

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 535 OF 2015

MEENAKSHI W/O ASHOK POTE & ORS
VERSUS
ASHOK S/O SUNDARRAO POTE

...

Advocate for Petitioner : Mr. J.M. Murkute
Advocate for Respondent : Mr. V.P. Sawant

WITH

CRIMINAL REVISION APPLICATION NO. 51 OF 2015

ASHOK SUNDARRAO POTE
VERSUS
MINAKSHI @ MINAXI W/O ASHOK POTE AND OTHERS

.....

Advocate for the applicant: Mr. V.P. Sawant
Advocate for respondents: Mr. J.M. Murkute

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

PER COURT:-

1. Being aggrieved by the judgment and order passed by the Additional Sessions Judge, Ahmedpur dated 10.3.2015 in Criminal Appeal No. 13 of 2014, the original applicants - wife and her children, preferred criminal writ petition No. 535 of 2015 whereas original opponent- husband preferred criminal revision application No. 51 of 2015.

2. Brief facts giving rise to the present proceedings are as follows:-

a) The petitioner wife alongwith her children filed criminal M.A. No. 16 of 2010 under Sections 12, 18, 19, 20, 21 and 22 of the Protection of Women's From Domestic Violence Act 2005, before the J.M.F.C. Ahmedpur against the respondent husband. It has alleged in the said complaint that for two months after the marriage, she was treated well. However, thereafter she was subjected to ill treatment on account of non fulfillment of certain unlawful demands from her parents. The parents of the petitioner wife could not fulfill the said demands on account of their poor financial condition. In the year 2007 itself, she was driven out from the house. However, due to intervention of brother of petitioner wife, respondent-husband again started cohabiting with her. Even after the birth of petitioner No.2, she was subjected to ill treatment on account of non fulfillment of demands like golden ring, clothes etc. Even on one occasion, the petitioner wife and her parents were beaten by the respondent-husband and his family members. The petitioner wife has lodged a complaint in the police station, Ahmedpur and accordingly crime No. 134 of 2008 came to be registered against respondent husband and his family members. Even on 25.11.2008, there was settlement between them and accordingly respondent husband

again took her for cohabitation. It was agreed between them that the cases filed against each other be kept as it is. The petitioner wife cohabited with the respondent husband for near about 4 months and during that period, she became pregnant. However on 20.3.2009, she was driven out from the house by respondent husband on account of non fulfillment of unlawful demands. Even thereafter, it has alleged that, respondent-husband has performed second marriage. The petitioner wife further contends that the respondent husband has refused and neglected to maintain her though having sufficient means.

b) The respondent husband has strongly resisted the said application by filing his say. It has contended that the petitioner wife left the matrimonial house on her own and since 2008 there is no cohabitation between them, as such. It has also contended that petitioner No.3 is not his son. It has further contended that though he had brought her for further cohabitation, the petitioner wife was not ready and willing to cohabit with him. It has also contended that he himself and his family members were subjected to beating by the petitioner wife and her parents and therefore, the mother of respondent-husband has filed criminal complaint in the court. It has further stated that the petitioner wife is possessing diploma in

education i.e. D. Ed., she is taking some coaching classes and she is able to maintain herself.

c) Both the parties led their oral as well as documentary evidence in support of their rival contentions. Learned J.M.F.C. Ahmedpur, by judgment and order dated 13.8.2014 in criminal Misc. application No. 16 of 2010 directed the respondent husband to pay monthly maintenance of Rs.4000/- to the petitioner wife and Rs.2000/- each to petitioner Nos.2 and 3. The learned Judge of the trial court has also directed the respondent husband to pay Rs.50,000/- as compensation to the petitioner wife.

d) Being aggrieved by the same, the respondent husband had preferred criminal appeal No. 13 of 2014 before the Sessions Court at Ahmedpur. The learned Additional Sessions Judge, Ahmedpur by its impugned order dated 10.3.2015 partly allowed the appeal and instead of Rs.4000/- p.m. towards maintenance to wife, the respondent husband is ordered to pay Rs.3000/- p.m. to the wife and instead of Rs.2000/- each to petitioner Nos. 2 and 3 children, the husband is directed to pay Rs.1500/- p.m. each from the date of filing appeal. Instead of compensation amount of

Rs.50,000/-, Rs.25,000/- is directed to be paid. Being aggrieved by the same, both the parties have approached this Court by filing criminal writ petition and criminal revision application, as mentioned above.

