

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

CRIMINAL WRIT PETITION NO. 1204 OF 2016

Shri Anant Baba Kumbhar

... Petitioner

Vs

Sou. Parubai Anant Kumbhar & Anr.

... Respondents

...

Mr. Ashok B. Tajane for the petitioner.

Ms. M. R. Tidke, APP for the State.

CORAM : M. S. SONAK, J.

DATE :20 AUGUST, 2016

P.C. :

1. The challenge in this petition is to the orders dated 05.07.2014 and 22.01.2016 made by the J.M.F.C., Dahiwadi and the Sessions Judge, Satara in the matter of maintainability of maintenance Application No. 123 of 2005.

2. Initially the Respondent had instituted maintenance Application No. 243 of 1999 seeking enhancement of maintenance already granted to her. During the pendency of this application, the respondent-wife instituted yet another maintenance Application No. 123 of 2005 seeking further enhancement of maintenance. On 4th February 2006, the respondent-wife gave a pursis that she does not wish to press MA No. 243 of 1999.

3. The petitioner objected to maintainability of MA No. 123 of 2005 on the ground that such application was not maintainable, in view of the pendency of MA No. 243 of 1999. The J.M.F.C. by the impugned order dated 05.07.2014 held as follows.

1. *The issue of maintainability of this application is answered partly affirmative.*
2. *The M. A. No. 123/2005 is maintainable since 05.02.2006 only. Applicant is entitled to enhancement of maintenance, if allowed, from 05.02.2006 only.*
3. *In view of order passed by Hon'ble Session's Judge Vaduj in Revision No. 137/2005 dt. 20/02/2006 parties directed to cooperate in earlier disposal.*

4. The petitioner, aggrieved by the aforesaid order dated 5th July 2014 instituted Criminal Revision Application No. 15/2014 before the Sessions Judge. By the impugned judgment and order dated 22nd January 2016, the Sessions Judge has held as follows.

Order

- 1) *Revision petition is hereby dismissed. However, in peculiar circumstances of the case, impugned order is set aside and Criminal Miscellaneous Application No. 123/2005 is held to be maintainable since it is institution in the Court*
- 2) *No order as to costs.*

5. Mr. Tajane learned counsel for the petitioner submits that MA No. 123/2005 was not maintainable, since, the same was instituted during the pendency of MA No. 243/1999. In any case, Mr. Tajane submits that in the absence of any challenge on the part of the respondent-wife to the order dated 05.07.2014, the learned Sessions Judge exceeded jurisdiction in taking away even the limited relief which had been granted by the JMFC to the petitioner. For this reasons, Mr. Tajane submitted that both the impugned orders are liable to be set aside and MA No. 123/2005 be dismissed as not maintainable.

6. Upon due consideration of the submission made by the learned counsel for the petitioner and upon perusal of the record, in my judgment, no case is made out to interfere with the impugned orders. There was no legal bar to the institution of MA No. 123/2005, even though, on the date of its institution, the earlier MA No. 243/1999 was pending. Ultimately, MA No. 243/1999 was never pressed and therefore, the same was disposed of. In matters relating to maintenance, it is always permissible for the parties to seek variation, no doubt, upon establishment of change in circumstances in that sense, there is no finality as such to any order relating to maintenance. In this case, admittedly, MA No. 243/1999 had not even been disposed of on merits. The same was merely not pressed by the respondent-wife, obviously because in the meanwhile, she has instituted MA No. 123/2005.

7. The restriction of relief by the J.M.F.C. to the petitioner was obviously incorrect and in excess of jurisdiction. The Sessions Judge, in exercise of revisional jurisdiction, was therefore entitled to correct such error of jurisdiction. Revisional jurisdiction can be exercised by the Sessions Court even *Suo moto* in a given case. Therefore, the mere circumstances that the respondent wife had not formally challenged the J.M.F.C.'s order dated 5th July 2014, was, clearly not a bar to the Sessions Judge exercising revisional jurisdiction, upon noticing the jurisdictional error in the J.M.F.C.'s order. In fact, it was the duty of the Sessions Judge to have done so.

8. For the aforesaid reasons, there is no case made out to

interfere with the impugned order. The petition is therefore dismissed. There shall be no order as to costs.

9. The Judicial Magistrate who is seized of MA No. 123/2005 is directed to dispose of the same as expeditiously as possible and in any case within a period of 6 months from today. It needs to be emphasized that maintenance application is have to be disposed of expeditiously.

10. All concerned to act on the basis of authenticated copy of this court order.

(M. S. SONAK, J.)