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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1608/2015

- 1] Sau.Kalpna w/o Pankaj Rozatkar,
age 31 yrs., occu.household,
- 2] Dhanjay Pankaj Rozatkar,
age 8 yrs., occu.education,
minor through her mother
petitioner no.1,

Both r/o c/o Laxman Hiranman Wankhede,
Sawada Road, at post Chinawal,
Tq. Raver Dist.Jalgaon.

...Petitioners...

Versus

Pankaj s/o Supadu Rozatkar,
age 35 yrs., occu.service,
r/o Chal No.2, Room No.3,
Om Sai Construction,
Khadakpada, Near Vanshri Apartment,
Kalyan (W) Tq.Kalyan Dist.Thane,
And c/o Head Master, Adgaon Vidya
Mandir, Kom Tq.Bhiwandi Dist.Thane.

...Respondent...

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Shri Vinod P. Patil, Advocate for petitioners.
Shri C.K. Shinde, Advocate, Advocate for respondent.

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CORAM: PRAKASH D. NAIK, J.

JUDGMENT RESERVED ON 8.12.2017

JUDGMENT PRONOUNCED ON 22.12.2017

JUDGMENT :

1] Petition is heard for final disposal.

2] The petitioners have challenged the order dated 2.9.2013 passed by the learned Judicial Magistrate, First Class, Raver Dist.Jalgaon in Criminal Miscellaneous Application No.78/2010 as well as the judgment and order dated 30.10.2015 passed by the learned Additional Sessions Judge, Bhusawal Dist.Jalgaon, in Criminal Revision Application No.167/2014.

3] The petitioner no.1 is the wife of the respondent. Their marriage was performed as per Hindu rites on 2.2.2006. The petitioner no.2 is the son of the petitioner no.1 and the respondent.

4] The petitioners contend that after the marriage, the petitioner no.1 joined the matrimonial home and was residing with the respondent, who is in service as Teacher. There was ill-treatment and cruelty at the hands of the respondent and his family members. The respondent filed HMP No.161/2007 u/s 13(1) of the Hindu

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Marriage Act, 1955 in the Court of Civil Judge, Senior Division, Kalyan, against the petitioner for divorce. The respondent also filed Regular Criminal Case NO.429/2007 in the Court of JMFC, Kalyan, for the offences punishable u/s 323, 326, 307, 504 and 506 r/w 34 of the Indian Penal Code. The petitioner no.1 was granted anticipatory bail in the said crime. It is further contended that the respondent filed Special Civil Suit No.208/2011 before the Civil Judge, Senior Division at Jalgaon, for compensation against the petitioners. The same is pending.

5] The petitioner no.1 filed Miscellaneous Application No.577/2010 against the respondent u/s 17, 18, 19, 20, 22, 23 and 26 of the Protection of Women from Domestic Violence Act before JMFC at Raver. The petitioner no.1 also filed HMP No.197/2011 before the Civil Judge, Senior Division at Jalgaon u/s 9 of the Hindu Marriage Act for restitution of conjugal rights.

6] The petitioners submit that the petitioner no.1 is a lady who is unable to maintain herself as well as her son as the respondent-husband is not paying maintenance regularly. The respondent is in service. He

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has initiated several proceedings to cause harassment to the petitioners. The petitioners filed Criminal Miscellaneous Application No.78/20101 before the JMFC claiming maintenance u/s 125 of the Cr.P.C. The respondent resisted the said application by filing say to the application. The evidence was recorded. After hearing the parties, the learned JMFC rejected the said application by order dated 2.9.2013.

7] The petitioners approached the Sessions Court by preferring Criminal Revision Application No.239/2013, which was then transferred to Bhusawal and numbered as Criminal Revision Application No.167/2014. The Sessions Court vide order dated 30.10.2015 rejected the said revision application. The petitioners have, therefore, approached this Court challenging aforesaid orders.

