

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 2589 OF 2006

Pradeep Tukaram Ambre
R/at At & Post : Awashi,
Tal. Khed, Dist:Ratnagiri,
Maharashtra

..Petitioner

V/s.

1. Priyanka Pradeep Ambre
R/at At & Post :Tisangi,
Tal. Khed, Dist: Ratnagiri,
Maharashtra

2. The State of Maharashtra

.. Respondents

Mr.Gopal R. Hegde for Petitioner.
None present for Respondent.

CORAM : M. S. SONAK, J.

DATE : 08th JANUARY 2016.

P.C.

1. The challenge in this petition is to the judgment and order dated 13-10-2006 made by the Additional Sessions Judge, Khed (ASJ) reversing the judgment and order dated 21-04-2006 made by the JMFC and awarding the respondent no.1 (Wife) maintenance at the rate of Rs.1,000/- per month under section 125 of Code of Criminal Procedure 1973

(Cr.P.C.).

2. Mr.Hegde, learned counsel for the petitioner has submitted that the Sessions Judge has travelled far beyond the parameters of the revisional jurisdiction in making the impugned order. He submitted that the Sessions Judge has re-assessed the material on record, as if, he were sitting in appeal over the decision of the JMFC. This, according to Mr.Hegde is a jurisdictional error which is required to be set right by this Court in exercising its extraordinary jurisdiction of Article 227 of the Constitution of India.

3. Mr. Hegde further submitted that in this case, the petitioner in the course of his deposition, had clearly made a statement that he was willing to accept the respondent no.1 back in the matrimonial home and to co-habit with her. He submitted that without any justification whatsoever, the respondent no.1 has refused to return to the matrimonial home and co-habit with the petitioner. Such refusal on her part dis-entitles her to claim any maintenance under section 125 of

the Cr.P.C. Mr. Hegde made reference to second proviso to Sub-Section 3 of Section 125 of Cr.P.C. in support of this submission.

4. Mr.Hegde made reference to several decisions, which shall be considered in the course of this judgment, mainly to submit that a wife, who, without any reasonable cause refused to stay with her husband is dis-entitled to claim maintenance under Section 125 of Cr.P.C.

5. Finally, Mr.Hedge submitted that he has some information from the petitioner that suit for divorce instituted by the petitioner on grounds of desertion and cruelty on the part of the respondent no.1 has already been decreed sometime in the year 2011 and divorce has been granted accordingly. He fairly admitted that the said decree has been appealed against by the respondent no.1 He stated that in the said suit for divorce, the respondent no.1 had applied for maintenance but the same was rejected on the ground that the respondent no.1 was able to maintain herself.

6. Having heard the learned counsel for the petitioner and perused the material on record as also the impugned judgment and order, it cannot be said that the Sessions Judge has exceeded the bounds of revisional jurisdiction. This is not a case where the sessions Judge as re-assessed the material before him. The Sessions Judge has reversed the judgment and order made by the JMFC, on the ground that the JMFC had erred in principle and further, the legal provisions were also miss-construed. Therefore, it cannot be said that there is any error of jurisdiction in the making of the impugned order.

7. On perusal of the material on record, it cannot be said that the respondent no.1 has declined to live with the petitioner without any reasonable cause. The Sessions Judge has rightly observed that the respondent no.1, from her side, did make efforts to reside and co-habit with the petitioner; however, the same did not fructify. In contrast, the petitioner, besides making a bald statement in the course of deposition that he had no objection if the respondent no.1 returned to the matrimonial home, has not demonstrated any steps taken by

him in that direction. Record indicates that the petitioner had earlier instituted criminal proceeding alleging offence under Section 498A of the Indian Penal Code, but the respondent no.1 withdrew the said proceeding. In the said proceeding also, respondent no.1 made a statement that she was willing to cohabit with the petitioner. There is also material on record that the respondent no.1 and her family members took active steps, with the assistance of family members, to bring about an amicable settlement, but the same was ultimately not possible. Proceedings under section 125 of the Cr.P.C. are summary in nature. On the basis of the material on record, the Sessions Judge has rightly observed that the finding recorded by the JMFC was unsustainable. There is no jurisdictional error in the view taken by the Sessions Judge.

8. In this case, the petitioner, in order to prove his case, has gone to the extent of examining his two minor children. The minor children have no doubt deposed that their mother used to quarrel with the father and get very angry. Upon a query as to why the minor children were dragged into

the witness box for the matter of this nature, learned counsel for the petitioner contended that there is no legal bar to examination of minors and even proceeded to cite the decision of the Hon'ble Apex Court in the case of *Panchhi & Ors. etc V/s. State of U.P.* ¹[JT 1998 (5) SC-565].

