

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

CRIMINAL WRIT PETITION NO. 499 OF 2009

Kamalkishor S/o Chiranjivlal Jaiswal,
Age. 38 years, Occ. Business,
R/o. Khadpura, Taluka Jintur,
District: Parbhani.

...PETITIONER

(Orig. Non-Applicant)

Versus

1. Komal D/o Kamalkishor Jaiswal,
Age. 8 years, Minor U/g of
Respondent No.3 mother.
2. Shubham S/o Kamalkishor Jaiswal,
Age. 12 years, Minor U/g of
Respondent No.3 mother.
3. Lata W/o Kamalkishor Jaiswal,
Age. 29 years, Occ. Household,
R/o. Jintur at present Kawalgaon,
Taluka Purna, District Parbhani.
(For herself and petitioner Nos. 1 & 2)

4. The State of Maharashtra. **...RESPONDENTS**
(Resp. Nos. 1 to 3
Orig. Applicants)

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Advocate for Petitioner : Mr M.A.Deshmukh h/f S G
Chapalgaonkar

APP for Respondent State 4 : Mr. S W Munde
Advocate for Respondents 1-3 : Mr S P Katneshwarkar

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CORAM : V.K. JADHAV, J.

Dated: December 06, 2016

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ORAL JUDGMENT :-

1. Being aggrieved by the judgment and order passed

by the Sessions Judge, Parbhani dated 9.3.2009 in Criminal Revision No.50/2006 the original non applicant-husband approached to this Court by filing present criminal writ petition.

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

Respondent no.3-wife alongwith minor respondent nos. 1 and 2 filed an application bearing Criminal M.A. no.52/2002 before the Judicial Magistrate First Class, Purna for grant of maintenance @ Rs.1,500/- for herself, Rs.1,000/- and Rs.700/- p.m. for her minor children. It has contended in the said application that she is legally wedded wife of the petitioner-husband and their marriage was solemnized way back in the year 1992. Respondents no.1 and 2 are their children born to them out of their marital wedlock. It has further alleged in the said application that, she was treated well till the birth of respondent no.1 herein. However, thereafter, petitioner-husband who was serving as a teacher came to be suspended by the department. Thus, the petitioner-husband started demanding an amount of

Rs.2.00 lacs required for his reinstatement in the service and subjected respondent no.3-wife to cruelty on account of the non-fulfillment of the said demand. The petitioner-husband started stating respondent no.3 to fetch that amount from the parents and give said amount to him. It has further alleged in the said application that, during that period petitioner husband had developed illicit relations with one Archana and also started giving threats to respondent no.3-wife that in case his demand is not fulfilled, he would marry with said Archana. Even on one occasion, petitioner husband alongwith her family members planned to take her life. It has alleged further that on 24.11.2002 the petitioner husband left her to Purna Railway Station with a direction to fulfill his said demands. Respondent no.3 wife has therefore, constrained to file a complaint at Police Station, Jintur. It has further alleged in the said application that, petitioner husband though having sufficient means, refused and neglected to maintain respondents no.1 to 3.

Petitioner husband has strongly resisted said application by filing his say at Exh.19. He has denied all

allegations made against him about unlawful demand and ill-treatment on account of the non-fulfillment of the so called demand. He has also denied the alleged relations with said Archana. It has contended that respondent no.3 wife is having quarrelsome nature and she used to go her parents house without any reason. Petitioner-husband every time brought her back for cohabitation and even on one occasion respondent no.3 wife had executed a bond stating therein that in future she would cohabit with him without any mistakes. It has further contended that, even though, petitioner-husband has given legal notice to the respondent-wife, she had refused to come for cohabitation. It has also contended that respondent-wife is earning Rs.4,000/- p.m. by doing tailoring work and thus she is able to maintain herself.

Both the parties led their oral and documentary evidence in support of their rival contentions. Learned Magistrate by judgment and order dated 22.3.2006 in Criminal M.A. No.52/2002 partly allowed the application and thereby directed the petitioner husband to pay maintenance @ Rs.200/- and 600/- p.m.

respectively to minor respondent no.1 and 2 alongwith costs of Rs.200/-. Being aggrieved by the same, respondent-wife alongwith her two children filed criminal revision no.50/2006 and the learned Sessions Judge, Parbhani by its impugned judgment and order dated 9.3.2009 directed the petitioner-husband to pay maintenance @ Rs.700/- p.m. to respondent-wife and Rs.500/- p.m. to respondent no.1 and Rs.1,000/- p.m. to respondent no.2 (minor children). Hence, this criminal writ petition.

