

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

CRIMINAL WRIT PETITION NO. 183 OF 2004

Shri Sunil Nilkanth Patil,
Age : 29 years, Occupation : Labour,
R/o Paldhi, Tq.Dharangaon,
District : Jalgaon.

...PETITIONER

-VERSUS-

Ashabai w/o Sunil Patil,
Age : 24 years, Occupation : Labour,
C/o Pitamber Bhadu Mahajan,
R/o Dhanora, Tq.Dharangaon,
District Jalgaon.

...RESPONDENT

...
Advocate for Petitioner : Smt.Chaitali Chaudhary-Kutti i/b Shri P.N.Kutti.
Advocate for Respondent : Ms.Seema Pawar h/f Shri A G Talhar.
...

CORAM: RAVINDRA V. GHUGE, J.
DATE :- 30th June, 2016

Oral Judgment :

1 The Petitioner/ husband is aggrieved by the judgment and order dated 19.10.2002 delivered by the learned Judicial Magistrate First Class, Jalgaon, thereby allowing the application of the Respondent/ wife and granting monthly maintenance at the rate of Rs.500/- per month under Section 125 of the Code of Criminal Procedure.

2 The Petitioner is also aggrieved by the impugned judgment

dated 06.09.2003 delivered by the learned Additional Sessions Judge, Jalgaon by which Criminal Revision Applications filed by him as well as by his wife have been dismissed.

3 The learned Advocate for the Petitioner has strenuously criticized the impugned judgments. She submits that both the judgments indicate non application of mind and are perverse and erroneous. The Respondent/ wife had herself left the marital home. There was no evidence that the Petitioner had ill treated her. In the absence of any specific evidence, which is required, to prove mental and physical abuse in such domestic matters, the learned Magistrate could not have arrived at the conclusion that the maintenance was required to be paid. She further submits that the Petitioner was working as a Labourer and was earning hardly Rs.50/- per day and used to get work for only about four days in a week. He was not able to maintain himself and hence, did not have capacity to pay the maintenance.

4 The learned Advocate for the Respondent has supported the impugned orders. It is pointed out that because of the ill treatment and continuous atrocities committed by the Petitioner, it is reported that the Respondent/ wife had attempted to commit suicide in her matrimonial home. It has also been brought on record that he used to resort to mental

and physical abuse. He runs a pan stall and his daily earning was Rs.200/- as on the date on which the learned Magistrate granted the maintenance. It is further stated that he has agricultural land and his annual yield from agricultural land in those days was Rs.2.5 lac.

5 I have considered the submissions of the learned Advocates.

6 It is settled law that in the revisional jurisdiction of this Court, there cannot be any interference in the impugned order unless the same appears to be erroneous or perverse or is likely to cause grave injustice. Merely because a second view is possible, the impugned order cannot be interfered with.

7 It is not disputed that the Respondent/ wife, after her Criminal Revision Application No.369/2002 seeking increase in maintenance amount was dismissed by the impugned judgment dated 06.09.2003, has not preferred any challenge in this Court.

8 The learned Magistrate has observed that because of the ill-treatment of the Petitioner, the Respondent had to leave her marital home. Her attempt to commit suicide in her marital home indicates that mental and physical abuse had exceeded the limits of her tolerance.

9 The learned Magistrate has also analyzed the evidence and concluded that the Petitioner stated in his deposition that he would not take the wife back to her marital home and that would be subject to the decision in the pending Hindu Marriage Petition. It was also proved that the Petitioner did not make an attempt to visit the house of the wife after she sent a notice to him to settle the issue in the presence of respectable persons and permit her to join him at her matrimonial home. It was also proved before the learned Magistrate that the Petitioner has 06 acres of agricultural land and also runs a pan stall. 7/12 extracts also indicated that there was a water-well in the land and the Petitioner had harvested cotton in the agricultural season of 2001-2002.

10 In the light of the above, neither on the count of alleged desertion, nor on the count of quantum of maintenance allowance granted, do I find that the impugned orders could be termed as being perverse or erroneous. This Criminal Writ Petition being devoid of merit is, therefore, dismissed.

11 Rule is discharged.