

Sangita Balasaheb Devkar and Others ...Petitioners  
vs.  
Balasaheb Mahadev Devkar and Another ...Respondents

 $1/8$

dated 25<sup>th</sup> June, 2013.

4. Mr. Tejas Hilage, learned counsel for the Petitioners submits that the order by which the Petitioners had been granted maintenance was disturbed by the Revisional Court by a cryptic order bereft of any appropriate reasons. He submits that merely because maintenance was claimed after 16 years, was not at all a ground to deny the Petitioners any maintenance. He submits that it is the case of the Petitioners that the Petitioner-wife was thrown out of the matrimonial home by the Respondent-husband. Mr. Tejas relied on ***Ashabai Himmatrao Junghare vs. Himmatrao Kisanrao Junghare, 2007(1) Mah.L.J. 802*** and ***Ranjana Shivaji Rakhpasare vs. Shivaji Bapu Rakhpasare and Another, 2004 CrLJ 145.***

5. Mr. Tejas points out that Respondent by filing an affidavit in reply before this Court has taken up false plea that he is disabled to the extent 88 % and cannot move without a wheelchair. Mr. Tejas points out that the medical certificate which is attached to the affidavit is dated 18<sup>th</sup> June, 2014. He point out that such medical certificate was never produced before the Revisional Court where the matter was pending. He points out that this statement is false and this falsity is evident from the photographs

annexed by the Petitioners along with affidavit in rejoinder. The photographs are of 12<sup>th</sup> October, 2016. The Respondent was absolutely fine and was present at the stall/shop through which he conducts his business. Mr. Tejas submits that this is a fit case not only to restore the maintenance of Rs. 1,000/- p.m. in favour of the Petitioner-wife but also, further to enhance the same. He submits that even the maintenance amount in favour of the children deserves to be enhanced.

6. On due consideration, the submissions made by Mr. Tejas and on perusal of the impugned order as well as the material on record, this appears to be a fit case to warrant interference with the impugned order to the extent it upsets the award of maintenance in favour of the Petitioner-wife.

7. The only reason why the Revisional Court has upset the award of maintenance in favour of the Petitioner-wife, is set out in para 11 of the impugned order which reads as follows:

11. It is the case of the respondent No. 3 that she has no source of income and she is unable to maintain herself as well as to respondent Nos. 1 and 2. The respondent No. 3 however, in her evidence has admitted that she is staying at her parents house since last 16 years. It is not the case of the respondent No. 3 that for all these years she was being maintained by her parents. It is also not her case that, she lost the source of income from which she was maintaining herself. This was necessary to be proved by respondent especially when

she is claiming maintenance after 16 years of separation. The trial Court was thus not justified in granting maintenance to the respondent No. 3.

8. On the basis of aforesaid reasoning, the Revisional Court was not at all justified in interfering the award of maintenance of Rs. 1,000/- p.m. passed by the Judicial Magistrate First Class, Islampur in the order dated 25<sup>th</sup> June, 2013. The Respondent had produced no material, whatsoever, on record to suggest that the Petitioner-wife had some source of income on basis of which she was in a position to maintain herself. The Revisional Court has acted on the basis of surmises and conjectures and therefore, the order, to the extent it upset award of maintenance in favour of the Petitioner, warrants interference.

9. In ***Ranjana Rakhpasare*** (supra) the learned single judge of this Court, in somewhat similar circumstances, has made following observations at paragraphs 14 and 15 which read thus:

14. In any case, no provision was made for the maintenance of Ranjana when she was residing at her parents house. A wife cannot be left at her parents house after marriage without the husband making any provision for her maintenance, which includes food, clothes, provisions for her medical treatment and other needs. Food and shelter now a days is not only the requirement of a young woman, even a woman of middle age. Therefore, husband Shivaji Rakhpasara was under lawful duty to make provision for alimony for the petitioner when she was discharged from matrimonial home or at

least when was residing separately from Shivaji and was staying at her parents house. In all probability in this case, she seems to have been discarded, because it has come in evidence that the mother of husband Shivaji left her in her parents house.