8] The learned Advocate for the petitioners submitted that the Courts have committed an error in rejecting the claim of the petitioners. The Sessions Court has also erroneously dismissed the revision application. The petitioners are having no source of income and are neglected by the respondent-husband. The petitioner no.1 has filed a petition for restitution of

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conjugal rights, which shows that the husband refused to maintain the petitioners. It is further submitted that the respondent-husband has filed proceedings for divorce, which shows that he has neglected the petitioners. The Courts below have erroneously relied upon the matters relating to compromise. It is true that there was a settlement between the parties before the Court and the amount of Rs.3,00,000/- was paid to the petitioners by respondent-husband and, therefore, the joint Purshis was submitted and the proceedings were withdrawn since the husband did not take steps to withdraw the criminal proceedings filed by him at Kalyan. The settlement could not be arrived at. The other reason for cancellation of settlement is that the respondent is not willing to take responsibility of the petitioner no.2. In the circumstances, both the proceedings were withdrawn by the parties. The conclusion arrived at by the trial Court that the petitioner no.1 is able to maintain herself being in service is perverse and without any evidence on record. There is no documentary evidence for coming to the conclusion that the petitioner no.1 is in service. The Courts below have not taken into consideration the

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fact that the petitioner no.2 is minor and is taking education in English medium school. Both the Courts lost sight of the fact that the petitioner no.1 has to incur expenses towards fees and donations in the schools. The learned counsel for the petitioners, therefore, submitted that the orders passed by the Courts below may be set aside.

9] The learned counsel for the petitioners relied upon the following decisions of the Supreme Court :-

- 1] *Sunita Kachwaha & others v. Anil Kachwaha*
AIR 2015 SC 554
- 2] *Bhuwan Mohan Singh v. Meena & others*
AIR 2014 SC 2875
- 3] *Minakshi Gaur v. Chitranjan Gaur & another*
AIR 2009 SC 1377
- 4] *Chaturbhuj v. Sita Bai*
AIR 2008 SC 530
- 5] *Shamima Farooqui v. Shahid Khan*
AIR 2015 SC 2025
- 6] *Saygo Bai v. Cheeru Bajrangi*
AIR 2011 SC 1557

10] The petitioner no.1 has filed affidavit in reply and additional affidavit in reply dated 26.11.2017 stating that the petitioner no.1 is employed as Assistant Teacher in Vardhaman English Medium School, Jalgaon, and

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is serving in the said school. It is also stated that the petitioner no.1 is receiving Rs.5,000/- per month regularly from the respondent as per the order passed by JMFC, Raver, in domestic violence proceedings. The said averments about employment were denied by the petitioner no.1 by filing affidavit in rejoinder dated 6.12.2017. The petitioner also stated that the respondent is earning salary of Rs.49,792/-. The salary certificate is annexed to the petition.

11] The learned counsel for the respondent submitted that the petitioners are not entitled for maintenance. The trial Court and the Sessions Court have taken into consideration the evidence on record and have passed well reasoned orders, which do not require interference. It is submitted that the petitioner no.1 had filed compromise proceedings and thereafter she has backed out from the said proceedings. The wife had agreed for settlement and thereafter did not support the settlement. The parties had filed petition for divorce by mutual consent. In the divorce petition, it was stated that both the parties agreeable for dissolution of marriage by mutual consent and on accepting the permanent alimony,

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the petitioner no.1 – wife has given up her rights in respect of the property. It is submitted that the amount of Rs.3,00,000/- was paid to the petitioners by the respondent. It is apparent from the record that the amount of Rs.3,00,000/- was deposited by the petitioners in this Court by Demand Draft issued in favour of the Registrar, High Court, Bench at Aurangabad.

12] The learned counsel for the respondent submits that the learned JMFC has dismissed the application u/s 125 of the Cr.P.C. on the ground that the harassment by the husband and in-laws was not proved.

