

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 368 OF 2015

Devidas S/o Gangaram Mundfhale,

Age : 27 years, Occu : Agri,

R/o : Golegaon, Tq. Umri,

Dist : Nanded.

Petitioner

-VERSUS-

Malanbai W/o Devidas Mundfhale,

Age : 23 years, Occu : Agri,

R/o : Golegaon, Tq. Umri,

Dist : Nanded.

Respondent

Mr. S. C. Bhosale, Advocate for the Petitioner.

Mr. A. A. Mukhedkar, Advocate of the Respondent.

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(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 27/06/2016

ORAL JUDGMENT :

1. Rule, Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the judgment and order dated

16.02.2015 delivered by the learned Additional Sessions Judge Bhokar, by which Criminal Revision Application No.08 of 2011 filed under Section 397 of the Code of Criminal Procedure has been allowed.

3. Mr. Bhosale learned Advocate for the petitioner has strenuously criticized the impugned judgment. Submission is that when the learned Magistrate has arrived at finding on facts by concluding that the statement of the respondent that the petitioner regularly beats her, does not appear to be believable, the Revision application filed by the respondent, seeking maintenance allowance under Section 125 of the Code of Criminal Procedure could not have been allowed. The learned Magistrate had granted maintenance only to the son of the petitioner.

4. Mr. Bhosale strenuously submits that the power of the Revisional Court is limited. Unless the conclusions of the learned Magistrate are perverse, no interference is called for. Findings on facts should not be interfered with and the grant of maintenance

allowance at the rate of Rs. 1000/- (Rs. One thousand) per month to respondent No.1 is unsustainable.

5. Learned Advocate for the respondent has supported the impugned order. He submits that the evidence on record was not properly considered by the learned Magistrate. Despite respondent No.1 having specifically stated that the petitioner beats her and that is the only cause for which she is seriously apprehensive about her cohabitation with the petitioner, this aspect was not properly gone into by the learned Magistrate. He, therefore, submits that the impugned judgment calls for no interference.

6. I have considered the submissions of the learned Advocates.

7. It is not disputed that respondent No.1 who is the legally married wife of the petitioner had deposed before the learned Magistrate that she was treated properly for a period of about one year. Therefore, the petitioner started pressurizing her to bring money from her parents so that he could start a shop. On that

account, she was continuously beaten by the petitioner and physically tortured. She was forced to leave her marital home in 2009. The petitioner had denied the said allegation. However, the facts remains that the only cause for respondent No.1 to leave her marital home was on account of the allegation of continued illtreatment and physical torture.

8. In my view, a legally wedded wife could not leave the company of her husband and marital home unless there are compelling circumstances. Learned Magistrate has erroneously concluded that the allegations of the wife did not appear to be believable. In such peculiar type of litigation, he could have considered the submissions of both the sides and could have, therefore, analysed the said evidence.

9. In the Revision Petition filed by the wife, the learned Additional Sessions Judge has rightly realized that the conclusions of the learned Magistrate to the extent of denial of maintenance to the wife are erroneous. He, therefore, rightly considered the law and

concluded that the beating of the wife by the husband, which fact is hidden within the four walls of the house, can be voiced only by the wife after it becomes un-bearable for her. No husband, at any time, would admit that he beats his wife.

10. In the light of the above, I do not find that the impugned judgment of the Revisional Court can be termed as perverse or erroneous. This petition, being devoid of merit is, therefore, dismissed.

11. Rule is discharged.

(RAVINDRA V. GHUGE, J.)