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

CRIMINAL WRIT PETITION NO. 878 OF 2015

Pramod s/o Dasrath Kesare,
Age: 33 years, Occu: Nil,
R/o. Village Watwada, Tq. Kalamb,
Dist. Osmanabad

..PETITIONER

VERSUS

1. Kunda @ Shejal Pramod Kesare,
Age: 42 years, Occu: Agri.
2. Teerth Pramod Kesare,
Age: 9 years, Occu: Education,
U/g. Of her mother i.e. Resp. No. 1,
R/o. Village Watwada,
C/o. Dasrath Santram Nitale,
Village Ghatanndur, Tq. Ambajogai,
Dist. Beed

..RESPONDENTS

Mr S. P. Chapalgaonkar, Advocate for petitioner;
Mr Arun S. Lomte, Advocate for respondents

CORAM : N.W. SAMBRE, J.

DATE : 28th March, 2016

ORAL ORDER :

Misc. Criminal Application No.230 of 2007 was preferred by respondents - wife and son claiming maintenance under section 125 of the Code of Criminal Procedure.

2. The aforesaid application came to be allowed by an order dated 29th June, 2012, passed by Judicial Magistrate First Class, Ambajogai, granting maintenance of Rs.1,500/- to respondent wife and Rs.1,200/- to the son,

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which was subsequently upheld by learned Additional Sessions Judge, Ambajogai, in Criminal Revision No.78 of 2012 preferred by the petitioner.

3. While questioning the legality of the impugned order, Mr Chapalgaonkar, learned Counsel appearing on behalf of the petitioner, would strenuously urge that both the Courts below have committed an error by not recording the findings as regards income of the petitioner, which should have been a basis for ordering payment of maintenance. The second limb of submission is that the marriage between the petitioner and respondent – wife was within the prohibited degree as provided under the provisions of the Hindu Law.

4. Learned Counsel appearing on behalf of the respondents opposed the petition on the ground that both the Courts below have concurrently held against the petitioner and have awarded the maintenance. He would submit that since there was neglect to maintain the respondents, the findings to that effect were recorded and reasonable amount of maintenance is awarded. He prayed for dismissal of the petition.

5. So far as the claim for refusal of maintenance to the wife is concerned, though it is claimed that the marriage was within the prohibited degree, still it is not in dispute that there is a divorce by mutual consent between the parties and as such, in my opinion, the Court below had rightly invoked the provisions of section 125 of the Code of Criminal Procedure at the instance of the respondents.

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6. So far as the aspect of non-recording of income is concerned, though the learned Counsel appearing on behalf of the petitioner has fairly stated that he is not denying the right of maintenance to the son, i.e. respondent no.2, it is required to be noted that the Court has proceeded to consider the evidence of the parties and then noticed that there is a neglect to maintain. Thereafter, evidence of respondent no.1 – mother and respondent no.2 is taken into account by both the Courts below, so as to arrive at a conclusion of award of maintenance of Rs.1,500/- to respondent no.1 and Rs.1,200/- to respondent no.2 son.

7. While awarding maintenance, the Court below has considered that even a labour earns about Rs.300/- per day as wages and as such, proceeded to award maintenance and rightly so.

8. In view thereof, no case for interference in extraordinary jurisdiction is made out. Thus, Criminal Writ Petition fails and stands dismissed.

(N.W. SAMBRE, J.)

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