

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

WRIT PETITION NO.3399 OF 2015

Sau. Tabassum D/o Mussa Shaikh Petitioner
nee Tabassum Sadik Mulla

Vs.

1. Sadik Haiderkhan Mulla
2. The State of Maharashtra Respondents

Mr. N.R. Bubna for Petitioner.
Mr. Anilkumar K. Patil for Respondent no.1.
Mr. S.S. Hulke, APP for State.

Coram : NITIN W. SAMBRE, J.

Date : 6th January, 2020

P.C.:

1. Heard.
2. The learned Judicial Magistrate First Class, Satana, District Nashik in Criminal Miscellaneous Application No.163 of 2007 by an order dated 13th April, 2010 awarded maintenance to the tune of Rs.1,500/- in favour of the applicant-wife.
3. The said order came to be set aside in revisional jurisdiction by the learned Additional Sessions Judge-2, Malegaon. As such, this petition.

4. The parties to the petition were married in the year 1994. The proceedings for maintenance came to be initiated in the year 2007 and based on the alleged Talaq, the learned Sessions Judge reversed the order of maintenance. While questioning the same, the learned counsel for the petitioner invited attention of this Court to the judgment in Criminal Writ Petition No. 544 of 2003 decided at Aurangabad Bench on 11th August, 2016, so as to claim that before accepting the stand, based on the alleged oral Talaq, attempts to settle the differences should be proceeded. According to him, the issue raised is no more res-integra and is already settled in the aforesaid judgment. Based on the findings recorded in the aforesaid judgment, he would urge that the revisional Court committed an error of law and also of jurisdiction in re-appreciating the entire evidence and reversing the order of grant of maintenance.

5. While countering the aforesaid submission, the learned counsel for respondent-husband would urge that the evidence of the witness of the respondent is sufficient enough to substantiate the

findings recorded by the revisional Court. According to him, since already the Talaq was granted and such Talaq was validly established through the evidence of the respondent and his witness, the order reversing the maintenance is very much justified. He sought dismissal.

6. Considered the submissions.

7. In support of the claim for maintenance, the petitioner entered into the witness box, which testimony was appreciated and the maintenance of Rs.1,500/- was ordered by the Court of learned J.M.F.C..

8. In Revisional jurisdiction, at the behest of the respondent-husband, the revisional Court set aside the same by accepting the testimony of the respondent-husband and that of the Maulana as his witness. Upon perusal of the testimony of the witness of the respondent-husband i.e. Maulana, who has certified Talaq, it could be gathered that the testimony does not repose confidence and cannot be accepted so as to support the case of the respondent-husband. The testimony of said witness Maulana is full of the vague utterances. He

was unable to state when he tried to settle the differences between the parties and on which dates such meetings were held by him. He was also unable to answer as to what was the cause prompting him to attend the Court proceedings on the date of pronouncement of Talaq in the Court premises.

9. In the aforesaid background, the testimony relied upon by the revisional Court that too in revisional jurisdiction, in the form of re-appreciation of evidence cannot be justified.

10. Apart from above, it is not established from the testimony of the respondent and his witness that before uttering or pronouncing Talaq, any genuine attempts were made to settle the differences between the parties to the petition

11. A perusal of judgment of the revisional Court, prima facie demonstrates that the said Court has exceeded its jurisdiction while reappreciating the evidence. In that view of the matter, order impugned dated 16th March, 2015 passed in Criminal Revision Application No. 41 of 2010 is hereby quashed and set aside.

12. The said Criminal Revision Application No.41 of 2010 stands dismissed and the order granting maintenance passed by the learned J.M.F.C., Satana, District Nashik in Criminal Miscellaneous Application No. 163 of 2007 stands restored.

13. The petition stands allowed in above terms.

(NITIN W. SAMBRE, J.)