

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2336 OF 2006

Santosh Govind Ishwalkar.] ... Petitioner

Versus

1. Sanika Santosh Ishwalkar,]
2. State of Maharashtra.] ... Respondents

None present.

CORAM :- M. S. SONAK, J.
DATE :- JANUARY 15, 2016

P. C. :-

1. Neither the parties nor their Advocates are present. However, considering that this matter relates to the year 2006, the same is disposed of on merits.

2. The challenge in this petition is to the Judgment and Order dated 26/07/2006 by which the Additional Sessions Judge, Sindhudurg ('ASJ') has allowed the respondent no.1's Criminal Revision Application No.17 of 2006 and awarded the respondent no.1 maintenance under Section 125 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') at the rate of Rs.800/- per month from the date of the petition i.e. 06/05/2005. On 07/01/2016, the following order was made :-

“Neither the petitioner nor his Advocate are present. However, considering that there are certain averments in the petition that the petitioner is a mentally challenged person, it would be appropriate to grant one more opportunity. Accordingly, stand over to 13/01/2016.”

3. Today since neither the petitioner nor his Advocate are present, the matter is being disposed of finally.

4. The main ground raised in this petition is that the petitioner is stated to be suffering from a mental disease known as 'Brief Psychlotic Disorder', and is under the treatment of one Dr.Rupesh Dhuri. As a result of this illness,the petitioner does not have the capacity to work and therefore, the petitioner is not in a position to either maintain himself or the respondent no.1. There is also a ground raised that the respondent no.1, without any justification, has refused to stay with the petitioner and therefore, the respondent no.1 is not entitled to any maintenance under Section 125 of Cr.PC. Insofar as the second aspect is concerned, the learned ASJ, by reference to the material on record, has held that there was sufficient justification for the respondent no.1 to stay away from the matrimonial home. Further, the material on record indicates that the respondent no.1 did make attempt to resume cohabitation but for reasons attributable mainly to the petitioner and his family members, such attempt did not frucify.

5. On the aspect of mental illness, the learned ASJ, on the basis of material on record, has disbelieved the case set out by the petitioner that the petitioner has suffered mental disorder on account of cruelty meted out to him by the respondent no.1. The learned JMJC, who had actually denied maintenance to the respondent no.1, had also held that the respondent no.1 is unable to maintain herself. Accordingly, there are concurrent findings of fact that the respondent no.1 is unable to maintain herself. No perversity has been demonstrated in the matter of record of such concurrent findings of fact.

6. For the aforesaid reasons, this petition is dismissed. The interim order, if any, stands vacated.

(M. S. SONAK, J.)