

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

CRIMINAL WRIT PETITION NO. 587 OF 2006

Surekha Narsan Marewad
Age: 32 years, Occu.: Household,
R/o Haibatpur, Tq. Udgir, at present
residing at Nalgir, Tq. Udgir, Dist. Latur.

..PETITIONER

VERSUS

Narsan Venkatrao Marewad
Age: 36 years, Occu.: Agri.,
R/o Haibatpur, Tq. Udgir,
Dist. Latur.

..RESPONDENT

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Mr. R.B. Deshmukh, Advocate for petitioner.
Mr. P.G. Gunale, Advocate h/f Mr. P.G. Rodge, Advocate for respondent.

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**CORAM : T.V. NALAWADE, J.
DATED : 02nd FEBRUARY, 2017**

ORAL JUDGMENT :

1. The petition is filed to challenge the judgment and order of Criminal Revision Application No. 28 of 2005 which was pending in the Court of Additional Sessions Judge, Udgir. The revision was filed by present respondent – Narsan against the decision of Miscellaneous Application No. 168 of 2004 which was pending in the Court of Judicial Magistrate, First Class, Udgir filed by present petitioner – Surekha for maintenance under Section 125 of the Code of Criminal Procedure. The Judicial Magistrate,

First Class, Udgir has granted maintenance @ Rs.250/- per month and this order is set aside by the Sessions Court. Both sides are heard.

2. The marriage took place in the year 1993 and there was cohabitation of more than eight years. Petitioner – Surekha got two daughters out of the wedlock. She contended in application that after few year of marriage, the husband started giving ill treatment to her by saying that she was not fair in complexion. The conduct of the husband which amounts to ill treatment is described by giving incidents and it was also contended by wife that demand of Rs.60,000/- was also made by husband but her parents could not fulfill this demand. When marriage took place in the year 1993, she was driven out of the matrimonial house in July, 2004. In the petition, she contended that she made attempt to return by herself and through mediator but her husband refused to accept her back in the matrimonial house. Ultimately she gave report to police on 03rd August, 2004. Then private complaint was also filed under Section 498-A of the Indian Penal Code.

3. It is the case of wife that after filing of complaint, husband gave notice to her and asked her to return to the matrimonial house. It is her case that this attempt of husband was not bonafide as he again refused to accept her in the matrimonial house when she went to his house for

resuming cohabitation. Same contentions were made about inability to maintain herself and entitlement to get maintenance @ Rs.1,500/-.

4. The husband contended that matter by filing reply. He denied the allegation that ill treatment was given by him and demand of Rs.60,000/- was made by him. He contended that there was no dispute till eight years of marriage but after that she started asking him to live separate from parents and dispute started. He contended that on 01st July, 2004, the father of present petitioner came to invite her for ceremony and present petitioner went to her parents house on that occasion without taking his consent. He contended that after four days of this incident, he alongwith other relatives went to the house of parents of petitioner to convince her to return to the matrimonial house but she refused to return and then he gave notice also. Then he contended that he is ready and willing to accept the petitioner in the matrimonial house but the petitioner is not ready to return to the matrimonial house.

5. Before the Judicial Magistrate, First Class both sides gave evidence. Wife examined herself and she examined one witness Babu. The husband examined himself and he examined one Pralhad in support of his case. As Sessions Court has observed that wife is living separate on her own

and so she is not entitled to get maintenance, only that point needs to be considered in the present matter.

6. The learned Judicial Magistrate, First Class believed wife and her witness. The Judicial Magistrate First Class had held that when there was cohabitation of more than eight years and there was no dispute, it does not look probable that wife had created dispute of the nature contended by the husband and she had left the company on her own. The circumstances like giving of report by wife to police against husband and filing of complaint by her was considered by the Judicial Magistrate, First Class. Ordinarily, Indian lady do not leave the matrimonial house unless there is grave reason for doing so. It needs to be kept in mind that she had given birth to two daughters from present respondent. It can be said that after the birth of second daughter, the dispute must have started. The age of second daughter was of ten months on the date of petition.

7. The Judicial Magistrate, First Class had refused to believe the husband and his witness on his contention that he has made attempt to bring the wife back to the matrimonial house. When revision was filed, considering the scope of revision, it was not possible for the Sessions Court to hold that wife was living separate on her own and there was some reason

for the same. Surprisingly Sessions Court considered one more circumstance like education qualification of husband as 10th standard and of wife as 12th standard. Even if it is presumed that wife is more educated, the circumstance that she had continuously cohabited with the husband for more than eight years needs to be kept in mind. It cannot be said that due to the higher education she left the company of the husband. On the other hand she had come with specific allegation against the husband that husband started saying that he is not liking her as according to him she was not of fair complexion. There is also other allegations that he wanted her to bring Rs.60,000/- from her parents.

8. In view of the aforesaid evidence and circumstances, it can be said that the learned Judge of the Sessions Court has committed serious error in setting aside the order of maintenance granted in favour of wife. Such decision cannot sustain in law. In the result, petition is allowed. Judgment and order of the Sessions Court, Udgir is set aside. Decision of the Judicial Magistrate, First Class, Udgir is restored. Rule is made absolute in those terms.

(T.V. NALAWADE, J.)

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