

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 494 OF 2003
WITH
CRIMINAL APPLICATION NO. 3024 OF 2016

Shaikh Irfan Shaikh Usman,
Age 32 years, Occ. Service
R/o Jamadar Wada, Savada,
Tq. Raver, District Jalgaon. ..Petitioner

Versus

Ziaunnisabi Shaikh Irfan
Age 25 years, Occ. Service,
R/o Master Colony, Mehrun,
Tq. and Dist. Jalgaon. ..Respondent

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Advocate for Petitioner : Shri Shaikh Javed R.
Advocate for Respondent : Shri Gaikwad Pramod h/f Shri Talhar A.G.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 13, 2016

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ORAL JUDGMENT:-

1. The petitioner is aggrieved by the judgment and order dated 12.5.2003, by which, the petitioner was directed to pay maintenance allowance at the rate of Rs.1200/- per month. The petitioner is aggrieved by the order dated 10.11.2003 passed by the learned Sessions Judge, by which the Criminal Revision Application filed by the petitioner as well as the respondent have been dismissed.

2. This petition was admitted on 22.1.2004 and the petitioner was

directed to deposit 50% of the arrears of maintenance. Interim relief was not granted to the petitioner.

3. Learned Advocate for the petitioner strenuously submits that the concurrent findings of both the Courts below are unsustainable. There was no evidence to indicate that the petitioner had ill-treated the respondent / wife and on account of his ill-treatment, she was forced to leave the marital home.

4. It is further submitted that the respondent put forth a case in her application for maintenance under Section 125 of the Criminal Procedure Code, that after her marriage on 5.5.1994, the petitioner insisted that she should complete her D.Ed. and only thereafter, should return to the marital home. She completed her D.Ed. in 1997 and claimed to have returned to the marital home only to be ill-treated and driven out. It is submitted that there was neither any ill-treatment by the petitioner, nor did the respondent return to the marital home.

5. It is further submitted that it was the petitioner who went to the maternal home of the respondent on 15.11.1998 in order to bring her back. Conditions were imposed that the petitioner should not ill-treat her and he should make arrangements for living separately as husband and wife in a separate accommodation. Because of this adamant stand taken by the respondent, the petitioner was compelled to divorce her

on 27.2.2000.

6. Learned Advocate for the petitioner has taken me through the entire evidence with the request that the oral and documentary evidence should be re-appreciated by this Court in the light of the fact that the testimony of one Shri Shaikh Shafi Shaikh Tahe, who was witness No.2 for the petitioner has been discarded as the petitioner was the son-in-law of the friend of the said witness. He had also earlier deposed in the Talaq proceedings in support of the petitioner and the petitioner had in fact uttered the word “Talaq” in his presence. Grievance is that the testimony of Shri Shaikh Shafi should not have been discarded.

7. Reliance has been placed upon the following judgments:-

- i. Deb Narayan Halder Vs. Smt. Anushree Halder [AIR 2003 SC 3174],
- ii. Gangabhavani Vs. Rayapati Venkat Reddy [AIR 2013 SC 3681], and
- iii. Shamim Ara Vs. State of U.P. and another [AIR 2002 SC 3551].

8. The petitioner has then relied upon the judgment and order dated 14.7.2005, delivered by the learned Judicial Magistrate (F.C.), vide which, the petitioner was acquitted of the offence punishable under Section 498-A read with Section 38 of the Indian Penal Code. It is, therefore, submitted that as the said judgment dated 14.7.2005 has not been challenged by the respondent, it has attained finality and hence

cruelty, demand of dowry and ill-treatment has not been proved against the petitioner.

9. Learned Advocate for the respondent has supported the impugned judgments, by contending that the scope of interference of this Court in its revisional jurisdiction is extremely narrow. Oral and documentary evidence considered by the trial Court and revisited by the revisional Court cannot be gone into threadbare. Merely because a second view is possible, this Court cannot cause any interference in the concurrent judgments of the Courts below.

10. It is further submitted that the petitioner is a Teacher by profession and draws a large salary. Maintenance of Rs.1,200/- per month, as has been granted by the learned trial Court on 12.5.2013, is a paltry amount. This Court has not granted interim relief to the petitioner.

11. I have considered the submissions of the learned Advocates.

12. The thrust of the petitioner's case is that an independent witness, namely, Shaikh Shafi has deposed in the trial Court and the same has been discarded for no reason. I have gone through the testimony of Shaikh Shafi . The petitioner is the son-in-law of Shri Shafi's friend and the respondent is the daughter of his another friend.

However, the cross-examination reveals that Shaikh Shafi was called upon to lead evidence by the petitioner. Though this may not have any bearing on the matter, it cannot be ignored that Shaikh Shafi had agreed to be the person before whom the petitioner uttered the word “Talaq” and he was, therefore, a witness to support the petitioner so as to prove that the word “Talaq” was uttered in his presence and he wrote it down on a paper. The trial Court as well as the revisional Court have concluded that the role played by Shaikh Shafi in supporting the petitioner for seeking Talaq indicates that he had led evidence so as to absolve the petitioner from payment of maintenance amount to the respondent.

13. Though with the able assistance of the learned Advocates, I have considered the evidence on record, the scope of interference in the revisional jurisdiction has been well settled by the Honourable Apex Court in the cases of Shalini Sham Shetty Vs. Rajendra Shankar Patil [2010 (8) SCC 329] and Radhey Shyam Vs. Chhabi Nath [(2015) 5 SCC 523]. The entire oral and documentary evidence is not to be gone into threadbare and re-appreciated in revisional jurisdiction. Merely because a second view could be taken cannot be a ground for causing interference in the findings on facts arrived at by the trial Court and more so, when the said findings have already been gone into by the learned Sessions Judge.

14. In the cited judgment, in the matter of Deb Narayan (supra), the issue was with regard to the ill-treatment and the demand of dowry by the husband. The Honourable Apex Court concluded that when the parties had happily lived and cohabited for more than 11 years, the alleged torture for dowry after a happy married life of 11 years is unbelievable. In this case, the allegation by the petitioner that the respondent deserted him, was not established.

15. In the Gangabhavani (supra), the Honourable Apex Court concluded that an interested witness would be one, who desires to derive some benefit out of the litigation. In the instant case, Shaikh Shafi had played the role of a witness and as a person before whom the petitioner had uttered the word “Talaq” and had written down the said word. He was therefore, instrumental in supporting the petitioner for obtaining Talaq. In this backdrop, the trial Court as well as the Sessions Court concluded that he was interested in supporting the petitioner so as to absolve him of the responsibility to pay the maintenance amount.

16. In so far as the judgment of the Honourable Apex Court in the case of Shamim Ara (supra) is concerned, the same was with regard to whether the marriage between the parties stood dissolved as on the date of the written statement. The manner of obtaining divorce by using the term “Talaq” was considered by the Court.

17. In my view, therefore, the above referred judgments would not be of any assistance to the petitioner.

18. Considering the above, I do not find that the impugned judgments could be termed as being perverse or erroneous so as to cause grave injustice to the petitioner.

19. The petition is, therefore, dismissed. Rule is discharged.

20. Pending criminal application stand disposed off.

(RAVINDRA V. GHUGE, J.)

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