

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 54 OF 2006

Ratan Damu Sonawane
Age: 31 years, Occu.: Labour,
R/o Bhenda (Bk), Tq. Newasa,
Dist. Ahmednagar.

..PETITIONER

VERSUS

1. Rajeshree Ratan Sonawane
Age: 27 years, Occu.: Household,
R/o Yeshodhara Colony, Vaishali Nagar,
N-8, CIDCO, Aurangabad.

2. Rohit Ratan Sonawane
Age: 3 years, Since minor,
under Guardianship of
Respondent No.1 – Mother
R/o Yeshodhara Colony, Vaishali Nagar,
N-8, CIDCO, Aurangabad.

..RESPONDENTS

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Mr. Manoj Patil, Advocate h/f Mr. C.K. Shinde, Advocate for petitioner.

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**CORAM : T.V. NALAWADE, J.
DATED : 04th JANUARY, 2017**

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned
Counsel for petitioner. Other side Counsel did not turn up.

2. The petition is filed to challenge the judgment and order of proceeding no. E-117/05 which was pending in the Family Court, Aurangabad. The Family Court has granted the maintenance @ Rs.1,000/- per month to the wife of the petitioner and maintenance @ Rs.700/- per month is granted in favour of other respondent – son of the petitioner.

3. In the proceeding filed under Section 125 of the Code of Criminal Procedure, the wife had contended that as she was deserted by present petitioner. She contended that in Family Court, due to mediation in the past, compromise has taken place and she had returned to her matrimonial house. She contended that petitioner did not act as per the compromise and he did not make arrangement of separate residence. She contended that she was ill treated and then she was asked to bring Rs.50,000/- from her parent's house as petitioner wanted to purchase motorcycle. She contended that as demand was not fulfilled, after two months of compromise, she was turned out of her matrimonial house and since Diwali festival of 2004 she is living separately. She contended that she has no source of income and she is unable to maintain herself and her minor son.

4. In Family Court, present respondent contended that present petitioner was working as driver in one factory and he was getting monthly salary of Rs.6,000/-. It was contended that he was getting monthly Rs.2,000/- by way of rent and he was gaining income from kerosene business as there is license in his favour in respect of kerosene. The maintenance @ Rs.1,500/- per month was claimed by each of the present respondents.

5. The present petitioner did not appear in the proceeding and so proceeding was decided ex-parte against him. The evidence was given in accordance with aforesaid contentions. The record of compromise was also produced before the Family Court and on the basis of evidence, the order of aforesaid nature is made in favour of present respondents.

6. Learned Counsel for present petitioner submitted that prior to giving of decision of proceeding filed under Section 125 of the Code of Criminal Procedure, there was decision in favour of husband of Civil Court in the proceeding filed under Section 9 of Hindu Marriage Act and so the proceeding filed under Section 125 of the Code of Criminal Procedure could not have been allowed. In support of his contention,

learned Counsel for petitioner placed reliance on two reported cases. In the case reported as *1999 Bom.C.R.(Cri.) 851 of this Court (Bhagwan Raoji Dale Vs. Sushma Alias Nanda Bhagwan Dale)* it was observed that the wife was not entitled to get maintenance as she had obtained divorce from husband and there was also decree of restitution of conjugal rights against her. In the case reported as *1995 Cri.L.J. 1187 (Calcutta High Court) (Rabindra Nath Roy)* it was held that when decree was obtained of divorce on the ground of desertion by the husband, in view of provisions of Section 125(4) of the Criminal Procedure Code the wife was not entitled to get maintenance. It was observed that the finding of Civil Court on the ground of desertion was binding on Magistrate.

7. The facts of the present matter are totally different. The wife had filed the proceeding for maintenance in March, 2005 and this proceeding is decided exparte against present petitioner. The husband had filed proceeding for restitution of conjugal rights in February, 2005. His proceeding was decided exparte on 16th September, 2005. The proceeding filed by wife came to be decided on 28th September, 2005. As both decisions were exparte, only on the basis of contentions made by petitioners of two proceedings, decisions were given.

8. In the present matter, it can be said that in the past when compromise took place, the wife had withdrawn the proceeding filed for maintenance and she had admittedly returned to her matrimonial house. Some record is produced by husband to show that on 05th March, 2004 he had given report against the wife that she had taken ornaments, money, etc. and her whereabouts were not known. In spite of such allegations wife had returned to the matrimonial house. Some allegations with regard to the character of wife were also made by husband. The wife has come with specific case that the husband did not act as per the terms of compromise. Copy of terms of compromise are on record and this document dated 19th August, 2004 shows that husband had undertaken to see that he would behave well, he would not give ill treatment to wife and he would leave separate from his parents. These circumstances are sufficient to infer that the wife always wanted to cohabit with present petitioner but the petitioner had other intention.

9. Total maintenance of Rs.1,700/- per month is granted in favour of respondent and this amount is not on higher side. It is clear that only to avoid making of payment of maintenance, the husband had taken some steps and then his wife withdrew the proceeding which was

filed for maintenance in the past. In view of this circumstance, this Court holds that the order made by the Civil Court in the proceeding filed under Section 9 of the Hindu Marriage Act cannot be used against the wife. In the result petition stands dismissed. Rule is discharged.

(T.V. NALAWADE, J.)

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