

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

CRIMINAL WRIT PETITION NO. 323 OF 2005

SUBHASH BABURAO BARATE
VERSUS
SHARDA SUBHASH BARATE & ANR

...

Advocate for Petitioner : Mr N V Gaware
APP for Respondent 2 : Mr N T Bhagat
Advocate for Respondents : Mrs S T Pawar h/f Mr A G Talhar

...

CORAM : V.K. JADHAV, J.

Dated: July 28, 2016

...

PER COURT :-

1. Being aggrieved by the Judgment and order passed by the learned I-Adhoc Additional Sessions Judge, Ahmednagar dated 1.1.2005 in Criminal Revision Application No.352/2003, the revision petitioner before the Sessions Court/original respondent in the maintenance proceeding preferred this writ petition.

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

Respondent No.1 filed a Criminal M.A. No.217/2000 before the Judicial Magistrate F.C., Karjat District Ahmednagar for grant of maintenance on the ground that after marriage she was treated well for some time and thereafter subjected to ill-treatment on account of non-fulfillment of demand of Rs.50,000/-. Said demand was

made for the purpose of opening a shop. It has also contended in the said application that she was driven out from her matrimonial house by the respondent-husband.

3. Present petitioner/original respondent appeared in the said proceeding and strongly resisted the said application by filing his say. According to him, respondent no.1-original applicant on her own accord willfully started living with her parents and deserted the company of the petitioner/original respondent-husband. It has also contended that, petitioner-husband never refused to maintain her.

4. Parties lead their oral and documentary evidence in support of their rival contentions. The learned Judicial Magistrate First class, Karjat, District Ahmednagar, by its judgment and order dated 24.11.2013 allowed the application and thereby directed the present petitioner to pay maintenance @ Rs.1,500/- p.m. from the date of application alongwith costs of Rs.1,000/-. Being aggrieved by the same, the present petitioner preferred Criminal Revision Application before the Sessions Court. The learned I-Adhoc Additional Sessions Judge, Ahmednagar, by its impugned Judgment and order dated 1.1.2005 partly allowed the revision application and thereby modified the order passed

by the learned Magistrate and directed the present petitioner to pay maintenance @ Rs.1,200/- p.m. from the date of application. Hence, this writ petition.

5. The learned counsel for the petitioner submits that, respondent/wife has failed to prove the refusal and neglect on the part of the petitioner-husband. Learned counsel submits that, Respondent-wife has no just cause to live separately and demand maintenance. She has left the company of her husband without any cause and, therefore, she is not entitled to claim any maintenance. Learned counsel submits that the Magistrate as well as the learned I-Adhoc Additional Sessions Judge, Ahmednagar has not considered the same and erroneously granted maintenance to the respondent-wife. Learned counsel in order to substantiate his contentions places reliance on a Judgment in a case of **Bhagwan Raoji Dale Vs. Sushma alias Nanda Bhagwan Dale** reported in **1999 Bom.C.R.(Cri) 851**.

6. Learned counsel for respondent/wife submits that, both the courts below have considered the evidence on record and accordingly granted maintenance to the Respondent-wife. So far as quantum of maintenance is concerned, the learned I-Adhoc Additional Sessions Judge,

Ahmednagar has modified the order and accordingly granted maintenance @ Rs.1200/- p.m. in the year 2005. The learned counsel submits that, considering the present cost of living and the source of earning of petitioner, respondent-wife now intends to file an application u/s 127 of the Code of Criminal Procedure for enhancement of the amount of maintenance.

6. I have carefully gone through the Judgment and order passed by the learned Magistrate. The respondent-wife has examined herself on oath and also examined one more witness. The 7/12 extract and copy of Namuna No.8A pertaining to the landed property of the non-applicant and his parents placed on record and they are marked as Exh.39 to 59. The respondent-wife has deposed before the Trial Court that she was treated well for initial 4 months after marriage and thereafter subjected to ill-treatment on various counts. There is no effective cross examination on this point. It is the contention of the respondent wife that she was also subjected to ill-treatment on the count that she should permit her husband to perform second marriage. It is a matter of record that the petitioner-husband has not provided anything towards maintenance of respondent-wife. Even though, petitioner husband has given offer to maintain

respondent-wife, no attempt has been made in this regard during the pendency of the proceedings before the Trial Court. The learned Judge of the Trial Court has therefore rightly held that said offer is not a bonafide offer. There is no evidence to show that respondent-wife on her own accord left the company of her husband and without any just cause living separately and claiming the maintenance. On the other hand, evidence on record unmistakably point out that respondent-wife had just cause to live separate and claim maintenance.

7. So far as sufficient means to pay separate maintenance by the petitioner-husband is concerned, the documents at Exh.39 to 59 placed on record clearly demonstrate that, the petitioner-husband and his family owned and possessed agricultural land at village Pedgaon and there are entries in the 7/12 extract that sugar cane was being supplied to the sugar factory of that area. Furthermore, petitioner-husband has also admitted in his cross-examination that he himself is a share holder of the sugar factory. Considering the documentary evidence placed on record, courts below have rightly granted the maintenance to the tune of Rs.1,200/- p.m. I do not find any fault in the judgment and order passed by the Trial Court as well as by the I-Adhoc

Additional Sessions Judge, Ahmednagar. No interference is required. There is no substance in the writ petition. Hence, following order is passed.

O R D E R

- I. Writ Petition is hereby dismissed.
- II. In the circumstances, there shall be no order as to costs.

(V.K. JADHAV, J.)

...

aaa/-