

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1521 OF 2017

Shri. Umesh Tanaji Mali

...Petitioner

Vs.

Sou. Shridevi Umesh Mali

... Respondent

.....

Mr. Umesh Mali for the Petitioner.

None for the Respondent.

.....

CORAM : G.S. KULKARNI, J.

DATE : JANUARY 11, 2018.

P.C. :

1. Heard learned counsel for the petitioner.
2. By this petition, the petitioner challenges the order dated 20.8.2016 passed by the Learned Sessions Judge, Sangli, whereby, the Criminal Revision Application No.38/2016 filed by respondent-wife has been allowed thereby, setting aside an order dated 25.11.2015 passed by Learned Judicial Magistrate First Class, Jath in Criminal Miscellaneous Application NO.105/2012. The Judicial Magistrate First Class, Jath had rejected the Application of respondent-wife under section 125 of Cr. P.C. on the ground that, there is an order passed against the respondent-wife in an application/petition of the petitioner for restitution of conjugal rights. The learned trial judge thus observed

that the respondent could not have stayed from the petitioner in view of the said restitution order and seek maintenance.

3. The learned Sessions Judge in the impugned order has clearly observed that the order passed in the application for restitution of conjugal right was an ex-parte order. Respondent-wife was not even served with the proceedings. It is clearly observed the restitution order being passed in the absence of the respondent-wife was a subject matter of a challenge by the respondent-wife. Considering the object intention behind section 125 Cr. P.C. learned Sessions Judge thought it appropriate to set aside the orders passed by the learned trial judge and remanded the application under section 125 should be heard and decided by the Judicial Magistrate First Class, Jath on merits.

4. I have heard learned counsel for the petitioner as also I have gone through the impugned order. In my opinion the circumstance that the petitioner's application for restitution of conjugal rights was decided ex-parte and same being the subject matter of challenge by the respondent are valid reasons for the learned sessions judge to restore the respondent's application under Section 125 of the Cr. P.C. to direct the learned trial judge to decide Section 125 application of the respondent-wife on merits cannot be said to be an erroneous approach. Thus there is infirmity in the observations as made by the learned

Sessions Judge in the impugned order. In any case the petitioner would have all the opportunity to defend the proceedings under section 125 of Cr. P.C.

5. There is no merit in the writ petition. It is accordingly rejected.

No costs.

6. All contentions of the parties on merits are expressly kept open.

(G.S. KULKARNI, J.)