

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

CRIMINAL WRIT PETITION NO. 1219 OF 2017

Jayashree Ramdas Kharmale,
Age 40 years, Occu. Nil.,
R/o. Jakhangaon, Tq. and
Dist. Ahmednagar.

....Petitioner.

Versus

1. Ramdas s/o. Muktaji Kharmale,
Age 44 years, Occu. Service,
R/o. Adarsh Madhyamik Vidyalaya,
Mumbra, Tq. Kalyan,
District Thane.

2. The State of Maharashtra,
Through : The D.G.P.
Ahmednagar.

....Respondents.

Mr. S.D. Kotkar, Advocate for petitioner.

Mr. R.K. Temkar, Advocate for respondent No. 1.

Mr. M.M. Nerlikar, APP for respondent No. 2/State.

**CORAM : T.V. NALAWADE, J.
DATED : July 20, 2018.**

JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent,
heard both the sides for final disposal.

2) The petition is filed to challenge the judgment and
order of Criminal Revision No. 34/2014, which was pending in
the Court of learned Sessions Judge, Ahmednagar. The Sessions

Judge has allowed the revision and has set aside the order of learned Judicial Magistrate, First Class, Ahmednagar given in a proceeding filed under section 125 of Cr.P.C. in favour of wife and the proceeding which was allowed by the Magistrate is dismissed.

3) The submissions made and the record show that the proceeding under section 125 of Cr.P.C. was filed on 9.3.2012 by wife. By the order dated 20.11.2013 the learned Magistrate granted maintenance at the rate of RS.3,000/- p.m. in favour of wife. During pendency of the maintenance proceeding filed under section 125 of Cr.P.C., the wife had filed a proceeding for civil maintenance under section 18 of Hindu Adoption and Maintenance Act on 6.8.2012. The civil proceeding came to be allowed on 9.5.2014 and the maintenance at the rate of Rs.5,000/- p.m. is granted by Civil Court. The appeal filed against the said decision is dismissed and the decision of the Civil Court has become final.

4) The revision is allowed by the Sessions Court by observing that there is decision of Civil Court granting maintenance and so, the order of maintenance made by J.M.F.C. under section 125 of Cr.P.C. cannot be kept in existence. It is

surprising that by making such observation and by placing reliance on some observations made by this Court in case reported as **1991 Mh.L.J. 1312 [Ravindra Haribhau Karmarkar Vs. Mrs. Shaila Ravindra Karmarkar and Anr.]**, the Sessions Court has dismissed the proceeding which was allowed by the J.M.F.C. The learned Judge of the Sessions Court has not taken care to go through the scheme of maintenance made under Cr.P.C. In section 127 (4) of Cr.P.C., it is made clear that when order of maintenance is made by J.M.F.C. under section 125 of Cr.P.C. while deciding civil maintenance, the Civil Court needs to consider the maintenance granted by J.M.F.C. The only interpretation of this provision is that the wife can get the amount awarded by J.M.F.C. by using provisions of Cr.P.C. and after recovery of that amount, the remaining amount which can be recovered under civil maintenance decree can be recovered by using provision of Civil Procedure Code. The provision of sections 125 to 128 of Cr.P.C. were made with the purpose that wife gets relief of maintenance immediately and the recovery is also immediate. That is why the provision is made to keep the husband in prison for every default committed in making payment of maintenance. This purpose was not kept in mind by the learned Sessions Judge. Even when there is no provision in Cr.P.C. or in Civil Law to set aside the decision of J.M.F.C. on the

ground that civil maintenance is there, the learned Sessions Judge has set aside the order made by J.M.F.C. The order of Civil Court will prevail over the order of J.M.F.C., but meaning of that proposition is that if the amount granted by the Civil Court is more, that amount also can be recovered by the wife and if there is finding of Civil Court in respect of entitlement of maintenance of the wife, then that finding needs to be considered by Criminal Court. In the present matter, the wife can in all recover the amount of Rs.5000/- as monthly maintenance. She can recover Rs.3000/- by using decision of J.M.F.C. and she can recover Rs.2000/- by using decree of Civil Court. Thus, the Sessions Judge has committed error in interpreting the provisions and also the case decided by this Court. There is one more circumstance like the proceeding was filed before J.M.F.C. on 9.3.2012 and the maintenance is granted by J.M.F.C. from the date of application. Proceeding before Civil Court was filed on 6.8.2012 and in that proceeding also the maintenance will be recoverable from 6.8.2012. This simple circumstance is also not considered by the learned Sessions Judge. In the result, following order.

ORDER

- (I) The petition is allowed.
- (II) The decision of the learned Sessions Judge, Ahmednagar given in Criminal Revision No. 34/2014 is set aside

and the judgment and order of learned J.M.F.C., Ahmednagar delivered in Criminal Application No. 220/2012 is restored.

Rule is made absolute in aforesaid terms.

[T.V. NALAWADE, J.]

ssc/