

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

CRIMINAL WRIT PETITION NO.1081 OF 2016

Smt. Prayagbai w/o Kishanrao
Kalyankar, Age 25 years,
Occu. Household,
R/o at present Sarsam,
Taluka Hadgaon,
District Nanded

.. Applicant

Versus

1. Kishanrao s/o Shankarrao
Kalyankar, Age 28 years,
Occupation Business,
R/o Bhokar (Chikhalwadi),
Taluka Bhokar,
District Nanded

2. The State of Maharashtra

.. Respondents

Mr Prashant Malode, Advocate h/f Mrs S.G. Chincholkar, Advocate for
applicant

Mr A.D. Hande, Advocate h/f Mr A.M. Gaikwad, Advocate for
respondent No.1

Mr N.T. Bhagat, A.P.P. for respondent No.2-State

CORAM : N.W. SAMBRE, J.

DATE : 20th August 2016

ORAL JUDGMENT

1. Learned Counsel for the applicant makes a motion for
converting the present application to be one under Article 227, as the
second revision under Section 397 of Cr.P.C. is not maintainable.

2. Permission granted. The revision be converted into Criminal
Writ Petition forthwith.

3. Heard Mr Malode, learned Counsel for the petitioners and Mr Gaikwad, learned Counsel for respondent No.1.

4. It is claimed that the learned Judicial Magistrate, First Class, Himayatnagar vide order dated 8th March 2001, awarded maintenance of Rs.500/- to the petitioner, which order was reversed in a revision by 2nd Ad hoc Additional Sessions Judge, Nanded vide judgment and order dated 6th October 2003. According to him, the petitioner is entitled for maintenance on the ground that the source of income being an Anganwadi Sevika is not a permanent one and the fact remains that the respondent No.1 has neglected to maintain the petitioner. According to him, in the backdrop of above, the order of Magistrate is required to be restored granting maintenance of Rs.500/-. He would then rely upon the judgment of Apex Court in the matter of **RAMAVTAR SHARMA Vs. SANTOSH**, reported in **2001 CRI. L.J. 2650** so as to submit that just because the petitioner was working as Anganwadi Sevika, the claim for maintenance under Section 125 of Cr.P.C. cannot be denied. In addition, he has also relied upon the judgment of the Bombay High Court, in the matter of **Smt. Asha Anil Deshmukh Vs. Anil Mahadeorao Deshmukh & anr.**, reported in **1996 CRI. L.J. 2751**, so as to submit that just because the wife is gainfully employed that cannot ipso facto deny the claim under Section 125 of Cr.P.C.

5. Mr Gaikwad, learned Counsel for respondent No.1 would support the order passed by the 2nd Ad hoc Additional Sessions Judge, Nanded dismissing the claim for maintenance. According to him, the

maintenance, as was ordered to be paid to children is not objected to by present respondent No.1, however, according to him, learned Ad hoc Additional Sessions Judge has noted that the present petitioner is gainfully employed as Anganwadi Sevika and is drawing substantial amount. He would then urge that there was no intention on the part of the respondent No.1 to neglect the petitioner, as he has initiated proceedings for conjugal rights and approach the father of the petitioner who happens to be a lawyer with a request that he is ready and willing to maintain and cohabit with the petitioner. According to him, the act on the part of the petitioner in refusing to co-habit with the respondent No.1 disentitles her to claim maintenance.

6. Having bestowed my anxious thoughts to the submissions made, it is required to be noted that the present respondent No.1 was accused in an offence punishable under Section 302 of Indian Penal Code, however, he is acquitted of the same. So far as the claim for maintenance by the petitioner is concerned, same is based on general statement that the respondent No.1 was in the business of grocery shop and was earning Rs.80,000/- per annum. It is required to be noted that the respondent No.1 was able to maintain his two children. Apart from above, it can be gathered from the material on record that the mother of the respondent No.1, at the relevant time was residing with the petitioner and he has every responsibility to maintain her. Apart from above, the conduct of the petitioner is also required to be taken note of, as she refused to co-habit with the respondent No.1, when the proceedings for conjugal rights were initiated by him and a

request was made by him to her father, which non-cooperation on the part of the petitioner weighed before the learned Ad hoc Additional Sessions Judge in refusing the maintenance to the petitioner.

7. The fact remains that the present proceedings are pending before this Court since 2004 and there is no interim order passed for payment of maintenance to the petitioner. The Court has to take judicial note of the fact that the petitioner is maintaining herself for last about more than thirteen years. Apart from above, the judgments as are relied upon by learned Counsel for the petitioner will be hardly of any assistance to her, particularly in the background of the fact that those proceedings do not applicable to the present case, as respondent No.1 has already initiated proceedings under Section 9 of the Hindu Marriage Act. Apart from above, there is material available on record, which speaks of efforts on the part of respondent No.1 to co-habit with the petitioner, which request was denied by the petitioner. The said aspect is also not covered in both the above referred judgments.

8. In my opinion, no case in extra-ordinary writ jurisdiction is made out. As such, Criminal Writ Petition stands dismissed. Rule discharged.

(N.W. SAMBRE, J.)

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