

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 524 OF 2019

Sau. Vaishali w/o. Gajanan Khadse,
Aged about 27 years, Occ – Household,
R/o Durbha (New), Tah. Zari (Jamini),
Dist. Yavatmal.

.... Petitioner

- Versus -

(1) Gajanan s/o. Narayan Khadse,
Aged about 32 years, Occ-Service,
R/o. Mukutban, Tah. Zari (Jamini),
District - Yavatmal.

(2) The State of Maharashtra,
Through Police Station Officer,
Mukutban, Tah. Zari (Jamini),
District - Yavatmal.

.... Respondents

Mr. S. Raisuddin, Advocate for the petitioner

None for respondent no. 1

Mr. N. R. Rode, APP for respondent no. 2

CORAM : ROHIT B. DEO, J.

DATED : 29TH JANUARY, 2021.

ORAL JUDGMENT

Heard.

2. With consent, the petition is finally heard at the admission stage.

3. The petitioner – wife is invoking writ jurisdiction assailing the concurrent findings recorded by the learned Magistrate and the revisional Court holding that the wife deserted company of the respondent – husband on her own.

4. The learned counsel for the petitioner opened the submissions with the contention that maintenance is refused by the Courts below on the premise that the name of the wife is mutated in the revenue record as owner or co-owner of agricultural field.

5. However, after perusal of the orders, it is noticed that the submission of the learned counsel is factually incorrect. Why such a submission was made is best known to the learned counsel. In the interest of observing restraint, I am refraining from recording any further observation.

6. The learned Magistrate appreciated the evidence on record and recorded a finding of fact that the wife left the company of the husband on her own accord and that she is not entitled to maintenance.

7. The learned Sessions Judge, though exercising revisional jurisdiction, reappreciated the evidence on record and found that the finding recorded by the learned Magistrate that the wife left the company of the husband without any justification is consistent with record.

8. It would be necessary to notice the thought process of the learned Sessions Judge as is discernible from paragraph 12 of the judgment impugned which reads thus :

12) When petitioner herself admitted that respondent left his temporary job and took a room of Ajabrao Krushnaji Dupare at Maregaon on rental basis where she had been with her father, this evidence shows that respondent tried for there conciliation and acted as per agreement in the meeting. But, even after that merely because petitioner visited to the rented house it cannot be accepted that she intended to cohabit with respondent as is argued for the reason that visiting the rental room and staying there are altogether different things. There is no whisper in the evidence of petitioner in respect of the incident which occurred on 10-02-2011. She not even whispered that the respondent did not allow her to enter the rented room which was taken by respondent as per agreement in the meeting. There was no reason to suppress as to what occur on 10-02-2011. Petitioner neither stated the same in her application nor in her evidence about which the claim of the respondent that merely the petitioner and her father

came there but, as they did not find the place suitable they left alongwith the matador. If this is so the contention and submission of respondent counsel that petitioner was not happy with the arrangement made cannot be said to be totally false. If really petitioner intended to resume cohabitation, she ought to have stayed there. But it is not the case at hand. This points of that it was the petitioner who left the company of matrimonial home on her own accord firstly on 30-05-2010 and thereafter on 10-02-2011. There cannot be on any other conclusion on this point. Therefore, the argument of learned counsel for petitioner that the presence of petitioner on 10-02-2011 at the rented house at Maregaon should itself be taken as intention of petitioner to cohabit can not be accepted. On the other hand it is seen that respondent left his temporary job also took a room at Maregaon by leaving his native place of Mukutban and attempted to resume cohabitation with petitioner. Therefore, the conclusion of trial court on this point cannot be said to be erroneous or perverse.

9. The learned Sessions Judge then relies on the decision of this Court in ***Sow. Sumanbai Ramesh Garje and anr. Vs. Ramesh Dagdu Garje 2014 ALL MR(Cri) 3710*** and holds that since the wife left the matrimonial house on her own accord, she is not entitled to maintenance.

10. I do not see any error in the concurrent findings recorded as would impel me to interfere in extraordinary jurisdiction under

Article 227 of the Constitution of India.

11. The petition is dismissed.

JUDGE

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