

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

CRIMINAL WRIT PETITION NO. 647 OF 2005

Malikarjun s/o Vishwanath Kapse,
Age : 37 years, Occupation : Labour,
R/o village Kautha, Taluka Kandhar,
District Nanded.

...PETITIONER

-VERSUS-

1 Savita w/o Malikarjun Kapse,
Age : 30 years, Occupation : Household,
R/o at present Panghosi, Taluka Kandhar,
District Nanded.

2 Priyanka d/o Malikarjun Kapse,
Age : 7 years, u/g of her real mother
Respondent No.1.
R/o as above.

...RESPONDENTS

...
Advocate for Petitioner : Shri A M Gaikwad a/w Shri V.P.Swant.
None for the Respondent.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 14th June, 2016

Oral Judgment:

1 The Petitioner is aggrieved by the judgment and order dated 17.08.2004 by which the learned JMFC has partly allowed the application filed by the Respondents under Section 125 of the Code of Criminal Procedure and granted maintenance allowance at the rate of Rs.800/- per

month to the Respondent No.1/wife and Rs.400/- per month to the Respondent No.2/daughter.

2 The Petitioner is also aggrieved by the judgment of the learned Additional Sessions Judge, Kandhar dated 24.10.2005 by which his Criminal Revision No.42/2004 has been dismissed.

3 Shri Gaikwad, the learned Advocate for the Petitioner, has strenuously criticized the impugned judgments. The contention is that there was no evidence before the learned Magistrate which would lead to the conclusion that the Petitioner was ill-treating or harassing the wife and as a consequence of which, she left the marital home. He submits that the Respondent/wife herself left the marital home of the Petitioner and started residing with her parents. The Petitioner made every effort to bring her back, but invain. In fact the Petitioner had issued the notice to the Respondent No.1/ wife for seeking restitution of conjugal rights. This notice was ignored by the Trial Court as well as by the Revisional Court.

4 It is further submitted that if the wife has deserted the Petitioner and if she is not residing with the Petitioner on her own will and desire, she would not be entitled for any maintenance allowance. The issuance of notice seeking restitution of conjugal rights is a clinching piece

of evidence and the same should have been considered by the Courts below. It is, therefore, submitted that both the impugned orders deserve to be set aside.

5 Shri Gaikwad further submits that the daughter who was Applicant No.2 before the learned Magistrate is said to be residing with the Petitioner. He has, however, no knowledge whether, the Petitioner has now resorted to any proceedings for modifying the order dated 17.08.2004 delivered by the learned Magistrate granting maintenance to the Respondents.

6 The learned Advocate for the Respondents is absent.

7 I have considered the submissions of the learned Advocate for the Petitioner and have gone through the impugned judgments and record available with his able assistance.

8 It is trite law that the findings on facts ought not to be interfered with merely because a second view is possible. It is also well settled that jurisdiction of the Revisional Court as well as this Court is limited and the entire evidence cannot be re-examined threadbare. (Read *Shalini Shyam Shetty vs. Rajendra Shankar Patil*, **2010(8) SCC 329** and

Radhey Shyam and another vs. Chhabi Nath and others, (2015) 5 SCC 423 : 2015 (3) SCALE 88).

9 The Trial Court has granted maintenance of Rs.800/- per month to the wife and Rs.400/- per month to the daughter. The said amount is neither exorbitant nor burdensome. The sources of income of the Petitioner have been considered and discussed by the Trial Court in paragraph 10 of it's judgment.

10 The witnesses who deposed on behalf of the Respondents have stated that after birth of the daughter, the Petitioner started ill-treating the wife and demanded Rs.50,000/- for purchasing a motorcycle. Due to weak financial condition of her father, the said demand could not be fulfilled and as a consequence of which, the Petitioner started beating, abusing and threatening the wife. Finally, he beat her and drove her out of his house and since then she is residing with her parents after having suffered ill-treatment at the hands of the Petitioner. So also, one of the witnesses had tried to counsel the Petitioner and the Petitioner was given understanding that he would have to maintain his wife. All the witnesses, who were examined on behalf of the Respondents, have maintained their stand in their cross-examination as well. Merely because the Petitioner issued the notice seeking restitution of conjugal rights, would not establish

that the Petitioner was serious and committed to maintain his wife and permit her to reside with him in marital bliss.

11 Considering the above and the fact that the findings on facts are based on oral and documentary evidence on record, I do not find that the impugned judgments can be branded as being perverse or erroneous. This Criminal Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)