

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.835 OF 2006

Sou. Rajashree @ Kalpana Ramchandra Desai]
 (Deshmukh).]
 Age about 40 years, Occupation – Nil,]
 R/o. 78, Shaniwar Peth, Karad, Tal. Karad,]
 Dist. - Satara.] ... Petitioner

Versus

1. Shri Ramchandra Shivaji Desai (Deshmukh),]
 Age about 43 years,]
 Occupation – Agriculturist,]
 2. Shri Shivaji Dhondiram Desai (Deshmukh),]
 Age about 67 years,]
 Occupation – Agriculture/Retired,]
 Both R/o. Near Ram Mandir, Guruwar Peth,]
 A/P. Kadegaon, Tal. Kadegaon, Dist.- Sangli.]
 3. The State of Maharashtra.] ... Respondents

Mr. S. T. Bhosale for Petitioner.

CORAM :- M. S. SONAK, J.

JUDGMENT RESERVED ON :- DECEMBER 21, 2015
JUDGMENT PRONOUNCED ON :- JANUARY 07, 2016

ORAL JUDGMENT :-

1. This petition impugns Judgments and Orders dated 19/08/2004 and 30/06/2005 made by the Judicial Magistrate First Class, Karad ('JMFC') and the Additional Sessions Judge, Karad ('ASJ') denying the petitioner maintenance under Section 125 of the Code of Criminal Procedure, 1973 ('Cr.P.C.').

2. Mr. S. T. Bhosale, learned Counsel for petitioner, has submitted that the petitioner, who is a legally wedded wife of the respondent no.1, is unable to maintain herself and the neglect on the part of the husband is totally unjustified. He submits that the very marriage with the respondent no.1, was a product of fraud inasmuch as it was never disclosed to the petitioner that the respondent no.1 was dumb (unable to speak). He submitted that the petitioner was harassed by the respondent no.1 and at one stage, the brother of the respondent no.1 attempted to ravish the petitioner, taking undue advantage of the helpless situation in which the respondent no.1 was placed. He submitted that respondent nos.1 and 2 have sufficient income, both from service as well as agriculture and therefore, respondent nos.1 and 2 are duty-bound to maintain the petitioner. Mr. Bhosale submitted that there is more than sufficient justification for the petitioner to stay away from the respondents, particularly considering the harassment meted out to her and the two Courts have erred in denying maintenance to the petitioner, on the alleged ground that the petitioner had deserted the respondent no.1 without any sufficient justification.

3. Having heard the learned Counsel for petitioner, perused the record as well as the impugned Judgments and Orders, in my judgment, there is no case made out to interfere. There are concurrent findings of fact recorded by the JMFC and the ASJ that the petitioner, without any justification, has deserted the respondent no.1 and her two children. Sub-Section 4 of Section 125 of Cr.P.C. provides that no wife shall be entitled to receive maintenance from her husband, if she, without any sufficient reason, refuses to live with her husband. In this case, as noted earlier, the two Courts have recorded concurrent findings of fact that the petitioner, without any sufficient reason, has refused to live with her husband. With the assistance of the learned Counsel for petitioner, the notes of evidence (deposition) were perused. Upon perusal of the same, it cannot be said that the findings of fact concurrently recorded by the two Courts are vitiated by perversity or warrant interference in the exercise of extraordinary jurisdiction.

4. The allegation with regard to practice of fraud upon the petitioner, in the matter of marriage with the respondent no.1 cannot be accepted. In the first place, such allegation had been raised after 19 years of marriage and the birth of two children Vishal and Megha. Besides, there is evidence on record which suggests that even before the marriage, the parties were known and related to each other. As such, it is not possible to accept the petitioner's belated allegation that a fraud was played upon her in the matter of marriage with the respondent no.1.

5. Similarly, the allegation with regard to harassment and misconduct by the brother of the respondent no.1 has not at all been established. The petitioner has merely chosen to make such allegation, without producing any material whatsoever in respect of the same. In the matter of allegation against the brother of the respondent no.1, there is no material produced in the form of any complaint, either to the police authorities or to the elders in the family. There is no corroborative evidence which would suffice, even for the purposes of summary inquiry under Section 125 of the Cr.P.C. The two Courts have, therefore, rightly disbelieved the petitioner on the aspect of justification to stay away from the respondent no.1. There is no perversity in the findings of fact recorded by the two Courts.

6. What is significant in this case is that the petitioner's two children Vishal and Megha have deposed in the matter and have deposed against the petitioner. Vishal, at the stage when his deposition was recorded, was 19 years of age and the student of 1st year MBBS at Krishna Medical Institute, Karad. Vishal has deposed about behaviour of the petitioner, including the involvement of the petitioner in assaulting the respondent no.1, assaulting and being rude with the family members of respondent no.1 and also indulging in gambling activities. To the similar effect is the deposition of Megha, who was 16 years old at the time of her deposition. The petitioner, has not been able to make any dent in the testimonies of her own two children in the proceedings. The material on record also

indicates that the petitioner is earning some income by working as a cook and further, it is not as if the petitioner is unable to maintain herself. The material on record also indicates that the respondent no.1 bears the expenses of maintaining his two children and providing for their educational needs. Megha is stated to be afflicted by disease 'Dropsy'. Considering all these circumstances, the two Courts have rightly declined to burden the respondents with the liability to pay maintenance to the petitioner. Besides, the claim against the respondent no.2, who is the petitioner's father-in-law was, in the facts and circumstances of this case, totally misconceived.

7. In conclusion, therefore, no case is made out to interfere with the impugned orders. The Writ Petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)