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

CRIMINAL WRIT PETITION NO.1501 OF 2014

Bapu Chunilal Pardeshi,
Age : 32 years, Occu. Advocate,
R/o Lohtar, Tal. Pachora,
Dist. Jalgaon

..PETITIONER

VERSUS

1. Sau. Geeta Bapu Pardeshi,
Age : 26 years, Occu. Household,
2. Ajay Bapu Pardeshi,
Age : 6 years, Occu. Nil,
(Respondent No.1 is the guardian
of Respondent No.2 and both reside
C/o Umrao Maharu Pardeshi,
R/o Bahal, Tal. Chalisgaon,
Dist. Jalgaon

..RESPONDENTS

Mr A.N. Sabnis, Advocate holding for Mr P.B. Gamot, Advocate for
petitioner;
Mr N.R. Thorat, Advocate holding for Mr A.K. Tiwari, Advocate for
respondents

CORAM : N.W. SAMBRE, J.

DATE : 28th April, 2016

ORAL ORDER :

The petitioner, a practicing lawyer, married with respondent no.1,
who were blessed with a son respondent no.2 Ajay.

2. Since the petitioner started doubting chastity of respondent no.1 and
there was unhealthy atmosphere in the family because of unethical

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demand made by father-in-law, it is claimed that respondent no.1 left the marital house and then issued notice and initiated proceedings before the learned Judicial Magistrate First Class, Chalisgaon, under section 125 of the Code of Criminal Procedure claiming maintenance of Rs.5,000/- and Rs.3,000/-, respectively for herself and son, vide application dated 17th March, 2010.

3. The application was resisted by the petitioner by filing reply. It is claimed by the petitioner that the behaviour of respondent no.1 was not proper and she has created hostile atmosphere. It is then claimed that respondent no.1 is carrying out some tailoring work and is earning, in addition to the holding of land by her father.

4. Learned Magistrate, by an order dated 14th June, 2010 allowed the application of the respondents and awarded maintenance of Rs.4,000/- to respondent no.1 and Rs.3,000/- to respondent no.2 son, which was subject-matter of challenge in Criminal Revision No.158 of 2012 before learned Sessions Judge, Jalgaon. The revisional court dismissed the revision of the petitioner by an order dated 10th October, 2014. As such present petition.

5. Mr Sabnis, learned Counsel appearing on behalf of the petitioner, while questioning the legality of the orders passed by both the Courts below, would urge that the courts below have committed an error by recording a finding that respondent no.1 – wife was unable to maintain

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herself. He would then submit that there are no findings recorded whatsoever as regards income of the present petitioner, which should have been a basis for determining the quantum of maintenance to be awarded. According to him, respondent no.1 – wife is doing some tailoring work and is also getting sufficient financial support from her father, who is holding substantial agricultural land. So as to substantiate his contention, learned Counsel has relied upon the judgment of the Apex Court, in the matter of **Chaturbhuj vs. Sita Bai**, reported in **(2008) 2 SCC 316**, particularly observations in paragraph 7. He would then submit that since respondent no.1 has not discharged the burden by establishing that she was unable to maintain herself, this Court should set aside both the orders.

6. Mr Sabnis, while inviting my attention *qua* the health of the petitioner would urge that since he is not able to practice the profession, the professional income and the impediment in not attending the Court for giving evidence, was not considered by the revisional court.

7. Learned Counsel appearing on behalf of the respondents supported the order and submits that from the pleadings as are raised in the reply to the application under section 125 of the Code of Criminal Procedure, it could be easily inferred that the petitioner has neglected to maintain the respondents. He would then invite my attention to the conduct of the petitioner before the learned Trial Court and submits that there was enough material on record so as to infer the income of the present petitioner from profession and his agricultural holding. He would submit that the present proceedings be dismissed.

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8. With the assistance of respective learned Counsel, I have perused pleadings of the respective parties. The petitioner has filed reply to the application under section 125 of the Code of Criminal Procedure and has come out with a case that the cause for disturbance in the family is attributed to respondent no.1 as she was not behaving properly with the family members. It is then required to be noted that present respondent no.1 has issued a death threat i.e. to practice poison on him through his food. He has then alleged in his reply that the entire claim as is sought to be set-forth for getting maintenance is false and bogus.

9. *Prima facie*, it is required to be noted that in support of the claim, respondent no.1 has filed her affidavit and has entered into witness box. She has brought on record that the petitioner and his family members have neglected to maintain her and her son and she was saddled with allegation of unchastity. It is then required to be noted that though the petitioner had filed reply to the application, he has not entered into witness box so as to substantiate his claim. It is brought on record in the judgment of the learned Magistrate that there was sufficient material placed on record before the Magistrate so as to infer the income of the petitioner from profession and his agricultural holding. The learned revisional court was also alive to the agricultural holding of the petitioner. The land which is owned by the petitioner is located in such a region where its fertility is of high quality.

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10. Taking cumulative effect of the approach of the petitioner during the trial and revision, in my opinion, no interference is called for, particularly in extraordinary jurisdiction. The observations made by the Apex Court in paragraph 7 of the judgment in the matter of Chaturbhuj (supra) read thus :-

“Under the law the burden is placed in the first place upon the wife to show that the means of her husband are sufficient. In the instant case there is no dispute that the appellant has the requisite means. But there is an inseparable condition which has also to be satisfied that the wife was unable to maintain herself. These two conditions are in addition to the requirement that the husband must have neglected or refused to maintain his wife. It has to be established that the wife was unable to maintain herself. The appellant has placed material to show that the respondent-wife was earning some income. That is not sufficient to rule out application of [Section 125 Cr.P.C.](#) It has to be established that with the amount she earned the respondent-wife was able to maintain herself.”

The reliance placed by the learned Counsel for the petitioner, on the judgment in the matter of Chaturbhuj (supra) is wholly misplaced, for the reason that respondent no.1 – wife has entered into witness box and the marriage with the petitioner and birth of respondent no.2 was not disputed by the petitioner. Apart from above, the contents of the reply and the evidence that is brought on record demonstrates that the requirements pursuant to the observations made in paragraph 7 (quoted supra) were very much satisfied by respondent no.1.

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11 So far as health issue is concerned, there is hardly any material, much less the medical evidence, Doctor's certificate, etc. placed on record either before this Court or the Court below. Apart therefrom, there is no ground whatsoever raised to that effect in the petition, so also about incorrect finding recorded by the Courts below in regard to the income of the petitioner.

12. In view of above, no interference is called for. Thus, Criminal Writ Petition fails and stands rejected.

(N.W. SAMBRE, J.)

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