

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

CRIMINAL WRIT PETITION NO. 153 OF 2004

Lalasaheb Deu Kale,
Age : 52 years, Occupation : Agriculture,
R/o Sonalwadi, Taluka : Karjat,
District : Ahmednagar.

...PETITIONER

-VERSUS-

- 1 Kantabai Lalasaheb Kale,
Age : 42, Occupation : Household and Labour,
R/o Koregaon, Devkarwadi,
Tal.Karjat, District Ahmednagar.
- 2 Pappushet @ Vikas Lalasaheb Kale,
Age : 22, Occupation : Education,
R/o Koregaon, Devkarwadi,
Tal.Karjat, District Ahmednagar.
- 3 The State of Maharashtra.

...RESPONDENTS

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Advocate for Petitioner : Shri N.V.Gaware.

APP for Respondent 3/ State : Shri N.T.Bhagat.

Advocate for Respondent 1 : Shri V.D.Hon, Senior Advocate h/f Shri
A.V.Hon.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 30th June, 2016

Oral Judgment :

- 1 I have heard the learned Advocates for the litigating sides at length. I have gone through the record and proceedings of the Courts

below.

2 Considering the submissions of the learned Advocates and upon going through the record and proceedings, it is apparent that the thrust of the Petitioner's case is that because there was compromise purshis filed before the learned Magistrate on 23.03.1989 in Criminal Miscellaneous Application No.179/1988 under Section 125 of the Code of Criminal Procedure, the Respondent/wife could not have filed a fresh Criminal Miscellaneous Application No.354/1994 under Section 127 of the Code of Criminal Procedure claiming enhancement in maintenance allowance.

3 It is strenuously submitted by Shri Gaware, learned Advocate for the Petitioner, that when the order under Section 125 was nullified by the compromise between the parties, in the event the Respondent/ wife has any grievance as regards neglect, she could have preferred a fresh application under Section 125 and the application filed under Section 127 was, therefore, not maintainable.

4 The learned Advocate for the Respondent/wife submits that the Petitioner in fact has tricked the Respondent/wife. On the basis of the assurances given, the compromise purshis was filed on 23.03.1989 before

the learned Magistrate. The land admeasuring 1 H 49 R in Gat No.153 at village Sonalwadi, Taluka Karjat was agreed to be transferred to the Respondent/wife and that she would reside with the Petitioner/ husband peacefully in her marital home. Thereafter, the Petitioner merely mutated the land in the name of the wife and maintained the possession of land with himself and has been cultivating the land for the past about 27 years. It was, therefore, only for fiscal purpose that the revenue entry in the form of mutation entry was taken to project a picture that the compromise terms have been complied with.

5 He further submits that pursuant to the compromise terms when the wife started residing with her husband, he again started ill treating her and compelled her to leave the marital home. He, however, submits that the judgment of the learned Magistrate dated 24.02.1988 granting maintenance allowance to the wife at the rate of Rs.75/- per month and to her child at the same rate, was not set aside. It was in this backdrop that the application under Section 127 was filed seeking enhancement in maintenance allowance. He hastens to add that even the Petitioner has filed Criminal Miscellaneous Application No.19/1996 praying for setting aside the order of maintenance dated 24.02.1988.

6 Having considered the submissions of the learned Advocates

as above and having gone through the record and proceedings, it is apparent that there was indeed an order of the learned Magistrate granting maintenance to the wife dated 24.02.1988. That order has not been set aside. It appears that the Petitioner resiled from the compromise terms, which indicates his conduct.

7 Considering these facts and the attending subsequent circumstances, the learned Magistrate, in my view, has rightly allowed the application for enhancement of compensation by the judgment dated 23.06.2003. Needless to mention, the learned Sessions Judge, by the impugned judgment dated 11.02.2004, has rightly dismissed the revision application of the Petitioner.

8 In the light of the above, I do not find that the impugned orders could be termed as being perverse or erroneous so as to cause an interference. It is equally apparent that the Petitioner has dragged the Respondent/wife in litigation. This petition was admitted on 07.10.2004 and interim relief was refused to the Petitioner. I find this to be a fit case for imposition of costs considering his conduct.

9 In the light of the above, this Criminal Writ Petition being devoid of merit is, therefore, dismissed. The Petitioner shall pay costs of

Rs.10,000/- (Rupees Ten Thousand) to Respondent No.1 (Kantabai Lalasaheb Kale) within a period of FOUR WEEKS from today, failing which the said amount shall carry simple interest at the rate of 6% per annum till it's actual payment.

10 The record and proceedings shall be returned to the learned Magistrate in Criminal Miscellaneous Application No.354/1994.

11 Rule is, accordingly, discharged.

kps

(RAVINDRA V. GHUGE, J.)