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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3789 OF 2015

Rayyan Abdul Aziz Khan	..Petitioner.
Vs.	
Aziz Vazir Khan & Anr.	...Respondents.

**WITH
WRIT PETITION NO.3790 OF 2015**

Smt. Yasmeen Mohammed Hussain Shaikh (Rangrez)	
@ Yasmeen Aziz Khan	..Petitioner.
Vs.	
Aziz Vazir Khan & Anr.	..Respondents.

Mr. Mateen Shaikh with Afroz Siddique, S. Shaikh, S.Khirsagar , J. Shaikh,
R. Shaikh and Arshad Shaikh for Petitioners.
Mr. Sanjay Bhojwani for Respondent No.1.
Mr. A.S. Shitole, APP for State.

CORAM: A.S. GADKARI, J.

DATE : 25th April 2016.

P.C.

- 1 Heard the learned Counsel for the respective parties.
- 2 Rule. Rule is made returnable forthwith and by consent of the parties taken up for final hearing.
- 3 The Writ Petition bearing No.3789 of 2015 is preferred by the minor son and the Writ Petition No.3790 of 2015 is preferred by the wife of the

respondent No.1. The record discloses that the petitioner-minor son filed Criminal Misc.Application No.142 of 2007 (renumbered Misc. Application No.3226 of 2013) under Section 125 of Cr. P.C. . The petitioner- Smt. Yasmeen Shaikh filed Misc.Application bearing No.104 of 2007 (renumbered Misc. Application No.3225 of 2013) under Section 125 of Cr. P.C. That the petitioner-wife also filed an Application under the provisions of the Protection of Women from Domestic Violence Act, 2005 bearing Misc. Application No.223 of 2010 (renumbered Application No.3224 of 2013) before the Judicial Magistrate First Class, Pune.

4 By an order dated 18.1.2014 passed by this Court in Criminal Writ Petition No.2559 of 2011 preferred by the petitioner- Smt. Yasmeen Shaikh it was directed that all the aforestated three applications be heard by one and same Judge and accordingly those three applications were heard by the learned Judicial Magistrate First Class, Court No.6, Pune. The learned Trial Court by its Judgment and Order dated 2.6.2014 (without giving specification of the case numbers) partly allowed the applications and directed the respondent No.1-husband to pay the monthly maintenance of Rs.2000/- to the applicant-wife from the date of application moved under Section 125 of the Cr. P.C. i.e. from 6.7.2007 and Rs.1000/- to the applicant (son) from the date of application moved under Section 125 of the Cr. P.C. i.e. from 16.5.2007. The Trial Court

also directed that the respondent No.1 herein to pay the costs of Rs.8000/- to the applicants therein as contemplated under the provisions of the Protection of Women from Domestic Violence Act, 2005.

The record discloses that the respondent No.1 herein has preferred Revision Application before the learned Additional Sessions Judge, Pune. As per the contention of the respondent No.1, the prayers in the applications filed under the Protection of Women from Domestic Violence Act were rejected. As there was delay of 5 days in preferring the application, he also filed Criminal Misc. Application No.309 of 2014 for condonation of delay. The learned Additional Sessions Judge, Pune by its Judgment and Order dated 2.12.2014 dismissed the said application of condonation of delay of 5 days. The respondent No.1 subsequently filed Criminal Revision Application No.501 of 2014 against the grant of maintenance under Section 125 of Cr. P.C. to the son-Rayyan bearing Criminal Revision Application No.501 of 2014. The respondent No.1 also preferred Criminal Revision Application No.500 of 2014 against the grant of maintenance under Section 125 of Cr. P.C. in favour of his wife i.e. the Petitioner in Writ Petition No.3790 of 2015. The Revisional Court by two separate Judgment and Orders dated 30th June 2015 has partly allowed the said Revision Applications and directed the respondent No.1 to pay maintenance from the date of passing of the order passed by the Trial Court i.e. 2.6.2014 and

not from the date of filing of the application i.e. dated 16.5.2007 under Section 125 of Cr. P.c. . The petitioners have impugned the said two Judgment and Orders dated 2.6.2014 by questioning its correctness.

5 The learned Counsel for the petitioners submitted that there was no legal need or necessity for the Revisional Court to either, modify or change the date of grant of maintenance. He submitted that due to the said change in the date of granting maintenance, the petitioners herein have to suffer heavy monetary loss. He submitted that the respondent No.1 has not taken care or paid any amount to the petitioner-wife in Writ Petition No.3790 of 2015. He submitted that the petitioner-wife is facing financial hardship. He submitted that the order passed by the Trial Court is just and proper and there was no necessity for the Revisional Court to interfere with it.

