

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 329 OF 2008

Mahesh Sadashiv Athawale .. Petitioner
VS.
Sou. Poonam Mahesh Athawale & Ors. .. Respondents

None for Petitioner.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE: 26 AUGUST 2016

P.C :

- 1] Neither the petitioner nor his Advocate are present.
- 2] On 2 May 2008 whilst issuing Rule, this court made the following order :

- "1. Rule.*
- 2. Issue notice to the respondents returnable on 9th June, 2008. The notice will indicate that the matter will be heard finally.*
- 3. It is made clear that this order does not stay the effect of the impugned order.*
- 4. Hamdast allowed.*
- 5. The Petition would be heard only if the petitioner is not in arrears of the maintenance amount."*

- 3] As of today, since neither the petitioner nor his Advocate are present, it is not possible to ascertain whether or not the petitioner is in arrears of the maintenance amount. However, considering the circumstance that neither the petitioner nor his Advocate have

chosen to remain present, it would be appropriate to proceed on the basis that the petitioner is indeed in arrears. On this ground itself, this petition is required to be dismissed.

4] The petition, even otherwise, is directed against the order dated 5 April 2007, by which, the petitioner's criminal revision application no. 211 of 2006 came to be dismissed. The order notes that the petitioner was absent on two occasions and therefore, the criminal revision application is dismissed for default.

5] Whilst it is true that criminal revision application may not be dismissed for default and the revisional court is required to examine the record and decide the criminal revision application finally, in the facts and circumstances of the present case, the impugned order is not required to be set aside by applying this principle. In any case, no such principle applies in case of the criminal writ petition as the present one. As noted earlier, even today, neither the petitioner nor his Advocate are present.

6] Rather than interfere with the impugned order and direct the revisional court to rehear the revision application, this court, has examined the order dated 12 October 2006 made by the Judicial Magistrate, First Class, awarding maintenance at the rate of Rs.1,000/- per month to the respondent wife from the date of filing

of application before the JMFC. Upon perusal, it is clear that there is no ground made out to interfere with the said order either in exercise of revisional jurisdiction or in the exercise of supervisory jurisdiction.

7] The record does indicate that the petitioner has chosen to make several allegations against the respondent, which allegations however, the petitioner has failed to make good. The JMFC's order also correctly held that the mere institution of a petition for restitution of conjugal rights, does not disentitle the wife from claiming maintenance. In this case, on the basis of material on record, the JMFC has held that the wife is unable to maintain herself and the petitioner husband, despite having sufficient means, has neglected to maintain her. There is no perversity in the record of such findings of fact. In any case, such findings of fact, could not have been interfered with in the exercise of revisional jurisdiction or for that matter supervisory jurisdiction.

8] For all these reasons, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka