

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

CRIMINAL WRIT PETITION NO. 254 OF 2010

1. Rupali Venkati More
Age: 30 years, Occu.: Household,
R/o Pimpla Bhatta, Tq. Purna,
Dist. Parbhani

2. Rupesh Venkati More
Age: 7 years (minor)
Under Guardianship of
Petitioner No.1

..PETITIONERS

VERSUS

1. Venkati Raosaheb More
Age: 32 years, Occu.: Agri.,
R/o Pimpla Bhatta, Tq. Purna,
Dist. Parbhani

2. State of Maharashtra

..RESPONDENTS

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Mr. S.R. Bagal, Advocate for petitioners
Mr. M.V. Ghatge, Advocate for respondent no.1
Smt. D.S. Jape, A.P.P. for respondent no.2 - State

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**CORAM : R.G. AVACHAT, J.
DATED : 28th MARCH, 2022**

PER COURT :

1. The challenge in this writ petition, under Article 227 of the Constitution of India is to the judgment and order dated 14th December, 2019 passed in Criminal Revision Application Nos. 13 and 16 of 2007.

2. Petitioner No.1 is the wife (divorced) of Respondent No.1. Petitioner No.2 is their son. For the sake of convenience, the parties to this petition are referred to as the petitioner - wife and respondent – husband. The petitioner – wife had filed an application for maintenance under Section 125 of the Code of Criminal Procedure ('Cr.P.C.'). The learned Judicial Magistrate First Class, Purna allowed the said application granting maintenance of Rs.700/- and Rs.300/- per month to the petitioner - wife and the son respectively. The respondent – husband challenged the said order in Criminal Revision Application No. 13 of 2007, while the petitioners also took exception thereto and preferred Criminal Revision Application No. 16 of 2007 for enhancement of amount of maintenance. Learned Additional Sessions Judge, Parbhani vide her judgment and order impugned herein partly allowed the revision applications. The amount of maintenance of Rs.300/- per month awarded to the son was enhanced to Rs.1,000/- per month. The order granting maintenance to the petitioner – wife was set aside. Hence the present petition.

3. The learned Additional Sessions Judge negatived the petitioner – wife's claim for grant of maintenance for the reason that the respondent – husband had filed a petition for restitution of conjugal rights. The decree passed therein against the petitioner – wife attained finality. Since she did not obey the decree of restitution of conjugal rights, the respondent –

husband filed a petition for dissolution of marriage by decree of divorce on the ground of desertion. The said petition was allowed. The decree of divorce passed therein has attained finality. In view of learned Additional Sessions Judge, the petitioner – wife was thus not entitled to receive the allowance for maintenance as without any sufficient reason she has refused to live with the respondent – husband (Section 125(4) of the Cr.P.C.).

4. Learned counsel for the petitioner – wife would submit that in view of definition of the term “wife” under Explanation (b) to Section 125 of the Cr.P.C., “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. Learned counsel relied on the judgment of Hon’ble Supreme Court in the case of *Rohatash Singh Vs. Smt. Ramendri and Others*, 2000 Cri.L.J. 1498(1) and judgment of this Court in the case of *Dnyaneshwar Eknath Kachre Vs. Sunita Dnyaneshwar Kachre* dated 24th August, 2018 in *Criminal Writ Petition No. 1258 of 2017*.

5. On the question of quantum of maintenance, learned counsel for the petitioner – wife would submit that the respondent – husband owns an agricultural land of high fertility. Only with a view to defeat the petitioner – wife’s right to claim maintenance, he has shown to have relinquished his right, title and interest in the agricultural land in favour of his real brother.

According to learned counsel, the petitioner – wife has no source of income. The son is taking education. Estimate of expenditure towards household is Rs.7,000/- per month, besides medical expenses to the tune of Rs.1,000/- per month plus Rs.2,000/- per month towards transportation. The petitioner – wife has been residing at her parental house. The expenditure for the education of the son is little over Rs.1 lakh per annum. The petitioner – wife has placed on record her affidavit as to her assets and liabilities. He, therefore, urged for allowing the writ petition granting maintenance of Rs.5,000/- per month to the petitioner – wife and the son.

6. Learned counsel for the respondent – husband would, on the other hand, submit that this is a writ petition under Article 227 of the Constitution of India. This Court cannot go into the factual matrix. He reminded this Court of it's jurisdictional limitations in exercising power under Section 227 of the Constitution of India. According to him, the respondent – husband, post obtaining the decree of divorce, has re-married. He has two children of his second marriage. His mother is dependent on him. The petitioner – wife has a share in ancestral agricultural land. She has been gainfully employed. She has also been living in live in relationship. Without going into all such factual matrix, this Court cannot grant any maintenance. More so, when the petitioner – wife has not preferred application claiming maintenance under the changed circumstances viz. being a fresh cause of action as a divorced

wife. According to the learned counsel, there cannot be two views over the Apex Court judgment in Rohatash Singh (supra) case. He would further submit that the confirmation of quantum of maintenance challenged in the said petition was based on the order passed by the Supreme Court in exercise of jurisdiction under Article 142 of the Constitution of India. He, therefore, urged for dismissal of the petition.

7. Considered the submissions advanced. Perused the judgment and order. Gone through the authorities relied on.

8. The son has attained the age of majority. Before presentation of the application of maintenance under Section 125 of the Cr.P.C., the respondent – husband had filed a petition for restitution of conjugal rights. The decree passed therein attained finality. Since the decree was not obeyed, the respondent – husband has obtained a decree of divorce on the ground of desertion. He has re-married and has two children thereof. The application for maintenance preferred by the petitioner – wife has not been amended by her claiming entitlement in the capacity as a divorced wife. The learned Additional Sessions Judge was, therefore, justified in rejecting her application for maintenance on the ground that she had no sufficient reason to refuse to live with the respondent – husband. This Court cannot travel beyond the pleadings and the evidence let in. Post passing of decree of dissolution of

marriage, there is change in circumstance, as has been claimed by the respondent – husband. This Court, in Writ Petition under Section 227 of the Cr.P.C., cannot go into a disputed questions of fact. Admittedly, the son has filed a suit against the respondent – husband for partition and separate possession of the ancestral agricultural land.

9. I have perused the citations relied on by learned counsel for the petitioner – wife. I am, however, in complete agreement with the submissions advanced by learned counsel for the respondent – husband. In view of this Court, order of the Hon'ble Apex Court confirming the quantum of maintenance in Rohatash Singh (supra) case was in exercise of jurisdiction under Article 142 of the Constitution of India. Unless and until the respondent – husband is given an opportunity to put forth his case, as has been contended by the learned counsel, the petitioner – wife cannot be granted maintenance in her changed status as a divorced wife. Such was not the question involved in the case of Dnyaneshwar Eknath Kachre (supra).

10. When this Court expressed disinclination to allow the writ petition, learned counsel for the petitioner – wife came around to submit that the matter may be remanded back to the Judicial Magistrate First Class, Purna with a liberty to the petitioner – wife to amend the application with a view to urge for grant of maintenance in her changed status as divorced wife.

11. In view of above, the petition stands disposed of in terms of following order :-

Criminal writ petition is partly allowed. The order rejecting the petitioner – wife’s claim for maintenance is upheld. The matter is however remanded back to the Court of Judicial Magistrate First Class, Purna with liberty to the petitioner – wife to amend the same within a period of six weeks from the date of this order. The learned Magistrate then decide the application on it’s own merits after giving the opportunity of hearing to both the parties thereto.

(R.G. AVACHAT, J.)

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