

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.652 of 2016

Megha Mahesh Shelar and ors .. Petitioners
Versus
Mahesh Vitthal Shelar and Ors .. Respondents

WITH

CRIMINAL REVISION APPLICATION NO.88 OF 2016

Mahesh Vitthal Shelar .. Applicant
Versus
Dr.Sou Megha Mahesh Shalar & ors .. Respondents

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Mrs.Megha M. Shelar, Petitioner in person present in WP 652/16
and for respondent in Revision No.88/16.

Mr.Rajendra Abhule with Mr.Prosper D'Souza, Advocate for the
respondent in WP 652/16 and for applicant in Revision 88/16.

Mr.Rajan Salvi, APP for respondent no.2 State in Writ Petition as
well as in Revision.

CORAM: SMT.BHARATI H. DANGRE, J

DATED : 19th MARCH 2018

P.C:-

1 The present Writ Petition is filed by the petitioner wife
assailing the judgment passed by the Addl. Sessions Judge, Pune
declining her application claiming shared accommodation. The
Addl. District Judge dealt with two appeals, one filed by the
petitioner husband Mahesh Shelar being aggrieved by the amount

of maintenance granted by the Judicial Magistrate First Class, and another appeal filed by the wife refusing her relief of shared accommodation. Both the Criminal Appeals came to be heard together by the Addl. Sessions Judge at Pune and a common order was passed on 16th December 2015. Criminal Appeal filed by the husband came to be dismissed, whereas Criminal Appeal filed by the wife came to be partly allowed by enhancing the amount of maintenance allowing from Rs.3,000/- p.m to Rs.5,000/- and also enhancing the amount of Rs.3,000/- granted towards residence to Rs.5,000/-. The husband has filed a Criminal Revision Application being aggrieved by the order passed by the Addl. Sessions Judge.

Both the Writ Petition and Criminal Revision Application are being heard together.

The petitioner wife approaches this Court by filing this present Writ Petition being aggrieved by the refusal of shared accommodation. The petitioner appears in person and she has invited the attention of this Court to the order passed by Judicial Magistrate First Class on 21st June 2013 and specifically the observations made in that order. The application, as regards claim of shared accommodation by the wife which was filed below

Exhibit-41, was heard by Judicial Magistrate First Class, and the relief prayed came to be rejected with certain observations. The case of the applicant before the Magistrate was that the respondents were having a two storeyed building at village Kolgaon, Tahsil Shrigonda, District Ahmednagar where there are eight rooms, and she prayed that possession of two rooms be granted to her. She relied upon the Tax Assessment Receipt vide Exhibit 43 which reveal that property no.291 is standing in the name of the respondent no.2 Vithal i.e. father-in-law and Shakuntala i.e. mother-in-law, whereas property no.292 is standing in the name of respondent no.1 husband Mahesh. The Court, on consideration of the rival submissions, recorded a finding that property no.291 is an open land as per the documents filed on record. As regards property no.292 was concerned, the Court rejected the contention of the applicant on the ground that there was nothing on record to show that the house comprises of 8 rooms and in any contingency based on the judgment of the Hon'ble Apex Court in the case of ***S.R.Batra and Anr Vs. Taruna Batra (Civil Appeal No.5837/2006)*** dated 15th December 2016, the Court held that she is not entitled for a shared household since the property was not in the name of the husband. Resultantly, the application preferred for a shared household came to be rejected.

The petitioner who appears in person relied upon Exhibit-85 and Exhibit-86 placed on record which clearly reveals that property no.292 is not an open land, but it is a two storied RCC structure, and the name of the owner in the column "*Malkache nav*" reflects the name of Mahesh Vitthal Shelar and Vithal D. Shelar. It is the specific contention of the petitioner who appears in person that the said property was subsequently transferred in the name of the father-in-law and it originally stood in the name of the husband Mahesh.

