

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

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**CRIMINAL WRIT PETITION NO. 78 OF 2003
WITH
CRIMINAL WRIT PETITION NO. 79 OF 2003
WITH
CRIMINAL APPLICATION NO.5791 OF 2012
IN
CRIMINAL WRIT PETITION NO. 79 OF 2003**

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Bhaurao s/o Baburao Salve
age 65 years, Occ. Agri,
R/o village Ralegaon (Mhasoba),
Tq and District Ahmednagar. ..Petitioner..
(orig non applicant.)

VERSUS

1. Smt. Malan w/o Bhaurao Salve,
age 65 years, Occ. Household and
agri, R/o Neemgaon Gangarde,
Tq. Karjat, Dist Ahmednagar. (no.1 orig applicant)
2. The State of Maharashtra. ..Respondents...

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Advocate for petitioner : Mr R S Deshmukh
Advocate for Respondent no.1 : Mr M P Shinde
APP for respondent No.2 : Mr V M Kagne

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CORAM : V.K. JADHAV, J.

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Reserved on : February 04, 2019.
Pronounced on : June 03, 2019.

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JUDGMENT :-

1. Heard both sides.

2. The Respondent/wife had filed an application for maintenance bearing Criminal Misc. Application No.6 of 1983 against the petitioner/husband before the Judicial Magistrate First Class, Karjat. By order dated 30.4.1985 the learned Magistrate has allowed the said application and granted Rs.200/- per month towards maintenance. The Respondent-wife has filed Criminal Misc. Application No.171 of 2001 for enhancement of the said amount from Rs.200/- to Rs.1,500/-. She had also filed Criminal M.A. No.172 of 2001 for recovery of maintenance amount under section 125 (3) of the Criminal Procedure Code. In connection with the Criminal M.A. No.171 of 2001, the petitioner herein had filed an application exh.11 stating therein that he had filed Regular Civil Suit bearing No.339 of 1985 in the Court of Jt. Civil Judge J.D. Ahmednagar seeking declaration that respondent Malanbai is not his legally wedded wife and said suit was decreed on 28.1.1988. Being aggrieved by the same, the respondent Malanbai has preferred Regular Civil Appeal No. 316 of 1989 which also came to be dismissed, however, Second Appeal bearing No.290 of 1995 before this Court is

pending. In Criminal Misc Application no. 171 of 2001 the petitioner had filed an application exh.9 on the same count. After hearing the petitioner, the learned Judge of the trial court has rejected both the applications exh.9 and 11 filed in Criminal M.A. No.172 of 2001 and 171 of 2001 respectively. Being aggrieved by the same, the petitioner has preferred Criminal Revision Application No.108 of 2002 and Criminal Revision Application No.109 of 2002 against the said two orders passed below exh.9 and exh.11 respectively. The learned Additional Sessions Judge, Ahmednagar by judgment and order dated 13.1.2002 dismissed both the Criminal Revision Applications.

3. Being aggrieved by the same, the petitioner/husband had preferred these two criminal writ petitions against the aforesaid orders passed below exh.11 and exh.9 respectively.

4. This Court by order dated 3rd of June, 2019 disposed off the Second Appeal No.290 of 1995 with the following order :-

ORDER

- “I] Second Appeal is hereby partly allowed.
- II] The judgment and decree passed by the learned Jt. Civil Judge J.D. Ahmednagar dated 28.1.1988 in Regular Civil Suit No.339 of 1985 and confirmed by the learned 3rd Additional District Judge, Ahmednagar by judgment and order dated 20.2.1995 in Regular Civil Appeal No.316 of 1989 are hereby quashed and set aside.
- III] Regular Civil Suit No.339 of 1985 is hereby remanded to the trial Court for retrial with the following directions :-
- a] Re-admit the suit under its original number in the register of the Civil Suit and proceed to determine the suit.
 - b] The appellant/original defendant Malan Bhausahab Salve shall be permitted to file her written statement on the date of appearance or subsequent thereto at the discretion of the Trial Court, however, not later than one month from the date of appearance.
 - c] Parties are at liberty to adduce oral and documentary evidence in support of their rival contentions.
 - d] The parties shall appear before the Trial Court on 4th of July, 2019.
 - e] The Trial Court shall dispose off the Regular Civil Suit within NINE MONTHS from the date of appearance of the parties.
- IV] Second appeal is accordingly disposed off.
- V] Record and Proceedings shall be returned to the Trial Court, forthwith.”

5. In view of the above, both the Criminal Writ Petitions can be disposed off by directing the learned Judicial Magistrate First Class to dispose off the Criminal Misc. Application no.171 of 2001 and 172 of 2001 respectively, on its own merits, if not decided earlier, and the decision so rendered in the aforesaid pending Criminal Misc. Application no.171 of 2001 and 172 of 2001 would be subject to outcome in the Regular Civil Suit No.339 of 1985 after remand as per the order passed in Second Appeal No.290 of 1995. Order accordingly. Record and proceedings shall be returned to the trial court forthwith.

6. In view of disposal of Criminal Writ Petitions, nothing survives for consideration in criminal application no.5791 of 2012 in criminal writ petition no.79 of 2003. Hence, is it accordingly disposed off.

(V.K. JADHAV, J.)

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aaa/-