

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

CRIMINAL WRIT PETITION NO. 556 OF 2007

Shankar S/o Subhash Rakhunde,
Age. 27 years, Occu. Labour,
R/o. Guru Pimpri, Tq. Ghansawangi,
District Jalna.

...PETITIONER
(Ori. Non Applicant)

Versus

Smt. Archana W/o Shankar Rakhunde,
Age. 25 years, Occu. Household,
R/o. Guru Pimpri, at present Takarwan,
Tq. and Dist. Jalna.

...RESPONDENT
(Ori. Applicant)

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Advocate for Petitioner : Mr B R Sontakke Patil
Advocate for Respondent : Mr R M Deshmukh

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CORAM : V.K. JADHAV, J.
Dated: November 23, 2016

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ORAL JUDGMENT :-

1. Being aggrieved by the judgment and order passed by the 4th Jt. Judicial Magistrate First Class, Jalna, in M.A. No.235/2003 and the judgment and order passed by the 2nd Adhoc Additional Sessions Judge, Jalna dated 5.4.2006 in criminal revision application no. 138/2005 confirming thereby the order of granting maintenance passed by the Magistrate, the original non applicant-husband preferred this criminal writ petition.

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

The respondent is legally wedded wife of petitioner and their marriage relations are still subsisting. Respondent-wife has filed Cri. M.A. No.235/2003 alleging therein that after marriage she was subjected to ill-treatment on account of non-fulfillment of the unlawful demand and therefore she was constrained to reside with her parents. Petitioner husband though having sufficient means refused and neglected to maintain her. Thus she has filed Cri. M.A. No.235/2003 claiming maintenance @ Rs.1,500/- p.m.

The petitioner husband has strongly resisted the said application by filing his say at Exh.9. It has contended that respondent wife has no just cause to reside separately and claim maintenance. It has also contended that even though petitioner husband has given bonafide offer for cohabitation to the respondent wife, she has failed to come for further cohabitation. Petitioner husband is having no sufficient means to pay separate maintenance as claimed.

3. Both of the parties led their oral and documentary evidence in support of their rival contentions. Learned Magistrate by impugned order dated 9.5.2005 partly allowed the application and thereby directed the petitioner husband to pay Rs.1,200/- p.m. to the respondent wife towards maintenance from the date of application alongwith costs of Rs.500/-. The learned Adhoc Additional Sessions Judge, by impugned judgment and order dated 5.4.2006 in criminal revision application no.138/2005 confirmed the said order. Hence, this writ petition.

4. Learned counsel for the petitioner submits that respondent wife has no just cause to live separately and claim maintenance. Learned counsel submits that after marriage she hardly resided with the petitioner husband for three months and thereafter started residing with her parents with the contention that she dislikes the petitioner husband. Learned counsel submits that respondent-wife has failed to prove the just cause though burden of proving the same is on her and even then courts below granted maintenance to her. Learned

counsel submits that the petitioner husband is earning Rs.60/- per day by doing labour work and he does not have any agricultural land or Dhaba as alleged by the respondent wife. Learned counsel submits that both the courts below have failed to find out the real income of petitioner husband and in absence of any finding to that effect granted maintenance @ Rs.1,200/- p.m. to the respondent wife. Learned counsel submits that, thus both the orders impugned in this writ petition are liable to be quashed and set aside.

5. Learned counsel for the petitioner in order to substantiate his submissions places his reliance on the following cases :-

1. Minati Binati Nayak Vs. Gouranga Charan Nayak reported in 1995, Cri. L.J. 3569.
2. A.S.N. Nair Vs. Sulochana reported in 1981, Cri. L.J. 1898.
3. Shabuktabano Ayyaz Inamdar & Another Vs. the State of Maharashtra & Another reported in 2013, All MR (Cri.) 3893.
4. Suresh Prasad Vs. Urmila Devi & Others reported in 2013, ALL MR (Cri.) J. 13.
5. Sou. Geetabai Motilal Pardeshi & Others Vs. Motilal Babulal Pardeshi & Another, reported in 2015, ALL MR (Cri.) 2174.

