

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

901 CRIMINAL WRIT PETITION NO. 668 OF 2015

HANUMAN BAPURAO DHUMAL

VERSUS

RANJANA HANUMAN DHUMAL

...

Advocate for Petitioner : Mr. Sudarshan J Salunke

Advocate for Respondent : Mr. P. B. Patil

CORAM : V. K. JADHAV, J.

DATE : 12th January, 2016

PER COURT :

1. Heard finally with the consent of the parties at admission stage.

2. The petitioner, by way of this writ petition, is challenging the order of grant of maintenance by the Judicial Magistrate, First Class, Jintur dated 07.07.2012 in Misc. Criminal Application No. 54/2007 and confirmed by the Sessions Judge, Parbhani by order dated 02.04.2013 in Criminal Revision Application No. 76/2012.

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

- i. Respondent wife has filed Criminal M.A. No.54 of 2007 under section 125 of the Criminal Procedure Code for

grant of maintenance against the petitioner husband. Her marriage was solemnized with the petitioner three years prior to the filing of the said application. Initially, she was treated nicely for a year after marriage and thereafter, subjected to ill-treatment on account non fulfillment of demand of certain amount. She was also being harassed on the ground that she was not fair looking. The petitioner husband was insisting her for divorce. Finally, the petitioner had driven her out of the matrimonial home. Accordingly the respondent wife has filed an application for grant of maintenance as aforesaid.

ii. Respondent wife states in her application that she is unable to maintain herself and the petitioner husband has refused and neglected to maintain her. The respondent wife also contends that though the petitioner is having sufficient means of income, refused to maintain her. Accordingly she has claimed maintenance of Rs.2000/- per month.

iii. The petitioner husband has resisted the application for maintenance. He has admitted his marriage with the respondent wife, however, he has denied the ill-

treatment being extended to the respondent wife. It is the case of the respondent husband that after marriage, the respondent wife stayed with him only for 8 days. She was not willing to cohabit with him and thereafter, on her own, she left the matrimonial home alongwith gold ornaments and cash of Rs.5000/-. He tried to bring her back, however she did not come for further cohabitation. He is not having sufficient income to pay maintenance to the respondent wife.

iv. Learned Judicial Magistrate, First Class, vide order dated 07.07.2012, granted maintenance @ Rs.1200/- per month as against Rs.2000/-. Learned Sessions Judge, Parbhani, in Misc. Criminal Revision No.76/2012 confirmed the said order. Hence this writ petition.

4. The learned counsel for the petitioner submits that the petitioner husband has no sufficient means to pay separate maintenance and he is also not an able bodied person. Learned counsel submits that the petitioner husband is suffering from certain deformity and as per medical advice, he is required to avoid heavy work. Learned counsel has placed reliance on the medical certificate dated 05.05.2015 issued by the Medical

Officer. The learned counsel, however, admits that this medical certificate is produced for the first time before this Court. The learned counsel further submits that the respondent wife, on her own accord, left the house of the petitioner and she is residing separately without any just cause and therefore, she is not entitled for any separate maintenance. The learned counsel further submits that the Magistrate has granted maintenance from the date of application without recording any reason and therefore, the matter is fit to be remanded on this count alone. Learned counsel has placed reliance on the judgment of Andhra Pradesh High Court in the case of **Chikkamma @ Parvathamma and another Vs. Yerriswamy and another**, reported in **2004 ALL MR (Cri) Journal 97** and judgment of the Apex Court in the case of **Jaiminioben Hirenbbhai Vyas and another Vs. Hirenbbhai Rameshchandra Vyas and another**, reported in **2015 ALL MR (Cri) 376(S.C.)**.

5. Learned counsel for the respondent wife submits that the order passed by the learned Magistrate is proper and correct and no interference is called for. Learned further submits that the very meager amount is granted as maintenance and the petitioner husband, being able bodied

person, can pay the said maintenance amount to the respondent wife. Learned counsel further submits that the medical certificate is not produced before the trial Court and it is not clear that the petitioner husband is suffering from the said deformity from the beginning or he has suffered the said deformity in the year 2015 alone. The learned counsel thus submits that if at all the said deformity has occurred in the year 2015, the petitioner husband can file an application under section 127 of the Criminal Procedure Code but the medical certificate, produced for the first time, cannot be considered at this stage. The learned counsel further submits that the petitioner husband, in response to the notice, appeared before the Trial Court in the year 2008 and filed his say to the application in the year 2009. The respondent wife is not responsible for the delay and therefore she is not at fault for the maintenance granted in the year 2012 from the date of application. The respondent wife has no independent source of income and therefore is unable to maintain herself.

6. I have carefully gone through oral and documentary evidence on record. There is no reason to disbelieve the evidence of the respondent wife. She has categorically

deposed that she was subjected to ill-treatment on account of non fulfillment of demand of money and finally she was driven out of matrimonial home by the petitioner husband. It also appears from her evidence that thereafter the petitioner husband neglected to maintain her.

7. It is not disputed that the respondent wife has no independent source of income and she is unable to maintain herself. There is agricultural land and the same is shown to have been possessed by the petitioner's brother. However, the petitioner husband has to maintain his wife. The learned Magistrate, considering the fact that the petitioner husband is doing a labour work, has granted meager amount to the respondent wife as maintenance.

8. So far as medical certificate produced on record before this Court is concerned, it is not clear whether the petitioner husband is suffering from the said deformity right from the beginning. In case the petitioner is really suffering such deformity and is he not able to do any hard work, then he may file application under Section 127 of the Criminal Procedure Code. However, obviously for the first time this medical

certificate cannot be considered and no purpose would be served by remanding the matter on such a vague certificate.

9. The learned counsel for the petitioner husband vehemently submits that the application for maintenance is filed in the year 2007 and the maintenance is granted in the year 2012 from the date of application. Learned Magistrate ought to have recorded reason for granting maintenance from the date of application. The learned counsel further submits that the matter is fit to be remanded on this count. The learned counsel for the respondent wife has rightly pointed out that the petitioner husband has filed his say in the year 2009 to the maintenance application. He appeared in the said proceedings belatedly in the year 2008 though the application was filed in the year 2007.

10. It has come in the evidence that the respondent wife is unable to maintain herself and she has no independent source of income. The learned Magistrate has also recorded the same. In view of this, the maintenance granted from the date of application by the Magistrate is justified. Thus, the impugned order needs no

interference. There is no substance in the writ petition and the same is liable to be dismissed. Hence the following order:

O R D E R

- i. Writ petition is dismissed.
- ii. No order as to costs.
- iii. The respondent wife is permitted to withdraw the amount of Rs.56,000/- (Rupees fifty six thousand) deposited by the petitioner husband before this Court.
- iv. Writ petition is disposed of accordingly.

(V. K. JADHAV, J.)

JPC