

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2728 OF 2015**

Parshuram Shivram Mandale

..Petitioner

Vs.

Mandabai Parashram Mandale & Anr

..Respondent

Mr. V. S. Tambat for the Petitioner

**CORAM : R. M. SAVANT, J.
DATE : 6th JANUARY, 2017**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 24-3-2015 passed by the Additional Sessions Judge-3, Nashik, by which order, the Criminal Misc Application No.341 of 2011 filed by the Petitioner came to be dismissed and resultantly the order dated 21-6-2011 passed by the Learned Judicial Magistrate First Class (JMFC), Sinnar, allowing Criminal Misc Application No.217 of 2008 filed by the Respondent for maintenance came to be confirmed.

2 The Respondent herein as indicated above has filed the said Criminal Misc Application No.217 of 2008 for maintenance against the Petitioner. It was the case of the Respondent that the marriage between her

and the Petitioner was solemnised on 23-3-1999 as per Hindu customs. It is the case of the Respondent that the marriage is in existence. It was further the case of the Respondent that the Petitioner used to harass her for money and threaten her that he will throw her out of the house if she failed to bring the money as demanded by him. It is the case of the Respondent that an amount of Rs.70,000/- was paid to the Petitioner by her brother by selling his land and thereafter inspite of the payment of the said amount, the Petitioner demanded a further amount of Rs.50,000/-. It was also the case of the Respondent that the Petitioner forcibly took possession of her ornaments. It is her case that on 31-5-2002 the Petitioner has thrown the Respondent out of the house as a result of which the Respondent along with her brother had lodged a complaint with the Satpur police station. The Respondent had also filed Criminal Misc Application No.136 of 2002 for maintenance. It seems that the said Criminal Misc Application No.136 of 2002 was placed before the Lokadalat which had its sitting sometime in June 2003. Before the Lokadalat the Petitioner executed Exhibit 12 thereby accepting the Respondent as his wife and agreed to take her for cohabitation. In terms of the order passed by the Lokadalat based on the said Exhibit 12, the Petitioner took the Respondent for cohabitation but thereafter once again abandoned her and neglected her resulting in filing of the instant Criminal Misc Application NO.217 of 2008 filed by the Respondent claiming maintenance. It was the case of the Respondent that the Petitioner is working with the CEAT Company and his

income is about Rs.20,000/- per month. It was also her case that the Petitioner owns 10 acres of agricultural land at Bhadgaon Wadi and from the said land he earns Rs. 3 to 4 lacs per annum.

3 To the said Criminal Misc Application No.217 of 2008, the Petitioner filed his reply and denied that the Respondent was his legally wedded wife. It was his case that the said Exhibit 12 was executed by him as some money was taken by the Respondent and therefore the Petitioner agreed to take her for cohabitation. It was the case of the Petitioner that the Respondent has some income from agricultural lands.

Based on the aforesaid pleadings, the Trial Court framed issues amongst which was the issue of whether the Respondent is legally wedded wife of the Petitioner. The Respondent in support of her case led her own evidence. She brought on record the factum of the execution of the application Exhibit 12 before the Lokadalat. She also deposed in terms of the pleadings as set out in her application for maintenance. The Petitioner deposed in support of his case as set out in his reply. The Learned JMFC considered the evidence on record and came to a conclusion that the case of the Respondent that she is the wife of the Petitioner has not been dented. The Learned JMFC held that the Respondent has proved that the Petitioner has neglected her and abandoned her. The Learned JMFC having regard to the fact that the Respondent is employed with CEAT Company as also having

agricultural land, and having regard to the fact that the Petitioner having not proved that the Respondent has any income from agricultural lands deemed it appropriate to grant maintenance in the sum of Rs.600/- per month from the date of the application by judgment and order dated 21-6-2011.

4 The Petitioner aggrieved by the said order dated 21-6-2011 by the Learned JMFC challenge the same by way of a revision being Criminal Revision Application No.341 of 2011. The Learned Additional Sessions Judge-3, Nashik by the impugned Judgment and Order dated 24-3-2015 has dismissed the said application. The Learned Additional Sessions Judge whilst dismissing the said application has confirmed the findings recorded by the Trial Court on all the issues framed by the Trial Court. Hence there is a concurrent finding by the courts below as regards the marriage between the Petitioner and the Respondent as regards the negligence of the Respondent by the Petitioner and consequently the entitlement of the Respondent for maintenance from the Petitioner.

5 The Learned Counsel for the Petitioner would seek to reiterate the case of the Petitioner which was urged before the courts below. The Learned Counsel would contend that since the Petitioner was not married to the Respondent, there is no obligation on the part of the Petitioner to pay the maintenance to the Respondent.

6 In my view, it is not possible to accept the said contention urged on behalf of the Petitioner having regard to the concurrent finding recorded by the courts below. It is significant to note that the Petitioner before the Lokadalat had executed Exhibit 12 wherein he has accepted the Respondent to be his wife and had also agreed to take her for cohabitation which in fact he had taken, but had thereafter again neglected the Respondent. Though the Petitioner had sought to question the execution of the application Exhibit 12, the courts below have not countenanced the challenge to the said document. It is also required to be noted that the maintenance granted is a small amount of Rs.600/- per month. In my view, no case for interference in the Writ Jurisdiction of this court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]