

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.715 OF 2006

Sau. Ranjanabai w/o. Sanjay
Sonawane (Bhoi), Age 28 years,
Occu. Household, R/o. Ranjane,
Tq. Shindkheda, Dist. Dhule.

....Petitioner.

Versus

Sanjay Namdeo Sonawane (Bhoi),
Age 28 years, Occu. Agriculturist,
grocery shop and Dish Connection,
R/o. Virwadi, Tq. Chopada,
Dist. Jalgaon.

....Respondent.

Mr. S.A. Ambilwade h/f. Mr. A.S. Sawant, Advocate for petitioner.

Mr. P.P. Sapkale h/f. Mr. P.B. Patil, Advocate for respondent.

CORAM : T.V. NALAWADE, J.

DATED : 18th January, 2017.

ORAL JUDGMENT :

1) The petition is filed to challenge the judgment and order of Criminal Revision Application No. 66/2005, which was pending in the Court of 3rd Ad-hoc Additional Sessions Judge, Dhule. The revision, which was filed by present respondent - Sanjay Sonawane to challenge the decision of maintenance proceeding, is allowed and the maintenance order made in favour of present petitioner by Judicial Magistrate, First Class, Sindkheda in Criminal Misc. Application No. 50/2003 is set aside by the Sessions Court. Both the sides are heard.

2) In application filed under section 125 of Criminal Procedure Code, the wife had made contentions that after marriage, which took place on 19.12.2002, she cohabited with the husband and then she became pregnant. It is her case that demand of dowry was made and then she was sent to her parents house. It is her case that somehow the husband and his relatives were convinced and then she was accepted back in matrimonial house. It is her case that after few days again the demand was repeated and ultimately, severe beating was given to her and due to the beating, she suffered miscarriage. It is her case that after the miscarriage, husband expressed that he was not ready to accept her back in the matrimonial house.

3) It is her case that she has no source of income and she is unable to maintain herself. It is her case that the husband has flour mill, grocery shop and the family of the husband owns 10 Acres of irrigated land. It was contended by the wife that the monthly income of the husband was between Rs. 15,000/- and Rs.20,000/-. The maintenance at the rate of Rs.1500/- p.m. was claimed by the wife.

4) The husband contested the matter by filing written

statement. He contended that he had not driven the wife out of matrimonial house. He contended that without his consent, the wife had undergone abortion in one hospital and out of that incident, he had filed criminal case against the wife.

5) Both the sides gave evidence. The Trial Court held that the wife was living with her parents. But, the Trial Court also held that she had reason to live separate from husband as husband had made allegations against her and he had filed even a criminal case against her. One criminal case was also filed by the wife against the husband for the offence punishable under section 498-A etc. of Indian Penal Code. These circumstances were considered and considering the capacity of the husband, the J.M.F.C. had granted maintenance at the rate of Rs.500/- p.m.

6) The decision given by the Sessions Court shows that serious mistake is committed by the Sessions Court. Observations are to the effect that the Magistrate had answered first point, "whether the applicant has proved that she has been refused or neglected to be maintained by opponent ?" in negative by the Court and the second point, "whether the applicant has proved that she is having just and reasonable ground to reside separately from the husband ?" in negative,

the Sessions Court has allowed the revision. It is observed by the Sessions Court that when the wife is admitting that she is living with her parents and she is not examining doctor to prove that the miscarriage was caused due to beating given by the accused, maintenance cannot be granted to her.

7) It can be said that the learned Judge of the Sessions Court has not even gone through the reasoning given by the Magistrate. It can be said that the aforesaid point No. 2 was answered in affirmative, but the Sessions Court has held that it was answered in negative. The findings given on point Nos. 1 and 2 need to be read together and it can be safely said that the Magistrate had come to the conclusion that only due to aforesaid circumstance, she was driven out of the matrimonial house by husband and she was living separate from the husband. It cannot be said that on her own, she was living separate from her husband. Thus, due to misreading of the findings and the reasoning given by the Magistrate, Sessions Court has committed serious error.

8) The learned counsel for petitioner placed reliance on the observations made by this Court in the case reported as **2015 ALL MR (Cri) 2570 [Sangita Sudhir Mhaske Vs.**

Sudhir Bhausahab Mhaske & Anr.] Facts and circumstances of each and every case are always different. In the present case, not only case is filed against the husband for offence punishable under section 498-A of the I.P.C., but the husband has also filed case against the wife in which he has made allegations that without taking his consent, the wife had undergone abortion. These circumstances are sufficient to infer that the husband has no intention to resume cohabitation and he has deserted the wife. Thus, there was no other alternative before the J.M.F.C. than to grant maintenance. Amount of Rs.500/- was granted by J.M.F.C. in the year 2005 and it is certainly on lower side. In the result, following order is made.

ORDER

- (i) Petition is allowed.
- (ii) The decision given by the Sessions Court in Criminal Revision Application No. 66/2005 is set aside. The decision given by the learned J.M.F.C. in Criminal Misc. Application No. 50/2003 is restored.

Rule is made absolute in aforesaid terms.

[T.V. NALAWADE, J.]

SSC/