13] The Sessions Court then rejected the revision application preferred by the petitioners. The learned counsel for the respondent submitted that the petitioner no.1 used to quarrel on petty grounds. She has attempted to commit murder of the respondent on 17.12.2006 by pressing his neck in the night hours. The complaint was lodged with the Police u/s 307 of the Indian Penal Code, which is pending. She again made an attempt of committing murder of the respondent on 6.2.2007. She then left the matrimonial house and started residing with her parents since 7.2.2007.

14] It is submitted by the learned counsel for the respondent that the respondent had filed HMP No.161/2007 in the Court of Civil Judge, Senior Division for divorce, which was transferred to the Court at Jalgaon. The petitioner no.1. has filed a false case vide RCC No.73/2008 for offence punishable u/s 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code. The respondent and his family members were acquitted in the said case. The petitioner no.1 has also filed the petition for restitution of conjugal rights. The parties have decided to settle the issues. However, subsequently the petitioners did not show interest in the settlement. It is, therefore, submitted that considering the aforesaid aspects, the petition be dismissed. The learned counsel for the respondent relied upon a decision in the case of *Smt.Mamta Jaiswal v. Rajesh Jaiswal* delivered by Madhya Pradesh High Court reported in **II (2000) DMC 170**.

15] The petitioners had preferred an application u/s 125 of the Cr.P.C. before the Court of JMFC, Raver, on 19.7.2010, which was numbered as Criminal Miscellaneous Application No.78/2010. In the said application, the petitioner no.1 has given instances of harassment caused

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to the petitioner no.1 by the respondent after the marriage. In the said application, it was also stated that a child was born after the said wedlock. She further stated that the respondent is employed as a Teacher in Vidya Mandir School, Adgaon and earning salary of Rs.20,000/- per month. He is also earning from other sources. The father of the respondent is also employed and the respondent is having the house at Shahapur, which is owned by his family. The petitioner no.1 is residing at her parental home from 7.2.2007. It was further stated that the respondent had lodged a false complaint of attempt to commit murder against the petitioner no.1. He also filed HMP No.161/2007 before the Court of Civil Judge, Senior Division, which is pending. It was further stated that the petitioners had preferred an application for maintenance in the said proceedings. It was stated that the petitioner no.o2 is studying in the school and expenses are required to be incurred for his education. The petitioners prayed for maintenance of Rs.2,000/- per month from the date of the application. The said application was preferred on 19.7.2010. Both the parties tendered evidence in the said proceedings. The learned

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Magistrate vide order dated 2.9.2013 rejected the said application. While rejecting the application, it was observed that the proceedings are pending between the parties. The respondent was tried for the offence u/s 498-A of the Indian Penal Code, which has resulted in acquittal. The respondent has filed the complaint against the petitioner no.01 for offence u/s 307, 323, 326 of the Indian Penal Code. IT was further stated that the petitioner no.1 – wife has also initiated proceedings under the Domestic Violence Act on 7.8.,2010. The trial Court, however, rejected the application on the ground that the petitioner no.1 was employed as Teacher and she is well educated, has completed education and is capable of getting employment. The son is getting interim maintenance in the sum of Rs.1,000/- and, therefore, the application preferred by the petitioners deserves to be rejected.

16] The observation made by the trial Court appears to be contrary to law and evidence on record. In paragraph no.18, the trial Court has analyzed the evidence of the petitioner no.1. The petitioner no.1's contention was reproduced in the said paragraph. The

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petitioner had stated that she had given up her employment in the circumstances narrated therein. The respondent – husband is employed as Teacher and earning salary of Rs.20,000/- per month. He is also earning through other sources of income. There are no other dependents on the respondent and it is his responsibility to take care of the petitioner no.1 and the son. He is financially sound. The Court further observed that the petitioner no.1 was employed as Teacher and she is well educated and being capable of getting job, she is not entitled for maintenance. Surprisingly, the observations made in paragraph no.18 with regard to the grounds for maintenance made by the petitioners were not discarded in any manner. The trial Court has not expressed any reason for not accepting the case of the petitioners. The only reason, which appears for rejecting maintenance, is that the petitioner no.1 was employed as Teacher and being educated person is eligible to get employment. The reasons assigned by the trial Court appear to be absurd and contrary to the material on record. The grounds raised by the respondent that there are several proceedings pending and that the petitioners had agreed

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for compromise, are no grounds for refusing maintenance to the petitioners.

