

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

CRIMINAL WRIT PETITION NO. 1444 OF 2015

ABDUL SATTAR SHAIKH ANSAR
VERSUS
THE STATE OF MAHARASHTRA & ANOTHER

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Advocate for Petitioner : Mr A R Kawade
APP for Respondents: Mr S P Tiwari
None present for respondents No.2 and 3.

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CORAM : V.K. JADHAV, J.
Dated: December 22, 2016

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PER COURT :-

1. Being aggrieved by the judgment and order passed by the 7th Jt. Judicial Magistrate First Class, Jalgaon dated 4.5.2011 in Criminal M.A.No.72/2008 and the common judgment and order dated 13.2.2015 passed by the Sessions Judge, Jalgaon in Criminal Revision No.126/2011 and 148/2011 the original non applicant-husband has approached to this Court by filing present criminal writ petition.

2. Brief facts, giving rise to the present writ petition are as follows :-

a] Respondent no.2 is legally wedded wife of the petitioner and respondent no.2 is their son. She was

treated well for sometime but thereafter physically and mentally harassed in her matrimonial home by the petitioner and his family members on account of non fulfillment of unlawful demand for purchasing a vehicle. In the year 2005, itself respondent-wife was sent to her parents home and even thereafter, she was subjected to ill-treatment on account of non fulfillment of the said unlawful demand. As such, lastly respondent-wife was forced to leave the matrimonial home. Respondent-wife alongwith her children constrained to approach the learned Magistrate by filing Criminal M.A. No.72/2008 for grant of maintenance. It has contended in the said application that petitioner-husband has refused and neglected to maintain her though having sufficient means and that she herself and her son are having no independent source of income and they are unable to maintain themselves.

b] Petitioner-husband has strongly resisted said application by filing his say at Exh.9. According to the petitioner-husband, respondent-wife had failed to perform marital obligations and left the matrimonial

house without any reason. She had also lodged false complaint under section 498-A of the IPC. It has also contended by the petitioner-husband that he has already given Talaq to the respondent-wife by Talaqnama dated 31.12.2008 and as such he is not liable to pay the maintenance to the respondent-wife under section 125 of Cr.P.C.

The learned Magistrate by its impugned judgment and order dated 4.5.2011 partly allowed the application and thereby directed the petitioner-husband to pay Rs.1,500/- p.m. towards maintenance of respondent no.2 and Rs.1,000/- p.m. towards maintenance of respondent no.3 son from the date of application alongwith costs of Rs.1,000/-.

Being aggrieved by the same, the respondent-wife alongwith her son preferred criminal revision no.126/2011 to the extent of quantum of maintenance and petitioner-husband has preferred criminal revision no.148/2011. The learned Sessions Judge, by impugned common judgment and order dated 13.2.2015 dismissed both the criminal revision applications. Hence, this criminal writ petition.

3. The learned counsel for petitioner-husband submits that the petitioner had proved the factum of talaq before the court by examining the witnesses who are signatories of Talaknama Exh.43-A. Learned counsel submits that respondent-wife has failed to perform her marital obligations and on the other hand left the matrimonial house and residing with her parents without any just cause. Learned counsel submits that, even in the year 2006 petitioner-husband had issued a legal notice to the respondent-wife for further cohabitation, however, she had not taken any cognizance of the same. Thus, the petitioner-husband constrained to give Talaq to her. Learned counsel submits that, both the courts below have not taken this aspect into consideration. Learned counsel submits that respondent-wife has filed false complaint under section 498-A of IPC against him and his family members. Further respondent-wife had also complained against him to his superior officers and therefore he has lost his job. At present the petitioner-husband is unemployed and is not able to pay the maintenance. Respondent-wife has failed to prove that the petitioner-

husband though having sufficient means refused and neglected to maintain respondent-wife and son.

4. None present for respondents no.2 and 3.

5. The petitioner-husband has resisted the application for grant of maintenance on two grounds. Firstly, the respondent-wife left the matrimonial house on her own and residing with her parents without any just cause and therefore, the petitioner-husband is not liable to pay the maintenance and secondly, that by Talaqnama dated 31.12.2008 he had given divorce to respondent no.2 wife and as such petitioner-husband is not liable to pay any maintenance to her under the provisions of Section 125 of Cr.P.C.

It appears from the evidence adduced by the petitioner-husband that, the petitioner-husband has merely examined the witnesses on the Talaqnama. Those witnesses have merely deposed about their signatures on the Talaqnama and they could not elaborate as to strain relations between the spouse. In the light of the observations in Dagadu Chotu Pathan

Vs. Rahimbi Dagadu Pathan by the larger Bench of this Court, it is incumbent on the husband to set out before the Court the reasons for such a divorce and whether he has sought the help of arbitrator for reconciliation at any time before the wife approached the court, before he filed his written statement or before he appeared in the witness box to take such a plea of Talaq. It has also observed that mere pronouncement of Talaq by husband or merely declaring his intentions or his acts of having pronounced the takaq, is not sufficient and does not meet requirement of law. Exercise of right to Talaq by husband, is required to be satisfied the preconditions of arbitration of reconciliation and reasons for Talaq.

In the instant case, the petitioner-husband has failed to give reasons for pronouncing talaq and that there is no evidence at all on the point of arbitration for reconciliation before the alleged talaq was pronounced by him.

6. On the other hand, respondent-wife has produced on record the notice to compromise issued by her through Jalgaon Zilla Maniyar Biradari, Jalgaon Exh.34

and further a letter dated 24.4.2006 Exh.35 which unmistakably point out that she had made genuine efforts for further cohabitation. On the contrary, the petitioner-husband has failed to show any attempt on his part for compromise or further any genuine reason for pronouncing the Talaq. Learned counsel has shown to this Court the legal notice issued by the petitioner-husband in the year 2006 to the respondent-wife for cohabitation, however, it appears from the judgment and order of the trial court that said notice is not produced on record and it is not exhibited. As such, this notice cannot be considered at this stage. Both the Courts below have thus rightly recorded findings that petitioner-husband has failed to prove Talaq dated 31.12.2008 and that, though having sufficient means petitioner-husband refused and neglected to maintain respondents no.2 and 3.

7. The petitioner-husband is a school teacher. Respondent No.2 wife has relied on the statement of income Exh.27 obtained under the provisions of Right to Information Act and the same is proved through PW. 2.

It appears from the said certificate that the petitioner-husband is getting monthly salary of Rs.20,200/-. Though the learned counsel has submitted that petitioner-husband has lost his job at present, there is nothing on record to substantiate the same. Furthermore, no such subsequent event can be considered and the petitioner-husband is always at liberty to file an application under section 127 of the Cr.P.C. for cancellation of the maintenance order on that ground.

8. In view of the above discussion, I find no reason to interfere in the impugned judgment and orders passed by the Courts below. There is no substance in the criminal writ petition. Hence, following order.

O R D E R

Criminal Writ Petition is hereby dismissed.

sd/-

(**V.K. JADHAV, J.**)

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aaa/-