

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1143 OF 2012

Sou. Vandana w/o Hanumant Somwanshi,
Age-35 years, Occu:House-hold,
R/o-Nalegaon, Tq-Kaij, Dist-Beed,
At present residing at Pimpri Amba,
Tq. & Dist-Latur.

...PETITIONER

VERSUS

Dr. Hanumant s/o Vithal Somwanshi,
Age-37 years, Occu:Medical Practice,
R/o-Nalegaon, Tq-Kaij, Dist-Beed.

...RESPONDENT

...

Mr.R.T. Nagargoje Advocate for Petitioner.
Mr.K.J. Suryawanshi Advocate for Respondent.

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CORAM: A.I.S. CHEEMA, J.

DATE : 25TH JANUARY, 2016

ORAL JUDGMENT :

1. Heard. Rule. Rule made returnable
forthwith. With the consent of learned counsel for
the parties, the Petition is taken up for final
disposal at admissions stage.

2. The Petitioner – wife has filed this Writ Petition against the Respondent – husband claiming that the order passed by the Judicial Magistrate, First Class (J.M.F.C.), Court No.2, Latur in Misc. Application No.549 of 2007 on 2nd April 2009 may be quashed and set aside. It is claimed that in the Criminal Revision No.51 of 2009, the Revisional Court modified the order passed by the J.M.F.C. In Misc. Application No.549 of 2007, and granted maintenance of Rs.700/- per month from the date of order in Misc. Application No.549 of 2007. It is claimed that the order should have been passed for amount of Rs.1500/- from the date of application.

3. It is stated on behalf of the Petitioner that Revisional Court set aside the order passed by the J.M.F.C. dismissing the maintenance application. However, the maintenance order passed was for only Rs.700/- per month, which is very insufficient looking to the cost of living. The

learned counsel for the Petitioner is relying on the Judgment in the matter of **Jaiminiben Hirenbbhai Vyas and another vs. Hirenbbhai Rameshchandra Vyas and another, reported in 2014 AIR SCW 6511** to submit that the Hon'ble Supreme Court has held that reasons should be recorded for adopting a date for grant of maintenance.

4. On behalf of the Respondent, it is stated by the learned counsel that the impugned order has already been maintained by this Court in Writ Petition which was filed by the Respondent - husband. It was registered as Criminal Writ Petition No.261 of 2011, challenging the order of maintenance of Rs.700/- per month which had been passed, and this Court has maintained that order and dismissed the Petition of the Respondent - husband. Thus, according to the learned counsel, the impugned order has become final and may not be disturbed.

5. The Judgment in Misc. Application No.549 of 2007 passed by the trial Court does show that the Applicant therein, claiming to be house wife, had filed maintenance application against husband, who is doctor and medical practitioner. The Magistrate did not appreciate the evidence properly and thus the Revisional Court interfered, but however granted maintenance only at the rate of Rs.700/- per month. Without recording reasons, the maintenance was ordered from the date of decision in Misc. Application No.549 of 2007.

6. The husband filed Criminal Writ Petition No.261 of 2011, copy of order in which matter, dated 5th March 2013, has been produced by the learned counsel for Respondent and the same has been taken on record and marked "X" for identification. That Writ Petition of the husband was of 2011 and present Writ Petition was filed by the wife against the same order. It appears that present Petition was filed in December 2012. When

the matter filed by husband came up before this Court on 5th March 2013, it does not appear that the counsel for the wife was present. Counsel holding for the Advocate of wife did not point out the filing and pendency of the present Petition by the wife. In the Registry, there does not appear to be a system in the computer to feed and ascertain whether against the same impugned order matter is already filed or pending. Otherwise both the matters would have been taken up together.

7. Now the question before me is, whether for the error of the counsel for the wife or error in the system, should the wife suffer injustice, which is apparent on the face of record. Rs.700/- per month maintenance directed against the husband, who is medical practitioner is shocking. Even if, the children from the wed-lock as referred to by the J.M.F.C. are with the husband, the amount is disproportionately low. Even in 2011, the amount could be said to be paltry. The

amount has to be respectable, the cost of living, facts relating to status of the couple, the need to save wife from vagrancy, need to be considered keeping in view the provisions under Section 125 of the Code of Criminal Procedure.

8. The Petitioner claimed Rs.1500/- per month. There is no reason as to why this amount as claimed by her should not have been granted and that too from the date of application, she being house wife required support from her doctor husband. As per Judgment in the matter of **Jaiminiben Hirenbbhai Vyas and another**, cited supra, it was necessary for the Assistant Sessions Judge to record reasons to make the order effective from the date of decision in Misc. Application No.549 of 2007. I find that the Magistrate himself found that there was no material to substantiate the allegations of living in adultery and also found that wife was unable to maintain herself and Respondent has sufficient

means to maintain wife. The husband failed to prove his allegations of illicit relations. When such allegations are made and the same are not proved, it cannot be held that just ground for wife to refuse to live together is not there. Magistrate, on erroneous findings regarding refusal to live together against wife, rejected the maintenance application. 125(4) of Code of Criminal Procedure was wrongly applied by the Magistrate. Looking to the facts of the matter, the maintenance deserves to be granted from the date of application.

9. Invoking my powers under Section 482 of the Code of Criminal Procedure and Articles 226 and 227 of the Constitution of India to do complete justice and not to be cowed down by technicalities, looking to the nature of litigation, even though when earlier Writ Petition No.261 of 2011 of the husband came up the system and Advocate for wife failed to point out pendency

of this Petition and order dated 5th March 2013 was passed dismissing the Petition of husband, I find no obstruction to consider the claim of wife. After all, even if both Petitions were taken together, the order I now propose to pass could have simultaneously followed that order of dismissal dated 5th March 2013.

10. For the above reasons, the Criminal Writ Petition is allowed. The order passed in Criminal Revision No.51 of 2009 dated 20th January 2011, is modified. The Respondent shall pay Rs.1500/- (Rupees One Thousand Five Hundred) per month as maintenance to the Petitioner from the date of filing of Misc. Application No.549 of 2007 i.e. from the date of 1st November 2007.

11. Rule is made absolute on the terms indicated above.

[A.I.S. CHEEMA, J.]