

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

CRIMINAL APPLICATION NO.3539 OF 2016 WITH
CRIMINAL APPLICATION NO.3540 OF 2016 IN
CRIMINAL WRIT PETITION NO.952 OF 2016

Shirish s/o Arjunrao Dalvi ... APPLICANT

VERSUS

The State of Maharashtra
and another ... RESPONDENTS

.....
Shri V.G. Salgare, Advocate for the applicant
Shri C.V. Dharurkar, A.P.P. for State
.....

CORAM: N.W. SAMBRE, J.

DATED: 24th October, 2016.

ORAL ORDER :

1. Heard Mr. Salgare, learned counsel for the applicant. The applicant suffered an order under Section 125 of the Criminal Procedure Code in Criminal Application No.21/2002 on November 30, 2011. The relation between the applicant and respondent No.2 of husband and wife is not in dispute. It is also not in dispute that the applicant is working as a Teacher. The learned Magistrate ordered payment of maintenance of Rs.1300/- w.e.f. January 16, 2002 for a period from 16.1.2002 to 15.6.2011 and Rs.5000/- from 16.1.2011.

2. The applicant thereafter preferred Criminal Revision being Revision No.54/2012 before the learned Sessions Judge, Ahmednagar, which also came to be dismissed with costs of Rs.2000/- on June 19, 2014. As such, the husband preferred Criminal Writ Petition No.952/2014. The said Criminal Writ Petition was listed from time to time and after the petitioner removed his lawyer from the record, was given an opportunity to work out the matter on merits. The petitioner though was given various opportunities, has not argued the matter till the rejection of the Writ Petition vide order dated April 11, 2016. The conduct of the petitioner could be noted from the observations made in paragraph Nos.9, 10 and 11 of the said order, which reads thus :

"9. On 14th July, 2015, learned Counsel appearing on behalf of the petitioner sought discharge as the petitioner want to argue his matter in person, which prompted this Court to pass the following order :-

"Learned Counsel Shri Narwade submits that his client wants to argue the matter himself. He submits that in view of this circumstance he wants to withdraw his appearance and he may be discharged. The petitioner is present in Court and he has filed purshis in writing. In view of this circumstance, the Advocate is discharged. The petitioner wants time to prepare for the matter. By way of last chance, stand over to 30th July, 2015."

10. While granting opportunity to prepare the matter, the Court ordered last chance, however, on 30th July, 2015, the petitioner appeared in person and sought time

to file certain documents on record, which was granted by this Court and the matter was adjourned as per his convenience on 17th August, 2015.

11. Thereafter the matter was not moved before this Court, however, lastly when it was listed before the Court, the party in person remained absent on 2nd April, 2016, which has prompted this Court to post the matter on 11th April, 2016 for dismissal. The party in person personally appeared before this Court on 11th April, 2016 and when was called upon to work out the matter, has straight-away refused, on the ground that he has other important work and he wants time of more than one month to prepare the matter. As the petitioner was appearing in person, pursuant to the Rules framed by the High Court, namely, Rules for Presentation and Conduct of Proceedings in Person by Parties, governing the issue as regards grant of permission to party in person to conduct his own matter before the Court, the petitioner was orally called upon to appear before the Committee, within one week, however, he refused to co-operate even with that and submits that he is not willing to appear before the said Committee."

3. After the petition was dismissed, the petitioner has moved the present application seeking condonation of delay of 22 days in filing the present application for recalling the earlier order and sought an opportunity of hearing. The petitioner and his counsel are present in the Court. When the attention of the learned counsel for the applicant/ petitioner is invited to the conduct reflected in the above referred paragraphs, the learned

counsel expressed his remorse for the same and submits that and opportunity be granted. He would then urge that the wife of the petitioner is living in adultery and after marriage, stayed only for few days with him. In addition, the learned counsel would urge that the efforts for mediation have also failed and as such, she is not entitled for the maintenance. So far as above referred issues are concerned, in response to the Court's query, the learned counsel submits that till date the applicant has not paid a single paise towards maintenance to the non-applicant wife.

4. Apart from above, it is required to be noted that, both the courts below on its merits, particularly as regards the evidence as is brought on record, the income of the present applicant, has proceeded to award maintenance. The learned revisional Court has also taken into account all the facets of the matter and also considered the case of the petitioner moved by the wife Exh.22 and 24 for remanding the matter afresh to the trial Court for additional evidence. Looking to the object of Section 125 of the Criminal Procedure Code, the learned Sessions Judge has not noticed any material illegality in the order of the Magistrate and rejected the claim. So far as order of the Magistrate is concerned, the same in its entirety has dealt with the evidence and pleadings of the parties and there is a finding that the present applicant has neglected to maintain the respondent wife.

5. Based on income of the present applicant, which he is receiving in capacity of teacher, which is to the tune of more than Rs.25,000/-, ordered payment of maintenance. In my opinion, no case either for recalling of the order or so as to cause any interference in the extraordinary jurisdiction is made out.

6. Criminal Applications, as such fail and dismissed with exemplary costs of Rs.25,000/- (Rupees twenty five thousand) to be recovered from the applicant in the form of arrears of land revenue by the concerned Tahsildar.

7. The Registrar (Judicial) shall forthwith forward the copy of this order to the Tahsildar, within whose jurisdiction the present applicant is working, who shall execute the R.R.C. as amount of costs from the salary payable to the applicant and shall ensure that the said amount of costs is deposited in the account of High Court Legal Services Sub-Committee, Aurangabad.

8. With above observations, the both the criminal applications are dismissed.

(N.W. SAMBRE, J.)