

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 403 OF 2007

Kalim S/o Mehtab Maniyar
Age : 35 years, Occu.: Labour,
R/o Nanand, Tq. Ausa, Dist. Latur .. Petitioner

Vs.

- 1] Nurjanhabee W/o Kalim Maniyar
Age : 30 years, Occu.: Household
- 2] Julekha D/o Kalim Maniyar
Age : 9 years, Under guarding of
Respondent no.1
- 3] Jilani S/o Kalim Maniyar,
Age : 7 years, Under guarding
of Respondent no.1

All R/o Selu, Tq. Ausa,
Dist. Latur .. Respondents

Mr. A.R. Barate, Advocate h/f. Mr. M.P. Gude, Advocate for
the petitioner
Mr. M.L. Dharashive, Advocate for the respondents

CORAM : V.K. JADHAV, J.
DATE : 24/08/2016

ORAL JUDGMENT :

Heard.

2. Being aggrieved by the order of maintenance
dated 03/01/2007 passed in Criminal Misc. Application

No.50 of 2006 by the learned Judicial Magistrate First Class, Ausa and the said order being confirmed by the learned Adhoc Additional Sessions Judge, Latur vide order dated 26/2/2007 passed in Criminal Revision No. 13 of 2007, the original opponent – husband has preferred this criminal writ petition.

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

. Respondent no.1 alongwith respondent nos.2 and 3 had filed application under section 125 of the Code of Criminal Procedure for grant of maintenance before the learned Judicial Magistrate First Class, Ausa vide Criminal Misc. Application No. 50 of 2006. It was contended in the application that in the year 2002, the respondent no.1 wife had filed criminal application no. 24 of 2002 for grant of maintenance, however, the said application came to be disposed of in view of the settlement between the parties and accordingly the respondent no.1 – wife started cohabiting with the petitioner – husband. She was treated well for some time and, thereafter, she was again subjected to ill-

treatment on account of non-fulfillment of an unlawful demand of Rs.1 Lakh. She was driven out from the house by the petitioner – husband and since then, she is residing with her parents alongwith respondent nos.2 and 3. It has also been contended in the application that the petitioner – husband has refused and neglected to maintain her, though he is having sufficient means and because of the ill-treatment extended to her, she has just reason to live separate and claim the maintenance.

. The petitioner – husband has strongly resisted the said application by filing his say. He has accepted the relations, however, it has been contended that the respondent no.1 – wife was not cohabiting with him properly and she used to go to her parents house without taking his permission. Furthermore, the respondent no.1 – wife had refused to cohabit with him on the ground that she did not like him. It has also been contended in the say that the petitioner – husband has no sufficient means to pay the maintenance and he earns his livelihood by working on daily wages.

. The parties to the said criminal application lead oral and documentary evidence in support of their rival contentions. The learned Magistrate vide its order dated 03/01/2007 passed in Criminal Misc. Application No.50 of 2006 has partly allowed the application and thereby directed the petitioner – husband to pay Rs.600/- per month to respondent no.1 – wife and Rs.400/- per month each to respondent nos.2 and 3 i.e. the minor children from the date of application.

. Being aggrieved by the same, the petitioner – husband has preferred Criminal Revision No. 13 of 2007 and the learned Adhoc Additional Sessions Judge, Latur vide order dated 26/2/2007, confirmed the order passed by the learned Magistrate and dismissed the Revision. Hence, this writ petition.

4. Learned counsel for the petitioner submits that the lower Court as well as the learned Adhoc Additional Sessions Judge have not considered the financial capacity of the petitioner – husband to pay separate

maintenance. Learned counsel for the petitioner submits that the learned Judge of the trial Court has awarded exorbitant quantum of maintenance and the same is totally against the principles of natural justice. The petitioner – husband has no sufficient means to pay the separate maintenance to the respondent no.1– wife and she has no just reason to live separate and claim the maintenance.

5. Learned counsel for the respondents submits that the order passed by the learned Magistrate and confirmed by the learned Adhoc Additional Sessions Judge, Latur in Revision, calls for no interference. After considering the evidence on record, the learned Judge of the trial Court has correctly recorded the finding that the petitioner – husband has refused and neglected to maintain the respondent no.1 – wife and though the petitioner – husband is having sufficient means, he failed to provide her separate maintenance. Learned counsel for the respondents submits that there is no substance in the writ petition and the writ petition is liable to be dismissed.

6. It appears that both the Courts below recorded concurrent findings on the point that the petitioner – husband has refused and neglected to maintain the respondent no.1 – wife and respondent no.1 is unable to maintain herself and her children. It further appears that the petitioner – husband is having sufficient means to pay separate maintenance. Respondent – wife has produced on record before the trial Court the 7/12 extract, pointing out that the petitioner – husband is having agricultural land and is personally cultivating the same. The learned Judge of the trial Court has specifically observed that the petitioner – husband is earning Rs.5000/- per month from the agricultural land and also by doing the labour work in the agricultural field.

7. In view of the above, I do not find any error in the order passed by the learned trial Court as well as the order passed by the learned Adhoc Additional Sessions Judge in Criminal Revision, while confirming the order passed by the learned Magistrate. No interference in the said orders is required.

There is no merit in the writ petition. Hence, the following order :-

8. Criminal Writ Petition is hereby dismissed.
Rule stands discharged.

[V.K. JADHAV]
JUDGE

arp/