

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 472 OF 2015

Gopalrao s/o Vithalrao Sonkhede
Age 63 years, Occ. Pensioner
R/o. 28, Gurunagar, Hsg. Society,
N-8, CIDCO, Aurangabad

...Petitioner

versus

Sou. Suman w/o Gopalrao Sonkhede
Age 58 years, Occ. Household
R/o. Shivaji Society, Udgir,
Tq. Udgir, District Latur

...Respondent

WITH
CRIMINAL REVISION APPLICATION NO. 248 OF 2013

Gopalrao s/o Vithalrao Sonkhede
Age 63 years, Occ. Pensioner
R/o. 28, Gurunagar, Hsg. Society,
N-8, CIDCO, Aurangabad

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Sou. Suman w/o Gopalrao Sonkhede
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...Respondent

...
Advocate for Petitioner : Mr. V.D. Patnurkar
Advocate for Respondents : Mr. B.S. Bhale
.....

CORAM : V. K. JADHAV, J.
DATED : 30th AUGUST, 2016

ORAL JUDGMENT:-

1. By criminal writ petition No. 472 of 2015, the petitioner is

seeking quashment of criminal application No.38 of 2010 pending before the J.M.F.C. Udgir under section 127 of the Cr.P.C. whereas by criminal revision application, the petitioner is seeking quashment of order dated 26.11.2013 passed by the learned Additional Sessions Judge, Udgir below Exh.14 in Criminal Revision No. 12 of 2013.

2. Brief facts giving rise to the present writ petition and the revision application are as follows:-

(a) The present respondent had filed Misc. Criminal application No. 75 of 1984 before the J.M.F.C. Udgir under section 125 of Cr.P.C. After considering oral as well as documentary evidence on record and after considering the points for determination, learned J.M.F.C. Udgir by its judgment and order dated 29.7.1986 dismissed the application for separate maintenance claimed by the present respondent Sumanbai.

(b) Being aggrieved by the same, the respondent wife preferred criminal revision application No. 151 of 1986 before the Sessions Court at Latur and learned Sessions Judge, Latur by its judgment and order dated 24.11.1988 confirmed the order of the trial court so far as dismissal of application

filed by the respondent wife for grant of maintenance is concerned.

(c) Thereafter, in the year 1990, respondent wife had again initiated proceedings under Section 125 of Cr.P.C. by filing criminal Misc. application No. 71 of 1990. The said application is strongly resisted on behalf of the husband by filing reply. The petitioner husband has also raised a specific plea about adultery in the said proceedings. Learned J.M.F.C. Udgir by order dated 28.11.1993 in criminal M.A. No. 71 of 1990 dismissed the application of the applicant.

(d) After 17 years, respondent wife initiated proceedings under Section 127 of Cr.P.C. by filing criminal M.A. No. 38 of 2010. The petitioner husband has filed an application Exh.11 in the said proceeding of Criminal M.A. No. 38 of 2010 pointing out earlier dismissal of application submitted by the respondent wife under the provisions of Section 125 of Cr.P.C. However, learned Judge of the trial court has filed said application with observation that the same will be considered at the time of final hearing. During pendency of said application under Section 127 of Cr.P.C. bearing criminal M.A. No. 38 of 2010, the respondent wife has filed application for

calling witness and since the same came to be rejected by the Magistrate, the respondent wife has approached the Sessions Court. The Sessions Court has allowed the said criminal revision application. Against the said order, the petitioner husband has approached this court, by filing criminal revision application No. 248 of 2013, in which this court has granted Rule and the same is pending. The petitioner husband is also challenging the proceeding pending before the learned J.M.F.C. Udgir, being Misc. Criminal Application No. 38 of 2010 by filing criminal writ petition No. 472 of 2015.

3. Learned counsel for the petitioner submits that the proceeding under section 127 of Cr.P.C. are in respect of alteration in allowances on proof of change in the circumstances of any person and the Magistrate may make such alteration, as he thinks fit in the allowance for the maintenance or the interim maintenance, as the case may be. In the instant case, the Misc. Criminal application No. 75 of 1984 and further Criminal M.A. No. 71 of 1990 filed by the respondent wife for grant of maintenance came to be dismissed by the then Magistrate and the said orders now have attained finality. So far as the order passed in Criminal M.A. No. 71 of 1990 is concerned, the learned Magistrate, after appreciating the evidence on record, found that the respondent wife is living in adultery and

accordingly dismissed her application for grant of maintenance. In view of this, there is no reason for the Magistrate to entertain Cri. M.A. No. 38 of 2010 filed under the provisions of Section 127 of Cr.P.C. Even though the petitioner husband has pointed out the same to the Magistrate by filing application Exh.11, the same is not considered.

4. Learned counsel for the respondent wife submits that the learned Magistrate has rightly passed order below Exh.11 with observation that whatever points raised by the petitioner husband are by way of his defence in the said proceedings and the same thus could be considered at the time of final hearing of Misc. criminal application No. 38 of 2010. The said Misc. criminal application No. 38 of 2010 is under consideration and the petitioner husband can raise all points available to him in the said proceeding. Learned counsel submits that there is no substance in the writ petition and the same is liable to be dismissed.

5. There was no reason for the Magistrate to entertain the application under section 127 of Cr.P.C. when there is no order passed on earlier occasion for grant of maintenance in favour of respondent-wife. The respondent wife in para 2 of her Misc. criminal application No. 38 of 2010 has pointed out to the court that her Misc.

Criminal application No. 75 of 1984 came to be rejected by the court which was filed for grant of maintenance. It further appears that she had suppressed filing of Criminal Misc. application No. 71 of 1990 for grant of maintenance. Even though the petitioner husband has brought to the notice of the court this fact by filing application Exh.11 the learned Magistrate has not considered the same.

6. The provisions of section 127 of Cr.P.C. are restricted to alteration in the allowance. Since the application filed by the respondent wife for grant of maintenance on two occasions came to be dismissed by the competent court and those orders now have attained finality, there is no question of entertaining the application No. 38 of 2010 filed under Section 127 of Cr.P.C.

7. In view of the above criminal writ petition is allowed in terms of prayer clause "B" and disposed of.

8. In view of disposal of criminal writ petition, criminal revision application No. 248 of 2013 is also disposed of.

9. Rule is made absolute in the above terms.

(V. K. JADHAV, J.)

rlj/