3. Learned counsel for the petitioners submits that even though the respondent husband is having landed property and his own residential house, learned Additional Sessions Judge has not considered the same and reduced the amount of maintenance as well as compensation. The petitioner wife has a just cause to live separate and claim maintenance. The petitioner wife subjected to ill treatment on account of non fulfillment of certain unlawful demands made by the respondent husband. The trial court has rightly worked out the quantum of maintenance amount and also compensation amount by considering the financial position of the respondent-wife and other relevant factors. The Additional Sessions Judge has reduced the amount of maintenance as well as compensation without any basis and further erroneously awarded the said amount of maintenance from the date of appeal.

4. Learned counsel for the respondent husband submits that the respondent husband has denied the paternity of petitioner No.3 Pratik. Furthermore, the petitioner wife left the house of respondent

husband without any just cause and even though the respondent husband has given bonafide offer to her for further cohabitation, she has refused the same. There is no evidence about income of respondent husband and even though the learned Additional Sessions Judge has reduced the amount of maintenance and compensation, as awarded by the trial court, the same is also excessive and exorbitant. The respondent husband is not able to pay maintenance as he is labour by occupation and he has no other source of income as such.

5. On perusal of record and proceeding and the judgment and order passed by the courts below, I do not find that any interference is required so far as the findings recorded by the courts below about refusal and neglect to maintain the petitioner wife by the respondent husband is concerned. The petitioner wife has succeeded in proving that she was subjected to ill treatment on account of non fulfillment of unlawful demands and thus she has been compelled to stay with her parents. Both the courts below have observed that the petitioner wife has just cause to live separate and claim maintenance.

6. The respondent husband has denied paternity of the petitioner No.3 Pratik. Learned Additional Sessions Judge observed that respondent husband has filed an application for D.N.A. examination.

He subsequently not pressed the said application. Respondent husband has deposed before the trial court that after his wife started residing with her parents, she gave birth to petitioner No.3 Pratik and during that period there were no access between him and his wife. In view of provisions of Section 112 of the Indian Evidence Act, the birth of petitioner No.3 Pratik during continuance of marriage is conclusive proof of his legitimacy. The matrimonial relations between the parties are still subsisting and since petitioner No.3 Pratik born during the period of valid marriage, the same shall be conclusive proof of his legitimacy in view of Section 112 of the Indian Evidence Act. However, the respondent husband can rebut the said conclusive presumption by proving that he had no access at the time when the petitioner wife could have begotten petitioner No.3 Pratik. In absence of any evidence with regard to non access, the petitioner No.3 Pratik is also entitled for maintenance from respondent-husband.

7. So far as the quantum of maintenance is concerned, even though the petitioner wife has deposed in her oral evidence that the respondent husband has 20/25 acres of irrigated land, however, she could not substantiate the same by producing on record any relevant documents. Even the trial court in para 11 of the judgment has observed that the respondent husband has admitted in his cross

examination that he owned and possessed 1 to 1¼ acres of land. It is not disputed that the respondent husband is residing jointly with his parents and family having ancestral landed property and also residing in their own house. Even assuming that the respondent husband is doing labour work, it is clear that he is not required to spend anything for food grains and also for residence. Thus, in the given set of facts and evidence on record, I do not find any fault in the judgment and order passed by the Additional Sessions Judge except that he is directed to pay maintenance from the date of appeal, however, the same shall be from the date of application. Hence, I proceed to pass the following order:-

O R D E R

- I. Criminal writ petition No. 535 of 2015 is hereby partly allowed.
- II. The judgment and order passed by the Additional Sessions Judge, Ahmedpur dated 10.3.2015 in criminal appeal No. 13 of 2014 stands confirmed with the following modification:-

“That the respondent husband shall pay maintenance to

petitioner wife from the date of application”.

III. Rest of the judgment and order passed in criminal appeal No. 13 of 2014 stands confirmed.

IV. With these directions, writ petition as well as criminal revision application are disposed of.

(V. K. JADHAV, J.)

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