

Shailaja

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

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO. 870 OF 2017**

Shri Ashok Gundappa Gaddenvar                      ]      Petitioner

Vs.

Sou Sulochana Ashok Gaddenvar & Anr. ]      Respondents

.....  
Mr. Ajay A. Joshi, for the petitioner.

.....

**CORAM : R.G. KETKAR, J.**

**DATE : 5TH MAY, 2017.**

**P.C.**

Heard Mr. Joshi, learned Counsel for the petitioner at length.

2. By this petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 25<sup>th</sup> November, 2016 passed by the learned District Judge-3 & Additional Sessions Judge, Sangli in Criminal Appeal No. 58 of 2011. By that order, the learned Sessions Judge partly allowed the

appeal preferred by the petitioner herein and modified the judgment and order dated 27<sup>th</sup> January, 2011 passed by learned Judicial Magistrate First Class, Miraj in Misc. Criminal Application No. 317 of 2009 to the extent of relief of monthly maintenance and instead of monthly maintenance @ Rs. 3000/-, the petitioner is directed to pay monthly maintenance @ Rs. 2500/- with effect from date of the order i.e from 25<sup>th</sup> November, 2016.

3. Mr. Joshi submitted that respondent No.1 filed application Exhibit 32 for recovery of maintenance amount. Respondent No.1 prayed for issuing warrant as petitioner did not make payment of Rs. 60,000/-. Respondent No.1 thereafter filed an application for re-issuing recovery warrant on the ground that earlier recovery warrant could not be served on the petitioner. By order dated 13<sup>th</sup> March, 2017, the learned Magistrate has allowed the application thereby re-issuing recovery warrant. He submits that the petitioner is ready and willing to deposit Rs. 60,000/- in the trial Court within one week from today.

4. On merits, Mr. Joshi submitted that the learned

Sessions Judge committed serious error in awarding maintenance @ Rs. 2500/- per month to the first respondent. He invited my attention to the certificate dated 26<sup>th</sup> February, 2014 issued by the Child Development Project Officer certifying that respondent No.1 was paid honorarium of Rs. 45,243/- for the period from March, 2013 to January, 2014 as she is working as 'Anganwadi Sevika'. He submitted that learned Sessions Judge did not take into consideration the amount received by the first respondent which comes to Rs. 2,500/- per month. He submitted that respondent No.1 is able to maintain herself on the basis of honorarium received as she is working as 'Anganwadi Sevika'. He further submitted that respondent No.1 did not establish factum of second marriage of the petitioner. Finding recorded by the learned Sessions Judge on this point is perverse. He, therefore, submitted that the impugned order deserves to be set aside.

5. I have considered the submissions advanced by Mr. Joshi. I have also perused the material on record. A perusal of the application dated 1<sup>st</sup> March, 2011 made by the first respondent shows that she has claimed arrears of maintenance amount @ Rs. 3,000/- per month for the period from 29<sup>th</sup> July, 2009 to 28<sup>th</sup>

February, 2011 i.e for a period of 20 months and accordingly claimed Rs. 60,000/-. It is not in dispute that as per the impugned order, the petitioner is in arrears of Rs. 3,07,500/-. Submission made by Mr. Joshi that the petitioner is ready and willing to deposit Rs. 60,000/-, therefore, cannot be accepted.

6. In paragraph 15, learned Sessions Judge has considered the report dated 24<sup>th</sup> August, 2010 at Exhibit 28 of the Protection Officer. The report specifically records that Protection Officer visited house of the petitioner. He found that the petitioner is married with one Maluti Chandu Bagannavar of Shirahatti Village, Taluka Athani, Dist. Belgaum. She was also present along with the petitioner in the house. Protection officer found that the petitioner and his wife Maluti have two children by name Darshan aged 15 years and Sudarshan aged 12 years. Protection Officer also noted that one Bank account was opened in the name of Maluti.

7. In paragraph 16, the learned Sessions Judge observed that burden is shifted upon the petitioner to show that he has not performed second marriage. However, he did not produce any evidence in that regard. Learned Sessions Judge, therefore, held

that there is sufficient evidence on record to prove that petitioner is residing with his second wife and is having children. In such circumstances, respondent No.1 cannot be compelled to reside with the petitioner. Mr. Joshi submitted that in fact the petition for restitution of conjugal rights is allowed. I do not find any merit in the submission of Mr. Joshi. Learned Sessions Judge recorded that the petitioner is remarried. No material is produced on record to show that the petitioner obtained divorce from the first wife.

8. As far as quantum of maintenance is concerned, in paragraph 17, learned Sessions Judge has considered honorarium received by the first respondent in the year 2011. Even if I accept that in the year 2014 respondent No.1 received honorarium of Rs. 45,243/- for the period from March, 2013 to February, 2014, it will not absolve the petitioner from his liability to maintain his wife. Having regard to the escalating prices, I do not find that the learned Sessions Judge committed any error in awarding maintenance @ Rs. 2500/- p.m. The learned Sessions Judge took into consideration the fact that respondent No.1 is receiving Rs. 2500/- per month as honorarium. After considering earning capacity of the petitioner, the learned Sessions Judge awarded

maintenance @ Rs. 2500/- as against Rs. 3000/- as awarded by learned Judicial Magistrate First Class, Miraj from the date of the order. In view thereof, I do not find any ground to interfere with the order passed by the learned Sessions Judge. Impugned order cannot be said to be perverse being based upon evidence or contrary to evidence on record. Hence, petition fails and the same is dismissed.

**[R.G. KETKAR, J.]**