

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

CRIMINAL WRIT PETITION NO. 9 OF 2004

Smt.Jamunabai w/o Ashok Pardeshi,
Age : 33 years, Occupation : Household,
R/o Wade, Tq.Bhadgaon,
District Jalgaon.

...PETITIONER

-VERSUS-

Ashok Kashinath Pardeshi,
Age : 42 years, Occupation : Service,
R/o Kongaon, Behind Mutton Shop,
Tq.Kalyan, District Thane.

...RESPONDENT

...
Advocate for Petitioner : Shri Paresh B. Patil.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 30th June, 2016

Oral Judgment :

1 Leave to correct the date in prayer clause (C). Correction be carried out forthwith.

2 The Petitioner is aggrieved by the judgment and order dated 02.03.2000 delivered by the learned Magistrate by which Criminal Miscellaneous Application No.117/1997 filed by the Petitioner seeking maintenance allowance from the Respondent under Section 125 of the

Code of Criminal Procedure, has been rejected to the extent of her claim and has been partly allowed to the extent of the claim for her son.

3 The Petitioner is also aggrieved by the judgment of the learned Additional Sessions Judge dated 01.07.2003 by which her Criminal Revision Application No.115/2000 has been rejected.

4 Shri Patil, learned Advocate for the Petitioner, has strenuously criticized the impugned judgments. The contention is that it was proved before the learned Magistrate that the Petitioner/ wife has no source of income and yet her claim has been rejected. She also proved that the Respondent/ husband did not take steps to take her back to her marital home and has not filed any proceeding under Section 9 of the Hindu Marriage Act praying for restitution of conjugal rights. He submits that it is proved that he is working as a driver on the truck and earns approximately Rs.5000/- per month.

5 Reliance is placed on the judgment of the Honourable Supreme Court in the matter of *Shamima Farooqui vs. Shahid Khan*, **2015 (5) SCC 705** and the judgment of this Court in the matter of *Suresh Kishan Puri vs. Shobhabai w/o Kishan Puri*, **2015 ALL MR (Cri) 2815**.

6 This petition was admitted on 29.08.2005. Interim relief was not granted to the Petitioner.

7 None appeared for the Respondent on 07.04.2016, 06.06.2016, 16.06.2016 and even today.

8 I have considered the submissions of the learned Advocate for the Petitioner.

9 The Trial Court, upon considering the oral and documentary evidence, has specifically come to the conclusion that the Petitioner had placed a condition on the Respondent/ husband that if he does not reside with her in an independent separate accommodation, she would not live with him and if he is not in a position to accept her proposal to shift to village Wade, she may seek divorce. It was in this backdrop that the Petitioner walked out of her marital home.

10 It is also proved that the Petitioner has shifted to village Wade which is her paternal home. However, even in that village, she is not residing with her parents, but living independently with his son outside the village in a hut. With these conclusions, the learned Trial Court relied upon Section 125(4) of the Code of Criminal Procedure and refused to

grant maintenance to the Petitioner. The maintenance was granted to her son.

11 Having considered the findings on facts by the Trial Court and having considered the impugned judgments in the light of the submissions of the Petitioner, I do not find that the view taken by the Honourable Apex Court in the *Shamima Farooqui judgment (supra)* would be of any assistance to her. The issue in *Shamima Farooqui (supra)* was altogether different. Similarly, the view taken by this Court in the *Suresh Kishan judgment (supra)* would not assist the Petitioner as it has been recorded by this Court in the said judgment (supra) that the Respondent/ wife was forced to part with the company of the husband on account of intense physical and mental ill treatment. Hence, maintenance was granted.

12 As such, I do not find that the impugned judgments could be termed as being perverse or erroneous. This Criminal Writ Petition being devoid of merit is, therefore, dismissed.

13 Rule is discharged.