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

**CRIMINAL WRIT PETITION NO. 331 OF 2003
WITH
CRIMINAL APPLICATION NO. 2039 OF 2003**

Shaikh Ahmed s/o Shaikh Hussain,
Age: 27 years, Occu: Business,
R/o Ali Nagar, Purna, Tq. Purna,
Dist. Parbhani

..PETITIONER

VERSUS

Masarrat Parveen, Divorced wife of
Shaikh Ahmed, Daughter of Shaikh
Nizamuddin, Age: 21 years,
Occu: Household, R/o. Purna,
now at present R/o. in the House of
Maternal Uncle Shaikh Fahim,
Teacher, Opp. Jumma Masjid,
Parbhani

..RESPONDENT

Mr A. P. Gaikwad, Advocate holding for Mr S. S. Kazi, Advocate for
petitioner;
Mr M. A. Deshmukh, Advocate holding for Mr S. G. Chapalgaonkar
Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 6th April, 2016

ORAL ORDER :

This petition is by husband questioning the legality and
validity of the judgment and order dated 20th June, 2003, passed by the
learned 3rd Additional Sessions Judge, Parbhani in Criminal Revision
No. 57 of 2002 and the judgment and order dated 17th April, 2002, passed
by the learned Judicial Magistrate First Class, Parbhani in Criminal Misc.
Application No. 115 of 2001.

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2. The learned Magistrate, by the order impugned, has allowed the claim preferred under Section 3 (1) (b) of Muslim Womens (Protection of Rights on Divorce) Act, 1986 (hereinafter shall referred to as "the Act" for the sake of brevity) by ordering that the present petitioner shall pay Rs. 2,051/- as Meher amount, Rs. 7,500/- as Iddat amount, Rs. 10,000/- as Joda amount, Rs. 35,000/- for reasonable and fair provision, Rs. 20,000/- for Jahez articles, Rs. 1,530/- for earnings, Rs. 6,300/- towards cot and bed, Rs. 3,800/- towards still cup-board and Rs. 820/- towards plastic chairs to the respondent.

3. The petitioner was also ordered to pay Rs. 400/- towards costs of application. The said order was upheld by the learned Additional Sessions Judge, Parbhani in revision.

4. While trying to make out a case for showing indulgence, learned Counsel appearing on behalf of the petitioner would urge that parties to the present proceedings, initially entered into settlement and said documents could not be produced at the relevant time by the petitioner. He would then submit that reasonable opportunity was not granted to the petitioner.

5. According to him, the said documents of settlement between parties which were having far reaching effect and goes to the root of the matter, this Court must show indulgence. He would then submit that, denial of opportunity has resulted into injustice to the petitioner for no fault of him and for aforesaid reasons the matter be remanded back.

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6. Learned Counsel appearing on behalf of respondent-wife, while opposing the application would submit that the statutory provisions contemplates grant of the relief as were claimed before the learned Magistrate and learned Magistrate was right in passing order in favour of present respondent-wife. He would then submit that though, the opportunity was offered to the present petitioner by the learned Magistrate, so also the revisional Court, the petitioner has chosen not to remain present and has not placed on record documents much less related to the compromise. According to him, this is not fit case, where this Court, in extraordinary jurisdiction should interfere, particularly when there are concurrent findings recorded by the Courts below.

7. With the assistance of respective Counsel, I have perused entire papers as were placed on record before this Court. It is required to be noted that the learned Magistrate, while dealing with the claim of present respondent, evaluated all the material placed before it. Learned Magistrate issued notice to present petitioner and petitioner was represented through the lawyer. The petitioner, thereafter filed reply at Exh. 24 and denied the claim. The petitioner alleged that the Talak, particularly identified as 'Khula' was also sought to be referred to.

8. The learned Magistrate after examining the respondent has proceeded to decide the matter, as the present petitioner neither examined himself nor placed any document on record, so as to deny the claim as

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brought into action by the present respondent-wife. The learned Magistrate upon evaluating evidence on record, particularly the pleadings, as were canvassed before him, had allowed the application by an order dated 17th April, 2002. However, it is required to be noted that the revisional Court after filing of the revision, has decided the same, pursuant to the claim sought to be canvassed. It is then noted that the evidence that was placed before the learned Magistrate, considered in its entirety and evaluated the same having regard to the scope of revision as provided under Section 397 of the Code of Criminal Procedure. The learned Magistrate has in fact gone into application at Exh. 20 - seeking setting aside 'No written statement order', then application at Exh. 22, which was filed for cross-examination and other relevant documents. The Court then noted that there should be sufficient and fair chance to be offered to the present petitioner and has considered the claim of the present petitioner from time to time.

9. Having regard to the Farkhatnama, as was given on 28th February, 2001 and having noted that the present petitioner had not made any proper provision for the future maintenance of the present respondent-wife, in my opinion, both the Courts below have rightly proceeded to pass orders in favour of the respondent.

10. In this background, in my opinion, no case for interference in extraordinary jurisdiction, is made out. Writ Petition fails and stands rejected. In view of rejection of writ petition, criminal application No. 2039 of 2003 does not survive and stands dismissed.

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11. It is made clear that the respondent-wife will be at liberty to execute the order and if she approaches the Court, the Court, shall proceed with the execution of same, expeditiously.

(N.W. SAMBRE, J.)

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