

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.222 OF 2014

Sushma Rajaram Jadhav and Anr. ...Petitioners
vs.
Rajaram Ananda Jadhav and Anr. ...Respondents

Mr. Balwant Salunkhe h/f. Mr. Vikas Mali, for the Petitioners
Ms. Saima Ansari i/b. Mr. R.M. Momin, for the Respondent No. 1.

CORAM : M. S. SONAK, J.

DATE : DECEMBER 17, 2018

JUDGMENT

1. Heard learned counsel for the parties.
2. Rule.
3. Rule is made returnable with consent and the request of the learned counsel for the parties.
4. The challenge in this Petition is to the order dated 27th August, 2013 by the Additional Sessions Judge, Islampur interfering with the judgment order dated 23rd August, 2010 made by the J.M.F.C. Islampur awarding the Petitioners maintenance of Rs. 2,500/- i.e. to wife and minor son.
5. The only reason that the learned Sessions Judge has set aside the judgment and order dated 23rd August, 2010 made by J.M.F.C. is that the Petitioner-wife and the Respondent-husband

have secured a divorce by mutual consent By filing appropriate pursis before the LokAdalat. The learned Sessions Judge has relied upon the ruling of this Court in ***Shrawan vs. Durga, 1990 Mh.L.J. 418*** to interfere with the order of maintenance.

6. The learned counsel for the Respondent points out that if the Petitioner-wife has agreed for a decree of divorce, this implies that the Petitioner-wife was staying away from matrimonial home of her own accord. She submits that in this circumstance, it is not open for the Petitioner-wife to seek maintenance. She therefore defends the impugned order on the basis of reasoning reflected therein.

7. In my judgment, the impugned order is vulnerable for several reasons. In the first place, merely because the parents of the child may have obtained divorce by mutual consent, that by itself is no ground to deny the child maintenance. The impugned order does not even take into consideration the issue of maintenance for the minor child. This is an error apparent on the face of record. Secondly, under Section 125 of the Cr.P.C. even the divorcée-wife is entitled for maintenance. There is nothing on record to even remotely suggest that the Petitioner-wife in the present case had waived her right to receive maintenance

assuming that such waiver itself is permissible.

8. In the case of **Shrawan** (supra), it appears that there was some material to suggest that the wife had voluntarily surrendered her right to claim maintenance and it is in these circumstances, that the order granting maintenance to the wife was interfered with. There is absolutely no material in the present case to suggest any surrender of the right to receive the maintenance. Thus the learned Sessions Judge erred in relying on the case of **Shrawan** (supra).

9. In **Kaushalya Dinkar Mule vs. Dinkar Mahadeorao Mule, 2001 Cri.L.J. 2292** the learned single Judge of this Court has taken a view that relinquishment of claim of maintenance under a deed of divorce is not at all enforceable and no cognizance of such relinquishment could ever have been taken by the Magistrate while deciding the application for maintenance.

10. There was absolutely no good reason to deny the Petitioners the maintenance which was awarded to them by the learned J.M.F.C. The learned Additional Sessions Judge by interfering with the order made by learned J.M.F.C has exceeded the jurisdiction, and therefore the impugned order dated 27th August, 2013 warrants interference.

11. This Petition is accordingly disposed of with the following order:

(a) The impugned order dated 27th August, 2013 made by the learned Additional Sessions Judge, Islampur is set aside;

(b) As a consequence the judgment and order dated 23rd August, 2010 made by the learned J.M.F.C. in Cri. Misc. Application No. 20 of 2009 is restored;

(c) The Respondent is directed to pay maintenance to the Petitioners in terms of the order dated 23rd August, 2010;

(d) The time limit for clearing the arrears shall be three months from today.

12. The rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(M. S. SONAK, J.)