

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

CRIMINAL WRIT PETITION NO. 207 OF 2004

Sangita W/o Sanjay Gaikwad

Age : 24 Yrs., Occ. : Household,

R/o : At present Newasa (Bk.)

Tal. : Newasa, Dist. Ahmednagar. **PETITIONER**

V E R S U S

1. Sanjay Sukhdeo Gaikwad

Age : 26 Yrs., Occ. Service

& Agril., R/o : Taklibhan,

Tal. : Shrirampur, Dist.

Ahmednagar.

2. The State of Maharashtra **RESPONDENTS**

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Mr. D.R.Adhav, Advocate for Petitioner.

Mr. A.D.Kasliwal, Advocate for R – 1.

Mr. P.N.Kutti, A.P.P. for R – 2 - State.

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CORAM : Z.A.HAQ, J.

DATE OF JUDGMENT : 18th NOVEMBER, 2016

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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.

2. Heard Mr. D.R.Adhav, learned Advocate for Petitioner, Mr. A.D.Kasliwal, learned Advocate for Respondent No. 1/husband and Mr. P.N.Kutti, learned A.P.P. for respondent No. 2 – State.

3. The petitioner/wife had filed application u/s 125 of the Code of Criminal Procedure, which was allowed by the learned Magistrate by the Judgment dated 07/12/2001 and the husband was directed to pay ₹ 500/- [Rupees Five Hundred] per month towards maintenance to the wife. This order was challenged by the husband in the Revision before the Sessions Court. The Revision Application is allowed by the Sessions Court by the impugned Judgment.

4. The learned Additional Sessions Judge has allowed the Revision Application, observing that the dispute between the parties is amicably worked out and in the petition filed u/s 9 of the Hindu Marriage Act bearing No. 45/1999, a pursis (Exh.11) was moved and along with it a divorce deed was produced, which stated that the divorce had taken place and the parties were at liberty to perform another marriage and in view of these facts, the order passed by the learned Magistrate granting maintenance was required to be set aside.

5. The submission on behalf of the petitioner/wife is that the alleged divorce deed, on which the learned Additional Sessions Judge has relied, has no legal sanctity and the order passed by the Magistrate directing respondent No. 1/husband to pay maintenance could not have been set aside relying on such document.

6. Learned Advocate for respondent No. 1/husband has submitted that even if the divorce

deed is not considered, fact remains that the wife resided separately from the husband of her own volition and, therefore, she was not entitled for the maintenance. To support the submission, the learned Advocate has relied on the Judgment given in the case of **Vitthal Hiraji Jadhav Vs. Smt. Hamabai Vitthal Jadhav & Anr. reported in 2003 ALL MR (Cri.) - 1094.**

7. I find that the learned Additional Sessions Judge has not adverted to the relevant points and has allowed the Revision Application on the pre-supposition that legal and valid divorce has taken place between the parties. Learned Additional Sessions Judge has not considered whether document notarized before a Notary has the effect of terminating the marital ties between the parties.

The learned Advocate for respondent No. 1/husband has argued that as the wife has been residing separately of her own volition and without any reason, she is not entitled for maintenance. This point was neither raised before the Sessions Court

nor it is considered by the learned Additional Sessions Judge.

8. In the above facts, in my view, the impugned order is required to be set aside and the matter has to be remanded to the Sessions Court for considering it afresh. Hence, the following order:

(i) The impugned Judgment is set aside.

(ii) The matter is remitted to the Court of the learned Sessions Judge, Newasa for fresh decision according to law.

(iii) As the order passed by the learned Judicial Magistrate First Class, Newasa, District Ahmednagar was set aside on 30/12/2003, the petitioner/wife will not be entitled to enforce/execute the order passed by the learned Magistrate until appropriate orders are passed by the Sessions Court in the matter.

(iv) In the circumstances, parties to bear their own costs.

(v) Rule is made absolute in the above terms.

[Z.A.HAQ, J.]

KNP/Cr. W.P. 207.2004 - [J]