17] The Sessions Court has also reiterated the reasons assigned by the trial Court. The Sessions Court ought to have appreciated the material on record and should have considered the relief sought by the petitioners. On perusal of the order passed by the Sessions Court, it appears that the Sessions Court has also observed that it was not in dispute that the husband was Teacher and he had sufficient means. The petitioners had to prove that the husband neglected or refused to maintain them. The trial Court opined that the husband is getting salary of Rs.20,000/- per month. The harassment by husband and in-laws was not proved. As per the demand of the wife, husband arranged for separate residence. The Magistrate found that the husband did not refuse or neglect the petitioners. The Court observed that it cannot be forgotten that the petitioners had received Rs.3,00,000/- for grant of divorce by mutual consent. It was, therefore, observed that ignoring the subsequent events, the order passed by the Magistrate is legal and proper and it does not require any

interference.

18] In the case of *Saygo Bai v. Cheeru Bajrangi* (supra), the Supreme Court has observed that the wife and children thrown out of the house were entitled for maintenance.

19] In the case of *Shamima Farooqui v. Shahid Khan* (supra), the Supreme Court observed that object of Section 125 of the Cr.P.C. is amelioration of financial status of wife so that she can sustain herself. Sustenance cannot mean mere survival.

20] The other decisions relied upon by the petitioners are also dealing with the right of wife in claiming maintenance.

21] The respondent has relied upon the decision of Madhya Pradesh High Court in the case of *Smt.Mamta Jaiswal v. Rajesh Jaiswal* (supra). In the said decision, it was observed that the wife was well qualified woman possessing qualification. Earlier she was serving in the college. It impliedly means that she was possessing sufficient experience. It is difficult to believe that in spite of sufficient efforts made by her, she was unable to get employment. The respondent submits that

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in the present case also, both the Courts have considered the said aspect.

22] Admittedly, there is no evidence to show that the petitioner no.1 was employed in the school from the date of filing the application. The order cannot be based on inferences or conjectures. It appears that the petitioner no.1 is getting maintenance of Rs.5,000/- per month in domestic violence proceedings. The petitioner no.1 has stated that due to alleged settlement, the Hindu marriage petition has been disposed of. The interim maintenance granted in that matter is also insufficient. In the circumstances, the impugned orders passed by both the Courts below are required to be quashed and set aside. In the application u/s 125 of the Cr.P.C., the petitioner no.1 had claimed Rs.1,000/- each per month. The said application was filed on 19.7.2010. Hence, I pass the following order.

O R D E R

a] The impugned order dated 2.9.2013 passed by learned Judicial Magistrate, First Class, Raver, in Criminal Miscellaneous Application No.78/2010 and the judgment and order dated 30.10.2015

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passed by learned Additional Sessions Judge, Bhusawal, in Criminal Revision Application No.167/2014 are quashed and set aside.

b] The application preferred by the petitioners before the Court of learned JMFC, Raver, vide Criminal Miscellaneous Application No.78/2010 u/s 125 of the Cr.P.C. is allowed.

c] The respondent is directed to pay maintenance in the sum of Rs.1,000/- per month each to the petitioner nos.1 and 2 from the date of the application.

d] The respondent is also directed to pay Rs.10,000/- towards expenses incurred by the petitioners.

e] The writ petition is disposed of accordingly.

(PRAKASH D. NAIK, J.)