3. Learned counsel for the petitioner-husband submits that, respondent-wife has no just cause to reside separately and claim maintenance. Learned counsel submits that, respondent-wife is guilty of desertion and accordingly, Civil Judge Senior Division, Parbhani by judgment and order dated 16.2.2009 in H.M.P. No.21/2002 dissolved the marriage of petitioner with respondent no.3 by decree of divorce on the ground that the respondent-wife is guilty of desertion. Learned counsel submits that, respondent-wife is having quarrelsome nature and she left matrimonial house

without any reasonable cause. Same is also evident from the execution of the bond Exh.36 by the respondent-wife wherein she admitted her mistakes and requested the petitioner-husband for further cohabitation. Learned counsel submits that the allegations about the ill-treatment and cause for the aforesaid ill-treatment are false to the knowledge of the respondent-wife. Learned counsel submits that, the learned Magistrate has rightly rejected the application for grant of maintenance filed by the respondent-wife however, the learned Sessions Judge without applying mind granted maintenance to the respondent-wife also.

4. Learned Counsel for respondent-wife submits that, after birth of respondent no.1, respondent-wife was subjected to cruelty on account of the non-fulfillment of unlawful demand made by the petitioner-husband. He was demanding amount of Rs.2.00 lacs for setting aside his order of suspension and for his reinstatement in the service. He was insisting respondent-wife to fetch that amount from her parents. Since respondent-wife had refused the same, she was subjected to ill-treatments

such as beating, abusing starvation etc. Learned counsel submits that further the petitioner-husband had developed illicit relations with one Archana and even started giving threats to the respondent-wife by saying that, in case, his demand is not fulfilled, he would marry with said Archana. Learned Counsel submits that, it is a matter of record that though it was a duty of petitioner-husband to maintain the wife and minor children, he has refused and neglected to maintain respondents no. 1 to 3 even after respondent no.3 alongwith her minor children started residing with her parents. Learned Counsel submits that the learned Sessions Judge has rightly considered the same and accordingly granted maintenance to the respondent-wife also. Learned counsel submits that petitioner-husband is serving as teacher on monthly salary and thus considering his income and status of the family and also considering the growing needs of the minor children on account of their further education etc., rightly granted maintenance to the minor respondents at enhanced rate. Learned counsel submits that, so far as decree of divorce passed by the Civil Judge Senior Division in the

aforesaid H.M.P. is concerned, respondent-wife has challenged said decree before the District Judge and the learned District Judge has quashed and set aside the judgment and decree passed by the Civil Judge Senior Division. Learned counsel submits that, at present petitioner-husband has preferred Second Appeal before this Court and the same is pending.

5. On perusal of the judgment and order passed by both the Courts below, it appears that, the respondent-wife was subjected to ill-treatment on account of the non-fulfillment of the certain demands and she was forced to stay with her parents alongwith minor children. It is difficult to accept that, without any reason only because of the quarrelsome nature, respondent-wife started residing with her parents alongwith two minor children. Same is also evident from the bond wherein for further cohabitation respondent-wife has executed bond in the manner as suggested to her by the petitioner-husband by accepting her so called mistakes. After reading the contents of the said bond Exh.36, it appears that she was forced to give such undertaking by

executing a bond before four Panchas brought by the petitioner-husband. In fact, it was a matter between the husband and wife and at the instance of the petitioner-husband, wife was forced to execute such bond in presence of some third persons. The witness on the bond has also admitted in his cross examination that he was not knowing as to why respondent-wife was residing separately. On the other hand, petitioner-husband though issued a legal notice to the respondent-wife for restitution of the conjugal rights, instead of instituting a Hindu Marriage Petition for restitution of the conjugal rights, filed petition seeking dissolution of the marriage by the decree of divorce.

6. In my considered opinion, respondent-wife had just cause to live separate and claim maintenance. At the time of passing of the order by the Magistrate, said H.M.P. was not decided and it was not also brought to the notice of the revisional court even though decree of divorce was obtained by the petitioner-husband however, the same now loses its significance for the reason that the matter is now pending before this Court in Second

Appeal preferred by the petitioner-husband.

7. The learned Sessions judge has rightly considered this aspect and granted maintenance to the respondent-wife also. I do not find any fault in the impugned judgment and order passed by the learned Sessions Judge. Moreover, considering the growing needs of the minor children and status of the parties to the proceedings, the learned Sessions judge has rightly granted maintenance with enhanced rate to the minor respondents since amount of maintenance granted by the Magistrate @ Rs.200/- and 600/- p.m. appears to be meager and unreasonable. No interference is required. There is no merit in the writ petition. Hence, following order.

O R D E R

- I. Criminal Writ Petition is hereby dismissed.
- II. Rule discharged.
- III. Criminal writ petition is accordingly disposed of.

(V.K. JADHAV, J.)

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aaa/-