9. Learned counsel for the petitioner is right in his submission. There is no legal bar to examine a child witness, as indeed held by the Hon'ble Apex Court in the case of Panchhi (Supra). However, though the question may not be about legality, the question is certainly about propriety. In order to deny his wife maintenance, the petitioner has chosen virtually to traumatize the minor children by requiring them to depose in the maintenance proceeding. The Hon'ble Apex Court, in the case of Panchhi (Supra), was concerned with the deposition of the child witness, who was unfortunately the only surviving member who had to witness the most brutal murder of the remaining members of this family. The accused persons in the said case had raised questions about the competence of such

1 [JT 1998(5) SC-565]

child witness. It is in this circumstances that the Hon'ble Apex Court observed that a child witness is competent to depose but the evidence of the child witness can be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell them and thus a child witness is an easy prey to tutoring. The reliance placed by the learned counsel upon the decision in case of Panchhi (Supra), in the present context, is therefore entirely mis-construed. Rather, the decision supports the view taken by the Sessions Judge that child witness is a easy prey to tutoring.

10. In the case of *Deb Narayan Halder V/s. Smt. Anushree Halder* ²(AIR 2003 S.C. 3174) Hon'ble Apex Court has held that were reasons stated by the wife with regard to demand of dowry and cruelty are non-existent and wife has left the matrimonial home without any justifiable ground, the wife is not entitled for maintenance. In this case, the Sessions Judge had rightly concluded that there were justifiable grounds for the wife to stay away. In fact, the material on record indicates

2 [AIR 2003 S.C. 3174]

that the wife is willing to live with the husband but circumstances conducive for the same were not being created by the husband.

11. In the case of *Sangita Arun Mhaswade V/s. Arun Aba Mhasvade & Another* ³(1984 Cri.L.J. 1524 Bom), *Sayyed Jabbar Ali V/s. Mst.Saheba Fatima* ⁴(2002(1) Mah. L.J. 623) and *Mammad Kunhi V/s. Rukhiya* ⁵(1978 Cri.L.J. 1645), once again, the same proposition is reiterated that the wife, who without justification refuses to stay with the husband, is not entitled to claim the maintenance. In view of the finding that there was justification on the part of the respondent no.1 wife, the said judgments are distinguishable.

12. The Sessions Judge has recorded finding that the respondent no.1 is unable to maintain herself and further taken into consideration the circumstances the two children live with

³ [1984 Cri.L.J. 1524 Bom]

⁴ [2002(1) Mah. L.J. 623]

⁵ [1978 Cri.L.J. 1645]

the petitioner, awarded maintenance of only Rs.1,000/- per month. There is neither unreasonableness nor perversity in the approach of the learned Sessions Judge.

13. There is no clear material on record with regard to the decree of divorce obtained by the petitioner. However, assuming that the petitioner has obtained the decree of divorce sometime in the year 2011, then, at least from the year 2011, the petitioner has no ground to deny the respondent no.1 maintenance. In such a situation, there is no question of the second proviso to Sub-Section 3 of Section 125 being applicable. For the purposes of Section 125 of Cr.P.C., even a divorced wife is “wife” and where she is unable to maintain herself, she can claim maintenance from the person who was once her husband. Further, once the petitioner has obtained a decree of divorce, he cannot insist that the respondent no.1 comes to co-habit with him. It is possibly for this reason that the petitioner has not brought on record the decree of divorce in this proceedings, though it is stated that the decree was obtained some time in the year 2011. At this stage, there is no

question of adjourning the proceeding for the said purpose.

14. On cumulative consideration of aforesaid facts and circumstances, there is no reason to interfere with the impugned order, petition therefore dismissed. However, there shall be no order as to cost.

15. In terms of order dated 28th December 2006, the petitioner was directed to pay maintenance at the rate of Rs.800/- per month to respondent no.1 during the pendency of this petition. The learned counsel for the petitioner makes a statement that this order has been duly complied with.

16. Now that this petition is being dismissed, the petitioner is required to pay the balance amount and the arrears towards the balance amount should be cleared by the petitioner within a period of eight weeks from today.

17. Rule is therefore discharged and the interim order, if any, stand vacated.

18. All concerned to act on authenticated copy of this order.

(M. S. SONAK, J.)