

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2252 OF 2005

Sou. Chaya Satappa Divate and ors. .. Petitioners
vs.
Satappa M. Divate and anr. .. Respondents

Mr. G.N. Salunkhe for the Petitioner.
Mr. S.S. Patwardhan for Respondent No.1.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 05 February 2016.
Date of Pronouncing the Judgment : 17 February 2016.

JUDGMENT :-

1] The challenge in this petition is to the orders dated 31 August 2004 and 26 April 2005, to the extent, the said orders, have denied maintenance to the Petitioner No.1-wife and awarded inadequate maintenance to the Petitioner Nos.2,3 and 4 (children).

2] By the interim order, this Court had enhanced maintenance for the Petitioner Nos.2,3 and 4 to Rs.1000/-, Rs.800/- and Rs.400/- respectively.

3] Mr. S.S. Patwardhan, learned counsel for the Respondent-husband, has very graciously stated that the Respondent-husband, will not object to such enhancement being maintained, even in the final order in this petition. This is, notwithstanding the circumstance

that the Petitioner Nos.2,3 and 4 (daughters), by now, may have attained the age of majority. However, he submitted that should the Petitioner Nos.2 and 3 get married, the Respondent-husband, should be reserved the liberty of applying for variation. This is a reasonable approach. Accordingly, liberty, which, in any case, is available to the Respondent-husband, is hereby granted.

4] Mr. G.N. Salunkhe, learned counsel for the Petitioners, has submitted that the Petitioner No.1-wife, had genuine and valid reason for staying away from the matrimonial home alongwith her three minor children and the two Courts, without appreciating the same, have denied maintenance to the Petitioner No.1-wife. He pointed out that the correspondence, upon which, the two Courts have placed reliance, i.e., mainly relates to the period prior to 25 July 2001, on which date, the Petitioner No.1 alongwith her minor children, was constrained to leave matrimonial home. He points out that in the said correspondence, there was really no question of making any charges of harassment against the Respondent No.1-husband, particularly as their last child, i.e., Sooraj was born some time in the year 2001. The correspondence on record, when appreciated in proper perspective, would indicate that even the

same, did indicate that not all was well between the parties and the Petitioner No.1 was therefore, reluctant to return to the matrimonial home but, ultimately returned on the assurance of better treatment. In these circumstances, Mr. Salunkhe submitted that the two Court erred in denying any maintenance to the Petitioner No.1, even though, the material on record, established that the Petitioner No.1-wife was unable to maintain herself and the Respondent No.1-husband had sufficient means to maintain her.

5] Mr. Patwardhan, learned counsel for the Respondent No.1-husband, submitted that there are concurrent finding of fact, which are amply borne by the material on record. He submitted that the Petitioner No.1 made false charges in her application seeking maintenance, in regard to demand for gold by the Respondent No.1-husband and his parents. Such charges were never substantiated. On the contrary, the material on record establishes that such demands were never made or for that matter the making of such demands was inherently improbable, in the facts and circumstances of the case. Mr. Patwardhan points out that the Respondent No.1-husband has retired from Military Service and is only drawing pension. There were mediation efforts and the evidence on record establishes that

the Petitioner No.1 was adamant in staying away from the Respondent No.1-husband without any valid and justifiable reasons. Therefore, in terms of Section 125 of Code of Criminal Procedure, 1973 itself, the Respondent No.1-husband was not liable to pay any maintenance to the Petitioner No.1 and the view taken by the two Courts warrant no interference whatsoever.

6] The rival contentions now fall for determination.

7] The Petitioner No.1 and Respondent No.1 were married on 25 May 1991. In December 1992 or thereabouts, daughter Swapnali was born. In 1997, the second daughter Sonali was born and some time in the year 2001 son Sooraj was born. The Respondent No.1, on account of his duty, was mostly staying away from the matrimonial home. On account of deliveries and even otherwise, there is material on record, that the Petitioner No1 would stay with her parents. The correspondence on record is mainly during this period as also, in the context of decisions in relation to retirement of the Respondent No.1 after completion of fifteen year Military Service. It is true that in this correspondence, there are no allegation that the Respondent No.1 or his family member had any time demanded any gold or dowry.

Although, this is a case now suggested by the Petitioner No.1, however, it must be noted that the correspondence also makes reference to some difference and consequent reluctance on the part of Petitioner No.1 to return to the matrimonial home. In any case, the correspondence is prior to the year 2001, when, according to the Petitioner No.1, the real differences is surfaced and it was unbearable for the Petitioner No.1 and her minor children to continue to reside with the Respondent No.1 and his family members. Therefore, based solely upon the correspondence, it was not appropriate for the two Courts, to have denied maintenance to the Petitioner No.1.

8] There is material on record to suggest that there were problems between the Petitioner No.1 and Respondent No.1. There is also material on record, which suggest that meditations were attempted. There is material on record that after 2002 or thereabouts, even the Respondent No.1, made no efforts whatsoever for prevailing upon the Petitioner No.1 and the children to return to the matrimonial home. Although, Mr. Patwardhan is right that there is no such duty cast upon the Respondent No.1, in case, some such efforts were made, the same would buttress the case of the

Respondent No.1 that the Petitioner No.1, without any cause whatsoever, suddenly, left matrimonial home alongwith the minor children. The Petitioner No.1, has deposed about the physical and mental torture she underwent. Her evidence could not have been discarded, merely relying upon the correspondence prior to the year 2001. The witnesses also speak about the quarrels between the Petitioner No.1 and the Respondent No.1. Even the police were involved particularly at the stage when the Petitioner No.1 returned to take away the household utensils.

9] The two Courts, ought to have appreciated the material on record in the proper perspective and considering the status of the parties. The Petitioner no.1, after almost ten years and the birth of three children, has left the matrimonial home. She has deposed about the physical and mental harassment. The two Courts, are not justified, in the facts and circumstances of the present case, to merely regard these as some minor disputes between the parties. Ultimately, it is to be borne-in-mind that the decision, to leave the matrimonial home alongwith three minor children, after, ten years of marriage, is, quite a major decision and normally, the decision of this nature, will not be taken, unless, the reasons are major. Besides,

from the material on record, it is apparent that even the Respondent No.1, really did not bother to make any efforts to bring the Petitioner No.1 and minor children back.

10] Considering the aforesaid circumstances, it would be appropriate if the impugned orders are set aside to the extent, they deny maintenance to the Petitioner No.1. The impugned orders had already awarded maintenance to the three children. The maintenance amount has also been enhanced by this Court. The enhanced amount is hereby maintained, subject to liberty earlier granted to the Petitioner. The interests of justice would therefore, be met, if, the Petitioner No.1 is awarded maintenance at the rate of Rs.500/- per month from the date of her application for maintenance. Considering that the arrears, by now, will be substantial, the Respondent No.1 is granted twelve months' time to clear the arrears, by way of twelve equated monthly installments. The arrears should be cleared alongwith maintenance at the rate of Rs.500/- per month, which is hereby awarded.

11] Rule is made absolute to the aforesaid extent. There shall, however, be no order as to costs.

(M. S. SONAK, J.)