Page No.1460 in which it is held that the evidence in proceeding under Section 125 of the Criminal Procedure Code is held to be mandatory. The basic difference between reported case and the present case is that in the reported case not only affidavit was taken on record, no cross-examination was conducted because the Advocate for the husband remained absent. In the present case the affidavit of respondent No.1-wife was taken on record and which is served on the husband and husband's Advocate cross-examined diligently. In view of this it cannot be said that the evidence was not recorded in this case. The reliance on this judgment is thus misplaced.

3. The learned counsel for the petitioner also argued that the amount awarded is exorbitant. He said that the evidence that came on record indicated that the petitioner has monthly income of Rs.800/- only. On the other hand respondent No.1 has regular income from her tailoring business. He also pointed out that she has Shop and Establishment license also. This aspect of the case is rather factual and and I am not inclined to go into the details. The Courts below concurrently held that the

petitioner had sufficient income to pay at least Rs.2,000/- per month to his wife and child. I am not going into factual details as I consider this beyond the scope of this petition. The amount awarded appears to be reasonable and I am not inclined to disturb the same.

4. In view of this the Criminal Writ Petition stands dismissed.

[A.V. NIRGUDE, J.]