

(1)

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

CRIMINAL WRIT PETITION NO.60 OF 2006

Sau. Latabai w/o Sudhakarbhai Chaudhari,
Age : 48 years, Occu. Nil,
R/o Morwad, Tal. Taloda,
Dist. Nandurbar

..PETITIONER
(Ori. Applicant)

VERSUS

Shri Sudhakarbhai Bhagwanbhai
Chaudhari,
Age : 52 years, Occu. Agri. & Driver,
R/o Balda, Tq. Nizar,
Dist. Surat
(At present service at Chauryasi Doodh
Dairy, Wadi Falia, AIR India main road,
Bhagal Square, Tq. & Dist.
Surat (Gujrat)

..RESPONDENT
(Ori. Opponent)

Mr R.S. Shinde, Advocate for applicant;
Mr D.D. Chaudhary, Advocate holding for Mr Jayant R. Shah, Advocate for
respondent

CORAM : N.W. SAMBRE, J.

DATE : 21st February, 2017

ORAL JUDGMENT

Heard respective Counsel.

2. In 1972, the petitioner – applicant was married to the respondent
and was blessed with a daughter.

(2)

3. When the petitioner was pregnant, it is claimed that respondent – husband had driven her out of house, as a consequence she started residing at separate place wherein she was helped by her parents in upbringing the daughter. It is claimed by the petitioner that the respondent started residing with a tribal lady at Surat.

4. In the aforesaid background, an application under Section 125 of the Code of Criminal Procedure (for short, “Cr.P.C.”), being Criminal Misc. Application No.56 of 2000, moved before Judicial Magistrate First Class, Taloda, came to be allowed with directions to the present respondent – husband to pay maintenance of Rs.1,000/- per month to the petitioner – wife from the date of filing of the said application.

5. The respondent – husband, feeling aggrieved by the aforesaid order of maintenance, approached the learned Sessions Judge, Shahada by way of Criminal Revision Application No.38 of 2004, who by judgment and order dated 23rd December, 2005 allowed the said revision and set aside the order of grant of maintenance. The considerations which prevailed before the learned Sessions Judge for setting aside the order of grant of maintenance under Section 125 of Cr.P.C. were, there was no neglect on the part of the present respondent – husband to maintain the petitioner - wife and it was the petitioner – wife, who had voluntarily left his company. The learned Sessions Judge then relied upon the evidence of A.W. 2 i.e. brother of the petitioner who has stated that he was not ready and willing to send his sister back for cohabitation.

(3)

5. As a consequence, feeling aggrieved by the judgment rendered by the learned Sessions Judge refusing to pay maintenance, the present Criminal Writ Petition.

6. Amongst other, a ground is sought to be raised that the finding recorded by the learned Magistrate awarding maintenance of Rs.1,000/- per month to petitioner is based on documentary and oral evidence. Learned Counsel appearing on behalf of the petitioner - wife would urge that from her evidence it could be inferred that she had always disclosed her intention to stay with the respondent and it was respondent – husband who had not taken away her for cohabitation after she was blessed with a daughter. He then would invite attention of this Court to the fact that the order of award of maintenance is based on the income of respondent – husband as is assessed from the averments made in the application and the evidence brought on record. The last submission of the learned Counsel for the petitioner is, the order passed by the Magistrate, which had been set aside by the learned Sessions Judge, was stayed by this Court on condition that the respondent – husband continues to pay maintenance of Rs.700/- per month, which amount is not paid by the respondent – husband till date. It is then canvassed that the order of this Court is complied only for a period of one year.

7. Per contra, learned Counsel appearing on behalf of the respondent – husband would strenuously urge that if the cumulative effect of the

(4)

evidence of the applicant and her brother A.W. 2 is analyzed, the evidence of both these witnesses took the Sessions Court to the only conclusion that there was no attempt on the part of the respondent – husband to neglect to maintain the petitioner – wife. According to him, in the evidence of A.W. 2 i.e. petitioner's witness, he has in categorical terms stated that upon discussion with the present petitioner he had reached to a conclusion that if the respondent – husband is ready and willing to take back the petitioner for cohabitation, he would not be in a position to send his sister. He then would urge that once the factual findings are recorded by the revisional Court upon appreciation of evidence that there was no attempt on the part of the respondent – husband to neglect to maintain the petitioner – wife, this Court should be slow in interfering in exercise of extra-ordinary jurisdiction.

8. Having considered rival submissions of the parties, it is required to be noted that the relation between petitioner and respondent and that they were blessed with a daughter is not in dispute.

9. The dispute revolves around as to whether the petitioner voluntarily parted the company of the respondent and whether the respondent had neglected to maintain the petitioner.

10. In the present case, the maintenance under Section 125 of Cr.P.C. is claimed by the petitioner – wife for herself and not for her daughter. Such claim is based on specific pleadings *qua* her marriage some 25 years

(5)

back from the date of the application. It is then to be noted that though the allegation of the petitioner that the respondent – husband had started residing with another lady at Surat is not proved, still the same is not disputed by the respondent – husband in clear terms.

11. Apart from above, it is to be noted that in the evidence of the petitioner it has come on record that she was ready and willing to cohabit with the respondent – husband. If the respondent – husband had intended to raise a plea that the petitioner was not ready and willing to cohabit with him, it was always open for him to take out proceedings for restitution of conjugal rights, which attempt on the part of the present respondent – husband, is conspicuously absent.

12. In exercise of revisional jurisdiction, the learned Sessions Judge, while dealing with the issue *qua* appreciation of evidence of both the parties, has considered the fiction *qua* the evidence of the present petitioner and has recorded a finding that the petitioner was not entitled for maintenance.

13. In my opinion, there is no question of appreciation of evidence of respective witnesses, particularly in the backdrop of any legal fiction. The evidence brought on record is required to be appreciated keeping in mind the ultimate prayer of the aggrieved party before the Court. In the present case, the evidence of the petitioner suggests that she was neglected by the respondent – husband and in law she is entitled for maintenance.

14. Once it is brought in the evidence of the petitioner that she was ready and willing to go back with the respondent – husband, but to that effect, pursuant to the said statement of the petitioner, respondent-husband had not taken out any steps for cohabiting together, in my opinion, the burden lies on him to demonstrate that the petitioner was not entitled for maintenance in law.

15. What could be gathered from the evidence discussed by both the Courts below is, there was a neglect on the part of the respondent – husband in maintaining the petitioner. Apart therefrom, this Court is also required to take a judicial note of the fact that while considering the claim of the respondent – husband, he was directed to continue to pay maintenance at the rate of Rs.700/- per month. As the respondent – husband was avoiding to cause his appearance in the present proceedings, this Court by an order dated 29th March, 2007, had issued bailable warrant against him.

16. On 2nd July, 2007, while issuing Rule in the present matter, though this Court had passed an order of payment of Rs.700/- per month to the petitioner – wife, the respondent – husband till date has not complied with the same, which shows his attitude and approach to disrespect the court proceedings and its orders.

(7)

17. In the above backdrop, in my opinion, the petition needs to be allowed. Hence, I pass following order :-

The order dated 23rd December, 2005, passed by learned Additional Sessions Judge, Shahada, in Criminal Revision Application No.38 of 2004, is hereby quashed and set aside.

As a result, the judgment and order rendered by Judicial Magistrate First Class, Taloda on 1st November, 2004, in Criminal Misc. Application No.56 of 2000, stands restored.

The respondent – husband is directed to pay entire maintenance including that of arrears, within a period of one month from the date of this order.

Criminal Writ Petition stands allowed. Rule made absolute in the above terms.

(N.W. SAMBRE, J.)

amj