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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1560 OF 2014.

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|--------------------------------------|---|-------------------------|
| 1. Ganpati Annu Magdum |] | |
| age: 61 years, Occn. Agriculturist |] | |
| |] | ... <u>Petitioners.</u> |
| 2. Shri. Pramod Ganpati Magdum |] | Original |
| age:28 years, occn. Agriculturist |] | Opponents. |
| both residing at Terwad, Tal. Shirol |] | |
| District: Kolhapur |] | |
| V/s. | | |
| 1. Sou. Radhabai Ganpati Magdum |] | |
| age: 55 years, Occ.Household |] | |
| c/o Gangubai Appa Batte |] | .. <u>Respondents.</u> |
| r/o at: Herwad, Tal. Shirol |] | Respondent |
| Dist. Kolhapur |] | No.2 Original |
| |] | Applicant. |
| 2. The State of Maharashtra |] | |

Mr. Manoj A. Patil, for the Petitioners.

Mr. D. R. More, APP for the Respondent State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 11th JANUARY, 2016.

ORAL JUDGMENT: [PER: DR. SHALINI PHANSALKAR-JOSHI, J.]

1. Heard learned counsel for petitioner.
2. Rule.
3. With the consent of parties rule made returnable forthwith.
4. This petition is preferred by the original respondents,

challenging the order of Additional Sessions Judge, Jaysingpur, District: Kolhapur. By the impugned order, the Sessions Court has set aside the judgment and order passed by the Judicial Magistrate First Class, in Criminal Misc. Application No.69 of 2010 and allowed respondent's application for maintenance under Section 125 of the Code of Criminal Procedure, thereby directing the present petitioners to pay amount of Rs.2,000/- each to the respondent towards monthly maintenance, from the date of petition alongwith costs of Rs.1,000/-.

5. Brief facts of the petition can be stated as follows :-

Respondent No.1 has filed Criminal Misc. Application No.69 of 2010, before the trial Court, inter alia contending that she had married with the present petitioner No.1 and was cohabiting with him. Petitioner No.2 is the son born from the said wedlock. Subsequent thereto, on account of illtreatment and harassment, she was driven out of the house by present petitioner No.2 at the instigation of petitioner No.1. Since then, she was constrained to reside separately. She is not having any source of income whereas present petitioner Nos. 1 and 2 are having landed property. They are also having cattle and income from milk business. Hence they are in position to pay maintenance which she is claiming at the rate of Rs.2,000/- from each of the petitioners.

6. This application for maintenance was opposed by the present petitioners denying all the allegations made therein and submitting that the petitioner No.1 is ready and willing to maintain respondent and hence she should resume her cohabitation with him. It was also contended that she had already filed suit for partition and by suppressing said fact she had applied for maintenance. An attempt was made also to contend that she is having her own independent source of income as she is doing service and hence on all these counts, it was requested that her application deserves to be dismissed.

7. In support of their respective contentions, petitioners and respondent have examined themselves and on the basis thereof, the trial Court was pleased to reject her application for maintenance.

8. When this order was challenged before the Sessions Court, Sessions Court was, however, pleased to allow her application as stated above and granted her maintenance at the rate of Rs.2,000/- each from petitioner Nos. 1 and 2.

9. This order of the Sessions Court is challenged in this petition by learned counsel for the petitioners, by submitting that the petitioner Nos. 1 and 2 are all along ready and willing to maintain respondent. She is residing separately on her own accord and at her

sweet will and hence she cannot be entitled to get maintenance at all especially in view of provisions of Section 125 sub clause (4) of the Code of Criminal Procedure. An attempt is also made to submit that in her evidence before the Court, she has categorically stated that she is claiming maintenance against her husband i.e. petitioner No.1 alone and not against petitioner No.2 her son. In view thereof also, it is submitted that the order of the trial Court directing both the petitioners to pay maintenance at the rate of Rs.2,000/- each to respondent is required to be quashed and set aside.

10. Respondent wife has been duly served with notice, but failed to remain present at the time of hearing.

11. I have heard learned APP, appearing for the State, who has supported the impugned order of Sessions Court.

12. The relationship between the parties is undisputed. The petitioner is not challenging the fact that respondent is his legally wedded wife. It is also undisputed that the petitioner No.2 is son born out of their wedlock. As per respondent, she was driven out of the house and hence constrained to reside separately. One more reason was harassment and illtreatment meted out at the hands of both the petitioners. Several suggestions are put up to respondent, in her cross examination to the

effect that she has left the house of petitioners, at her own accord and residing separately at her own sweet will. These suggestions are denied by her. When specific query was put up to her in cross examination that petitioner No.1 was ready and willing to resume cohabitation and whether she is ready to do so, she has deposed that as she has apprehension of danger to her life, she is not ready to resume cohabitation. Therefore, her evidence has remained unshattered on record to the effect that on account of illtreatment and harassment meted out to her by both the petitioners, she is constrained to reside separately.

13. Moreover, some damaging suggestions are put up to the respondent in her cross examination suggesting that she is having illicit relations with one Anil Kamble. Thus, her character and fidelity is clearly challenged and suspected. In view thereof, in my considered opinion, Sessions Court, has rightly held that respondent is fully justified in residing separately from the petitioners and therefore, becomes entitled to get maintenance.

14. Though an attempt is made to suggest that she is also doing service and earn her own source of income, no evidence is brought on record to that effect and therefore, it follows that she is having no source of income and unable to maintain herself. As against it, present

petitioners are having agricultural landed property and also income from the milk business. In that view of the matter, Revisional Court has rightly held respondent wife entitled to get maintenance from the petitioners.

15. At this stage submission is also made to the effect that in evidence before the Court, respondent has stated that she is claiming maintenance from petitioner No.1 her husband and not from her son and therefore, it is submitted that at least the impugned order of the Revisional Court needs to be modified to that effect. However, one has to consider that the petitioner No.2 also owes legal responsibility to maintain his mother and hence amount of maintenance at the rate of Rs.2,000/- each is fixed considering his liability as co-extensive with his father. Having regard to the age of petitioner No.1, which it is submitted at bar is 82 years, on this count also in my considered opinion, responsibility imposed on petitioner No.2 of paying maintenance to respondent need not be disturbed or interfered with.

16. The impugned judgment and order of the Revisional Court being well reasoned and justified from the facts and evidence on record, in my considered opinion, no interference is warranted therein. This is also coupled with the fact that as of today, not a single paisa is deposited

by the petitioner towards maintenance of respondent and therefore, it totally negates the contention of the petitioner that he is ready and willing to maintain respondent and cohabit with her. He has not shown any bonafides by depositing the said amount and from this angle, the impugned judgment and order of the trial Court does not call for any interference.

17. Rule is discharged. The petition stands disposed of accordingly.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

C E R T I F I C A T E

Certified to be true and correct copy of the original signed order.