6 The learned Counsel for the respondent No.1-husband vehemently opposed the petitions and submitted that the respondent No.1-husband was taking care of his son by providing him clothes and also used to pay his educational expenses. He therefore submitted that as a matter of fact since 2007 the petitioner is protracting litigation and delay has been caused at her behest. He therefore submitted that the respondent No.1 should not be held responsible for delay while making the payments of maintenance to the petitioner-wife. He submitted that the petitioner-wife has filed the present petition only with a view

to harass the respondent No.1-husband. He submitted that the Judgment and Order passed by the Revisional Court needs no interference at the hands of this Court and the petitions may be dismissed.

7 The Revisional Court while changing the date of grant of maintenance has held that though the petition for maintenance under Section 125 was filed in the year 2007, the wife i.e. mother of the petitioner in Writ Petition No.3789 of 2015 moved an application for interim maintenance after a long gap and when the matter was part-heard. The said interim order was challenged before the Revisional Court. That only after the directions given by the said Court, the applications were decided and therefore it is clear that there was fault on the part of the petitioner in Writ Petition No.3790 of 2015. The learned Judge of the Revisional Court has further held that the respondent No.1 has paid school fees and other expenses of the minor son during the pendency of the petition and the said fact is not disputed by the petitioner-wife. These are the reasons recorded by the Revisional Court for coming to the conclusion while changing the date of maintenance, from the date of filing of the application under Section 125 of the Cr. P.C. to the date of passing of Judgment and Order by the Trial Court. In the Judgment and Order passed in the Revision Application No.500 of 2014 preferred by the petitioner-wife against the order passed in old Misc. Application No.142 of 2007 (renumbered Misc. Application

No.3226 of 2013) while recording the reasoning for change of aforesaid date the Revisional Court in addition to the reasoning given while deciding the Revision Application of the son has stated that there is nothing on record to show that the respondent No.1 herein i.e. husband had deliberately delayed the application. That was additional ground recorded by the Revisional Court while changing the date for granting maintenance from the date of passing of the Judgment and Order by the Trial Court under Section 125 of the Cr. P.C. dated 2.6.2014 instead of the date of filing of the said applications.

8 A useful reference at this stage can be made to the decision of the Supreme Court in the case of Jaiminiben H. R. Vyas & Anr. Vs. Hirenghai R. Vyas reported in (2015) 2 SCC 385. The Supreme Court in the said decision has held that while dealing with the provisions of Section 125 of Cr. P.C. it is neither appropriate nor desirable that the Court simply states that the maintenance should be paid from either the date of order or date of application in the matters of maintenance. It has been further held that the purpose of the provision is to prevent vagrancy and destitution in society and the Court must apply its mind to the options having regard to the facts of the particular case. The Supreme Court has also held that sufficient reasons are to be recorded by the Courts concerned while changing the date of grant of maintenance directed by one Court. In the present case in hand the learned Trial Court by its well

reasoned Judgment and Order dated 2.6.2014 directed the respondent No.1 to pay monthly maintenance to the wife and son (petitioners herein) from 6.7.2007 and 16.5.2007 respectively i.e. the date of filing of the application under Section 125 of the Cr. P.C. The Revisional Court has changed the date of maintenance from 6.7.2007 and 16.5.2007 to 2.6.2014 (date of Judgment and Order passed by the Trial Court). A minute perusal of the Judgment and Order passed by the Revisional Court in Criminal Revision Application No.501 of 2014 reveals that the Revisional Court apart from aforesaid reasoning mentioned in the Order, has not given any cogent reasons for change of the said date which according to me is not in consonance with the ratio laid down by the Supreme Court in the case of Jaiminiben Hirenbbhai Vyas (supra). In view of the same, I find that the Revisional Court has committed an error in law while changing the date of grant of maintenance from 6.7.2007 and 16.5.2007 respectively to 2.6.2014. In view of the same, I find that the Revisional Court has committed grave error in modifying the said dates. The petitioners therefore succeed and the impugned Judgment and Order dated 30.6.2015 passed in Criminal Revision Application No.501 of 2014 and Criminal Revision Application No.500 of 2014 respectively are hereby quashed and set aside.

9 The Judgment and Order passed by the learned Judicial Magistrate First Class, Court No.6, Pune dated 2.6.2014 in old Misc. Application No.142

of 2007 (renumbered as M.A.3226 of 2013) and old Misc.Application bearing No.104 of 2007 (renumbered Misc. Application No.3225 of 2013) is hereby restored.

10 Both the petitions are allowed in terms of prayer clause (b).

(A.S. GADKARI,J.)