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

CRIMINAL WRIT PETITION NO.616 OF 2006

Syed Muzaffar Ali s/o
Syed Ishaque Ali,
Age: 26 years, Occ: Household,
R/o. Khazi Bag Dargah Road,
Parbhani, Tq. & Dist. Parbhani. ..PETITIONER

VERSUS

Mehrunnisa Begum d/o Afzal Khan,
Age: 22 years, Occ: Household,
R/o. Khazi Bag, Dargah Road,
Parbhani.1 ..RESPONDENT

Mrs. Fatema Begum Kazi, Advocate for petitioner;
Mr R.R. Shaikh, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 7th SEPTEMBER, 2016

ORAL JUDGMENT :

Before learned Judicial Magistrate, First Class, Parbhani, respondent-wife moved application being Misc. Application No. 381 of 1996 stating following facts.

2. The marriage between petitioner and respondent was solemnized on 3rd April, 1996 and

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prompt dowry amount of Rs.25,101/- was paid. However, the said amount i.e. Meher was taken back by the father of petitioner on the count that the amount will be put in the fixed deposit. Jahez articles during the marriage, list of which also incorporated in the application, were also sought to be returned.

3. The claim was opposed by the present petitioner denying that dowry was never handed over to the present petitioner or his father as claimed and it is also denied that Jahez articles were given in the marriage.

4. Learned Magistrate, by judgment and order dated 5th November, 1997, after considering the evidence of respective sides, noted that performance of marriage and amount of Meher was not in dispute. After analytical appreciation of evidence of respondent-wife PW-1 at Exhibit-13, PW-2 Afsalkhan, father of respondent-wife at Exhibit-14, PW-3 Musraq Ahmed and evidence of present petitioner DW-1 at Exhibit-22, DW-2 Santosh Jadhav,

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DW-3 Aali Sherkhan, DW-4 Syed Jafer Ali, ordered that the amount of Rs.3000/- be paid towards maintenance for Iddat period from 11th October, 1996 to 11th January, 1997 with costs of Rs.500/-, however, declared that no case for ordering payment of Meher and Jehaz articles was made out and as such, rejected the claim to that extent. In revision, learned Additional Sessions Judge, Parbhani vide order 20th June, 2006 allowed the claim partly and ordered that an amount of Rs.20,000/- be paid towards price of Jahez articles, however, confirming the order of denial of Meher amount. As such, present criminal writ petition.

5. Mrs. Kazi, learned Counsel for the petitioner-husband would submit that once in the evidence, it was inferred by learned Magistrate that no case for payment of return of Jahez articles or considerations thereof was made out, learned Sessions Judge in exercise of revisional jurisdiction has exceeded power by ordering payment of Rs.20,000/- towards costs of Jahez articles.

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According to her, learned Sessions Judge has misappreciated the evidence of respective sides and as such, the order passed by learned Sessions Judge is not sustainable.

6. It is required to be appreciated from record that learned Sessions Judge, after appreciating the evidence, noticed that the brother of present petitioner stayed with him, who is owner of two wheeler transport vehicle, in which it was claimed that Jahez articles were transported. Even if presumed that respondent was not entitled for Meher, however, in the society in which the petitioner and respondent are residing, learned Sessions Judge presumed that Jahez articles were very much given in the marriage for supporting establishment of new married life by couple.

7. Under the Evidence Act, it is always open for the Court to presume certain facts and in my opinion, there is nothing contrary to be recorded so as to infer that Jahez articles were returned to the respondent or were not received at all.

8. Apart from above, judicial note can be taken of the fact that present petitioner, pursuant to the order of this Court passed on 14th June, 2012 and subsequent order dated 21st June, 2012, has deposited amount of Rs.15,000/-.

9. It will be appropriate, in my opinion, so as to meet ends of justice that the amount of Rs.20,000/- (Rs. Twenty thousand only) ordered by learned Sessions Judge be reduced to the amount of Rs.15,000/- (Rs. Fifteen thousand only), which is already deposited by the petitioner in this Court.

10. The respondent-wife will be entitled for the said amount of Rs.15,000/- with interest, if any accrued thereon.

11. With the above observations, criminal writ petition is dismissed.

(N.W. SAMBRE, J.)