

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 7 OF 2016

Shri Vinod B.Naik,
Major of age, Indian National,
S/o. Baburao Naik,
R/o. House no. 433/15
Ganga Nagar, Shiroda,
Ponda, Goa.

..... Petitioner

V e r s u s

1. Smt. Sheela Naik,
Major of age, Indian National,
w/o. Vinod V. Naik,
r/o. Pangal, Shiroda,
ponda, Goa.

2. State of Goa,
Through the Pubic Prosecutor,
Panaji, Goa.

..... Respondents

Mr. H. D. Naik, Advocate for the Petitioner.

Mr. Pravin Faldessai, Advocate for the Respondent no. 1.

Mr. S. R. Rivankar, Public Prosecutor for the Respondent no. 2.

Coram :- **C. V. BHADANG, J**

Date : **18th April, 2016**

ORAL JUDGMENT

Heard.

2. Rule heard forthwith with the consent of the learned Counsel.

Learned Counsel appearing for the Respondents, waive service.

3. By this Petition, the Petitioner is challenging the Order dated 24.06.2015 passed by the learned Addl. Sessions Judge at Panaji in Criminal Revision Application No. 119 of 2013. By the impugned Order, the Criminal Revision Application is dismissed for default of the Petitioner.

4. The brief facts are that the first Respondent was the wife of the Petitioner. Admittedly, their marriage is dissolved by a Decree of Divorce on 13.05.2014 by the Competent Court. The first Respondent had sought maintenance in Application no. 4/2008/C which was granted at the rate of Rs.1200/- per month. Subsequently, the first Respondent filed Criminal Misc. Application no.114/2012/C purportedly under Section 127(1) of Cr.P.C. for enhancement of maintenance. By Order dated 22.08.2013, the learned Magistrate has enhanced the maintenance to Rs.5,000/- per month. This was challenged by the Petitioner before the learned Sessions Judge in the aforesaid Criminal Revision Application which was dismissed in default, which brings the Petitioner to this Court.

5. I have heard the learned Counsel for the Petitioner and the learned Counsel for the first Respondent.

6. It is submitted by the learned Counsel for the Petitioner that the Criminal Revision Application could not have been dismissed in default and that too on account of the absence of the Petitioner. Learned Counsel further submits that since after the passing of the Order of the learned Magistrate for enhancement of maintenance, the Petitioner had obtained copy of Claim Petition no. 74 of 2015

filed by the first Respondent seeking compensation under Section 166 of the Motor Vehicles Act in respect of accidental injuries suffered by her. Learned Counsel further points out to Para 6 of the Petition in which the first Respondent has claimed that she used to earn an amount of Rs.300/- to Rs.400/- per day from her business running of a General Store. It is submitted that according to the first Respondent herself, she was earning approximately a sum of Rs.9,000/- to Rs.12,000/- per month which was not disclosed by her in her application for enhancement. Learned Counsel, therefore, submits that the first Respondent is not entitled to any enhancement of maintenance.

7. Learned Counsel for the first Respondent states that the learned Magistrate has rightly enhanced the maintenance on the basis of the evidence led by the parties. However, in view of the fact that the Criminal Revision Application was not decided on merits, he states that this Court may pass appropriate Orders.

8. I have considered the circumstances and the submissions made. The Criminal Revision Application filed by the Petitioner is not decided on merits but was dismissed in default without going into the aspects whether the Criminal Revision Application can be dismissed in default or the Court is obliged to decide the same on merits on examination of the records. I find that there is one more circumstance namely the first Respondent filing a Claim Petition making averments that she was running a General Store and earning Rs.9,000/- to Rs.12,000/- per month from the said business. In the overall circumstances, the Criminal Revision Application can be restored to the file of the learned Session Judge. It would be

open for the Petitioner to point out the circumstances as to the filing of the Claim Petition by the first Respondent and the averments about her income before the Revisional Court which shall pass appropriate Orders.

9. In such circumstances, the following Order is passed :

ORDER

- (i) The Petition is allowed.
- (ii) The impugned Order dated 24.06.2015 is hereby set aside. Criminal Revision Application no. 119/2013 is restored to the file of the learned Addl. Sessions Judge at Panaji sitting at Ponda, for disposal according to law.
- (iii) Needless to mention that the rival contentions of the parties are left open.
- (iv) Rule is made absolute in the aforesaid terms.

C. V. BHADANG, J.

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