

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

CRIMINAL WRIT PETITION NO. 936 OF 2015

YASHWANT DAMU BHOLE
VERSUS
SHAKUNTALA YASHWANT BHOLE

...
Advocate for Petitioner : Shri Patil Vijay B.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd June, 2016

Per Court:

1 The Petitioner is aggrieved by the order dated 23.04.2012 delivered by the learned Magistrate by which the application filed by the Respondent claiming maintenance allowance under Section 125 of the Code of Criminal Procedure, has been partly allowed and the maintenance of Rs.1500/- per month is granted. The Petitioner is also aggrieved by the judgment dated 05.01.2015 delivered by the learned Sessions Judge, Jalgaon by which his Criminal Revision Application No.170/2012 has been dismissed.

2 The strenuous contention of Shri Patil, learned Advocate for the Petitioner is that the Respondent had earlier preferred an application

bearing Criminal Miscellaneous Application No.5/2000 seeking maintenance allowance. The same was rejected as the Respondent could not prove that the Petitioner had deserted her. Her criminal revision application was also dismissed. He, therefore, submits that the second application under Section 125 of the Code of Criminal Procedure would be prohibited. Consequentially, the impugned orders are rendered unsustainable and deserve to be quashed and set aside.

3 Shri Patil, however, submits that after rejection of her first application, the Respondent had filed Hindu Marriage Petition No.36/2004 for restitution of her conjugal rights. By the judgment dated 24.10.2007, the said petition was allowed. He submits that notwithstanding whether, the Petitioner complies with the order dated 24.10.2007 or not, the second application for maintenance is not maintainable. The Respondent will have to resort to available remedies for seeking execution of the decree dated 24.10.2007.

4 I have considered the submissions of the learned Advocate.

5 Though the Petitioner submits that the second application for maintenance under Section 125 of the Code of Criminal Procedure is not maintainable, the essence would be as to whether, the application has

been filed on the same set of facts or whether, there is any change in circumstances pursuant to the rejection of the first application.

6 The Petitioner has relied upon the judgment of this Court in the matter of Vithalrao Marotrao Awadhut vs. Ratnaprabha Awadhut, **1978 Cr.L.J. 1406 (I)**. I do not find that the view taken by this Court in the said judgment would be of any assistance to the Petitioner for the reason that this Court has concluded that the second application was not maintainable since it was on the same set of facts on which the earlier application was heard and rejected. It was, therefore, concluded that the Applicant desired to take a chance of fresh favourable orders when there was no change in the circumstance.

7 In the instant case, after the first application was rejected, the Respondent preferred a petition for seeking restitution of her conjugal rights. The said petition has been decreed. It is not disputed that the Petitioner has still not complied with the said order.

8 In the light of these facts which can surely be termed as changed circumstances, it is evident that the Petitioner did not permit the Respondent to join him despite the decree of restitution of her conjugal rights. The learned Sessions Judge has, therefore, rightly concluded that in

these changed circumstances since the Petitioner did not take the Respondent for cohabitation, it would amount to refusal and desertion.

9 In the light of the above, I do not find any merit in this petition. The same is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)