15. Thus, it was the duty on the part of husband Shivaji to bring it on record that he made provisions for her alimony when she was residing with her parents, at their house. But there was nothing on record. The learned Additional Sessions Judge did not refer to his important aspect of the matter, keeping in view the word "neglected" appearing in provision of [Section 125](#) of the code. He should have also noticed that word "deserted" has also prominence in such cases. "Refused to maintain", "neglects", "does not make any provision for maintenance" are also important words, which are to be considered by the revisional Court while dealing with the deciding such petitioners which revolve around [Section 125](#) of the Code. Unfortunately, the learned Sessions Judge lost the sight of that.

10. Similarly, in ***Ashabai Junghare*** (supra) has made the following observations at para 15 which read thus:

15. It is true that the applicant did not claim any maintenance since 1973 till 2001, when this application was filed, but that fact by itself will not disentitle her from claiming maintenance, if she proves that she is not able to maintain herself. It is contended by learned Counsel for the applicant that till when she was able to maintain herself, she did not claim any maintenance and that is the fact which can be accepted in these circumstances of the case where the applicant has now become aged about more than 55 years and is growing old, incapacitating her do any job of earning livelihood. No doubt, there is evidence of witness Dr. Ramesh adduced by the respondent to show that the applicant was working as a part time lady attendant in his hospital, but that evidence clearly shows that her service is not permanent. He has also stated that he did not know

whether the applicant is doing any other job. His evidence does not show that applicant can continue with the said job even if she become old lady. Considering the age of the applicant in my opinion, it was necessary for the respondent to prove specifically that she had sufficient means to maintain herself even at her late age. It is brought on record to show that the applicant was living with her father for this pretty long time. There is also evidence on record to show that about 5 years prior to the application her father had died. Therefore, unless there is clear evidence on record to show that she has some income by which she is able to maintain herself, the inference that she is not entitled for maintenance as she is able to maintain herself, cannot be drawn. On this count, therefore, the inference drawn by the learned Additional Sessions Judge, cannot be said to be correct.

11. The reasons in the impugned order are contrary to the reasoning expressed in the aforesaid two decisions of this Court. This is an additional ground to interfere with the impugned order to the extent it upsets the award of maintenance in favour of the Petitioner-wife.

12. At this stage, it is not necessary to go into the issue as to whether the Respondent is handicapped, bedridden and therefore not in a position to pay any maintenance to the Petitioners. However, it is necessary to note that medical certificate dated 18<sup>th</sup> June, 2014 was never produced before the Revisional Court even though the Criminal Revision Application No. 2 of 2014 was very much pending as on 18<sup>th</sup> June, 2014. The same was

disposed of by the impugned order only on 28<sup>th</sup> October, 2014. In any case, if at all, there is genuinely any change in the circumstances, it will be open for the Respondent to apply to the Competent Court for variation of the maintenance order. Similarly, it will also be open to the Petitioners to apply to the Competent Court for increase of the maintenance amount. If such applications are made, there is no doubt that the Competent Court will consider the same in accordance with law and dispose of the same on their own merits. However, all this need not detain the interference with the impugned order to the extent it upset even the award of Rs. 1,000/- by way of maintenance in favour of the Petitioner-wife.

13. Accordingly, this Petition is partly allowed in following terms:-

(a) The impugned order to the extent it upset the award of maintenance @ Rs. 1,000/- p.m. in favour of the Petitioner-wife is set aside.

(b) The order dated 25<sup>th</sup> June, 2013 made by learned Judicial Magistrate First Class, Islampur in Criminal Miscellaneous Application No. 193 of 2011 is restored in its entirety.

(c) The Respondent is directed to pay maintenance @ Rs.

1,000/- p.m. to the Petitioners and further the Respondent is directed to clear all arrears within a period of three months from today.

(d) Liberty is granted to both, the Petitioners as well as the Respondent to seek variation, if they so chose, by filing appropriate application before the Competent Court i.e. Court of Judicial Magistrate First Class, Islampur. Such application if made, will be considered on its own merits in accordance with law.

14. Rule is made partly absolute to the aforesaid extent.

15. There shall be no order as to costs.

**(M. S. SONAK, J.)**