

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 516 OF 2005

1. Ashabai W/o Vithal Mhaske,
Age 35 years, Occu. Household,

2. Pramila D/o Vithal Mhaske,
Age. 16 years, Occu. Education,

3. Manisha D/o Vithal Mhaske,
Age. 14 years, Occu. Education,

(Petitioner No. 2 and 3 are deleted as per
the leave granted on 16.11.2016)

All R/o. Ghatsiras, Tq. Pathardi,
Dist. Ahmednagar.

...Petitioners.

Versus

Vithal S/o Mamtaji Mhaske,
Age. 40 years, Occu. Agril,
R/o. Savargaon (Mayamba),
Tq. Ashti, Dist. Beed.

...Respondent.

.....
Advocate for Petitioners: Mr. Prashant R. Nangre
Advocate for Respondent : Mr. M.R. Sonawane
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CORAM : V. K. JADHAV, J.
DATED : 16th NOVEMBER, 2016

ORAL JUDGMENT:-

1. Learned counsel for the petitioners, on instructions, seeks leave to delete the names of petitioner Nos. 2 and 3. Leave granted. Deletion be carried out forthwith.

2. Being aggrieved by the judgment and order passed by the Judicial Magistrate, First Class, Pathardi, dated 17.5.2003 in Criminal M.A. No. 94 of 2002 and the judgment and order passed by 2nd Adhoc Additional Sessions Judge, Ahmednagar, dated 14.7.2005, passed in Criminal Revision Application No. 173 of 2003, confirming thereby the order passed by learned J.M.F.C., as aforesaid, original applicant-wife preferred this writ petition.

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

The petitioner is legally wedded wife of respondent and some time after the marriage, the petitioner was subjected to ill-treatment on the ground that the petitioner had not conceived male child. Further, she was also subjected to ill-treatment on account of non fulfillment of unlawful demand of Rs.10,000/-. Even she was driven out from the house by respondent-husband on her failure to satisfy said demand. Since then, the petitioner wife is residing with her parents. The petitioner therefore, constrained to file criminal Misc. application No. 31 of 1994 before the J.M.F.C. Pathardi, claiming maintenance for herself and her two minor daughters. Learned Magistrate, by judgment and order dated 10.1.1997, partly allowed the said application No. 31 of 1994 and thereby directed respondent husband to pay maintenance to the daughters at the rate of Rs.200/- p.m. each. However, in Criminal

Revision application No. 21 of 1997 preferred by the petitioner wife, the Additional Sessions Judge, Ahmednagar granted maintenance to her at the rate of Rs.300/- p.m. In the year 1999, the dispute was amicably settled, by effecting compromise in criminal application No. 264 of 1999, whereby the present petitioner had accepted Rs.20,000/- as lump sum amount towards permanent alimony. It was also agreed in the said compromise that the respondent husband will maintain his daughters. However, respondent husband has not followed the terms of compromise and the petitioner, alongwith her daughters, constrained to file criminal application No. 94 of 2002 before the J.M.F.C. Pathardi for grant of maintenance. By the impugned order dated 17.5.2003, the learned J.M.F.C. Pathardi, partly allowed the application and directed the respondent husband to pay maintenance of Rs.300/- p.m. to each of the daughters and rejected application of the petitioner wife. Being aggrieved by the same, petitioner wife has preferred Criminal Revision application No. 208 of 2003. However, learned 2nd Adhoc Additional Sessions Judge, Ahmednagar, by impugned order dated 14.7.2005, has dismissed aforesaid criminal revision application and confirmed the order passed by the Magistrate. Hence, this criminal writ petition.

4. Learned counsel for the petitioner wife submits that respondent husband has not followed the terms of compromise effected between the parties in criminal application No. 264 of 1999 and he even has refused to maintain his daughters. Thus, the petitioner wife alongwith

her daughters constrained to file criminal application No. 94 of 2002 before J.M.F.C. Pathardi for grant of maintenance. Learned Magistrate has entertained the said application for grant of maintenance on the ground that the respondent husband has failed to abide the terms and conditions of said compromise. In the light of same, learned Magistrate ought to have granted maintenance to the petitioner wife also.

5. Learned counsel for the respondent husband submits that the petitioner wife has accepted Rs.20,000/- as lump-sum maintenance amount and she started residing separately with her parents by relinquishing her right of future maintenance, voluntarily. Learned counsel submits that the Magistrate has therefore, rightly rejected the application of the petitioner for grant of maintenance and the learned Additional Sessions Judge has confirmed the order passed by the Magistrate. No interference is required in the impugned orders.

6. On careful perusal of the compromise effected between the parties, it appears that the petitioner wife has accepted Rs.20,000/- as lump-sum maintenance already paid to her and further relinquished her right towards future maintenance. Admittedly, said compromise is effected on 9.10.1999 and since then the petitioner wife started residing separately. However, in the year 2002, petitioner wife has filed criminal application No. 94 of 2002 for grant of maintenance mainly on the ground that respondent husband, though agreed in the said

compromise, failed to maintain his daughters. In view of same, learned Magistrate in para 34 and 35 of his judgment, has rightly observed that the petitioner wife has already received maintenance amount and since she has relinquished her right of future maintenance, she is not entitled to claim maintenance amount from the respondent-husband. Learned Magistrate, after going through the contents of compromise has come to the proper conclusion. It further appears from the contents of said compromise that the petitioner wife decided to live separately by consent after accepting Rs.20,000/- as lump-sum amount towards permanent alimony.

7. In view of above discussion, the petitioner wife would not be having any right to claim maintenance amount from the husband in the subsequent proceedings. I do not find any substance in the writ petition. No interference is required in the orders passed by the Magistrate and confirmed by the Additional Sessions Judge. The writ petition is hereby dismissed. Rule discharged. Writ petition is disposed of.

(V. K. JADHAV, J.)

rlj/