2 While dealing with the said contention, learned counsel for the respondent has voluntarily placed on record the tax receipts of property no.291 and 292, and do not dispute that the finding recorded by the Magistrate that plot no.292 is an open piece of land, is not correct. The document produced by the respondent also reflects that plot no.292 is a two storied RCC structure which stands in the name of Vitthal and Shakuntala. The ownership of the said property no.292 may be a matter of dispute, but the finding recorded by the Magistrate that property no.292 is an open land, is totally incorrect. On this short ground, the matter needs to be remanded back to the Magistrate for reconsideration. The issue is regards the ownership of property

no.292 and as to in whose name the property stands, since according to the petitioner wife, the property originally stood in the name of the husband, however, the property came to be transferred in the name of the father-in-law. In any contingency, the learned Magistrate did not deal with this issue at all, since he had recorded a finding that property no.292 is a vacant piece of land. In such circumstances, it is open for both the parties to bring on record the necessary documents and adduce necessary evidence to demonstrate as to in whose name property no.292 stands as on date; and whether the wife is entitled for a shared household in the said property. Liberty is given to both the parties to produce documents and adduce additional evidence to deal with the said issue.

3 Learned counsel for the respondent who had challenged the order of maintenance in the Appeal before the Addl. District Judge submits that the Judicial Magistrate First Class did not take into consideration the specific submission of the husband that the wife is a doctor practicing Homeopathy and she has a source of livelihood. According to the learned counsel, said aspect of the matter was completely lost sight of. The learned counsel has tendered on record, during the course of hearing

before this Court, certain documents to demonstrate that the respondent wife is practicing homeopathy and it referred certain patients to the pathology lab in Pune. According to the said counsel, the said aspect is not considered at all and the amount of maintenance has been enhanced from Rs.3,000/- to Rs.5,000/-, and the amount towards residence is also enhanced to Rs.5,000/-.

The petitioner wife specifically urges that the amount of maintenance awarded of Rs.5,000/- is a meager maintenance and she had prayed for an amount higher than the same in view of the earning capacity of the husband and she being not in a position to earn her living for herself. She does not dispute that at some point of time, she was practicing. However, her specific case is that on the date when she moved the application, she did not have any source of livelihood. In such circumstances, for re-determining the quantum of maintenance, the matter is remanded to the Magistrate who would take into consideration the earning capacity of the husband and also the alleged earning capacity of the wife, which according to the respondent husband, is a factor which was not considered by the Magistrate at all. However, it is made clear that the respondent husband would continue to pay the maintenance of Rs.5,000/- as directed by the Addl. Sessions

Judge, Pune by an order dated 16th December 2015 regularly and also continued to pay amount of Rs.5,000/- towards residence. The respondent to clear the arrears of the said amount forthwith, without which the plea which he intends to raise before the Magistrate, will not be taken into consideration at all.

4 It is open for the Magistrate to either maintain the said amount of maintenance as ordered, or vary accordingly by taking into consideration the material brought before it. The said proceedings be disposed of within a period of three months from the date of the order.

5 The learned Magistrate is also directed to dispose of the pending applications by which the petitioner wife has claimed shared household. The petitioner wife has also prayed for appointment of Commissioner by filing an application which was exhibited as Exhibit-80. The said application has become infructuous in view of the respondent husband specifically admitting and producing on record before this Court the document as regards the property no.292. The said documents are taken on record and marked as Exhibits "X" and "Y" for identification. The respondent is at liberty to place the said copies on record of the Magistrate during the course of further proceedings.

6 The respondent husband undertakes to deposit the arrears of maintenance till date in the Court of Judicial Magistrate First Class within a period of one month.

7 It is made clear that the statement made by husband that he would pay the arrears of maintenance is accepted as an undertaking to this Court and any breach thereof would be dealt with sternly.

8 The Magistrate is directed to consider the application which would then be filed by wife for withdrawal of the amount before reconsidering the issue as regards the quantum of maintenance and is directed to dispose of the proceedings within a period of three months.

8 Writ Petition and Revision Application are disposed of accordingly.

(BHARATI H. DANGRE, J)