6. Learned counsel for respondent wife submits that after marriage the petitioner husband started giving ill-treatment to respondent wife on account of non payment of remaining amount of dowry of Rs.5,000/-. She was subjected to mental as well as physical torture for non fulfillment of the said demand. Even the petitioner husband used to abuse her, beat her and keep her under starvation. On 8.3.2003 in the evening at about 7.00 p.m. petitioner husband driven her out of the house by subjecting her to severe beating. Since then she is residing at her parents house. Learned counsel submits that the petitioner husband though having sufficient means refused and neglected to maintain her. Petitioner husband himself has suggested to respondent wife about his income from the agricultural land, as well as income by running Dhaba. Learned counsel submits that respondent wife had just cause to live separate and demand maintenance. Even the petitioner husband has gone to the extent by suggesting to the respondent wife that the petitioner husband has performed second marriage. Learned counsel submits that the petitioner husband has issued

a legal notice which is in the form of bonafide offer, however, in the said notice the petitioner husband has directed the respondent wife to come with the ornaments and cash of Rs.5,000/- and if she fails to come with that, said notice shall be treated as notice for divorce. Learned counsel submits that both the courts below have therefore rightly passed order of maintenance in favour of the respondent wife. No interference is required. There is no substance in this writ petition. Writ petition is thus liable to be dismissed.

7. On perusal of the impugned judgment and order passed by the courts below, I find that both the courts below have concurrently recorded finding that respondent wife has just cause to live separate and demand maintenance. Learned counsel for the petitioner has vehemently submitted that respondent wife has admitted in her cross examination that after marriage she reside with petitioner-husband for four months. However, this particular admission in cross examination is in context that on non-fulfillment of the

said demand petitioner husband had driven her out from the house and thus she has admitted in her cross examination that of initial period of four months after marriage she stayed in the house of petitioner husband. On careful perusal of the deposition of respondent wife it appears that she has given all the details of ill-treatments at the hands of petitioner husband on account of non fulfillment of unlawful demand. Further, she has filed a complaint in the police station and accordingly, a crime was registered against the petitioner husband for having committed an offence punishable u/s 498-A of the IPC. Though the complaint was belatedly filed and petitioner husband came to be acquitted in the said case, fact remains that respondent wife had approached the police station with certain allegations. Petitioner husband has not come with any positive case or evidence to substantiate his contention that respondent wife on her own left his company and started residing with her parents. On the other hand, on perusal of the legal notice, it appears that petitioner husband wanted to get rid off her by suggesting in the legal notice in case if respondent wife fails to bring back

the gold ornaments, cash of Rs.5,000/- said notice shall be treated as notice for divorce. Said legal notice is placed on record and marked as Exh.20 before the court below.

8. It is a matter of record that petitioner husband has not paid any amount to the respondent wife towards maintenance. It was his duty to maintain wife though she was residing with her parents. On the other hand, petitioner husband had suggested the wife that he had performed second marriage. Thus, the learned Magistrate has rightly recorded the finding that respondent wife has just cause to live separate and demand the maintenance. The learned Adhoc Additional Sessions Judge has rightly dismissed the revision by confirming the order passed by the Magistrate.

9. Respondent wife is not able to maintain herself. She has no independent source of income. So far as quantum of maintenance is concerned, the learned counsel for the petitioner-husband submits that the

respondent wife failed to prove the income source of the petitioner husband. It is not disputed that petitioner-husband is residing in his ancestral house and his father owned and possessed ancestral agricultural land. In view of this, the petitioner-husband need not spend on his residence as well as food grains. Furthermore, petitioner-husband has suggested to the wife during the course of cross examination that petitioner-husband is having 15 acres of irrigated land, he also runs a Dhaba. Thus, the courts below has carried out a rough calculation of his income and accordingly granted maintenance @ Rs.1,200/- p.m. by considering the standard of living and economical status of both the parties. I do not find any substance in the writ petition. Hence, order.

ORDER

1. Criminal Writ Petition is hereby dismissed.
2. Rule discharged.

(V.K. JADHAV, J.)

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aaa/-