

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

CRIMINAL WRIT PETITION NO.482 OF 2022

Paras s/o Pushpendra Mathurvaishya
Age – 35 years, Occ- Service,
R/o- Mondhala Road, Pachora,
District – Jalgaon.

...Petitioner

Versus

Sonali w/o Paras Mathurvaishya
Age- 34 years, Occ- Beauty Parlour,
R/o- C/o, Gupta Provision, Agra Road,
Nehru Chowk, Deopur, Dhule,
Taluka & District – Dhule.

...Respondent

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Mr. Sandesh R. Patil, Advocate for the Petitioner.
Mr. Sachin Panale, Advocate for the Respondent.

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CORAM : S.G. MEHARE, J.

DATED : FEBRUARY 20, 2023

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2. The husband has impugned the orders of the learned Judicial Magistrate and learned Additional Sessions Judge, Dhule. The maintenance was granted to the respondent/wife under Section 125(1) of the Criminal Procedure Code.

3. The husband has a case that he has obtained the decree of divorce on the ground of cruelty; hence, she is not entitled to the maintenance. The wife fall under category of Section 125(1)(b) of

Criminal Procedure Code. Beside this, he has also the case that the respondent/wife is M.Com. She never attempted to secure the job though able to get the job. The source of income of the petitioner has not been properly appreciated. The petitioner was an employee in the small scale factory standing in the name of his mother. Since the respondent made the wild allegations, the father of the petitioner died. He also argued that both the Courts did not appreciate the evidence in proper perspective. To bolster his arguments, he relied on the case of Bhagwan Raoji Dale Vs. Sushma alias Nanda Bhagwan Dale, 1998 (2) Mh.L.J. 819, Deb Narayan Halder Vs. Anushree Halder (SMT), (2003) 11 SCC 303 and Mamta Jaiswal Vs. Rajesh Jaiswal, 2000 SCC Online MP 580.

4. Per contra, learned counsel for the respondent/wife has vehemently argued that the petitioner failed to prove his defence. The wife was to live separate from the petitioner as she was ill-treated. Though she is M.Com, she never was in employment. Considering the huge unemployment in the country, it is most difficult for her to get the suitable job though she is a Post Graduate. Though the small scale factory stands in the name of his mother, he is the proprietor of the factory. Only to hide the income with a view to avoid the maintenance, the small scale factory was shown in the name of his mother after the death of his father. Initially, the small scale factory was in the name of his father and after his death, the petitioner is one

of the legal heir. So the defence raised by the petitioner that he has a very small income, is unacceptable. Both the Courts have correctly appreciated the evidence. To bolster his arguments, he relied on the case of Rohtash Singh Vs. Smt. Ramendri and Ors, 2000 ALL MR (Cri) 996, Shakuntala w/o Dewanand Waghmare Vs. Dewanand Babanrao Waghmare, LAWS (BOM) 2008 8 683 and Smt. Gita w/o Chandrasshekhhar Pandit Vs. Shri. Chandrashekhar s/o. Rameshwar Pandit, 2009 ALL MR (Cri) 1104.

5. As far as the facts of the case are concerned, the petitioner/husband has a case that within 1 and ½ month, the respondent/wife left his home without any justifiable reason. It is also an admitted fact that the wife had filed the petition for restitution of conjugal rights and it is still pending. The divorce petition has been filed after filing the proceeding under Section 125 of the Criminal Procedure Code.

6. It appears that the arguments of the petitioner revolves around the two categories discussed in the case of Bhagwan Raoji Dale (cited supra). This Court in the said case in para 22 has observed that it is not every divorced wife who can claim maintenance under Section 125(1) of the Criminal Procedure Code. The woman who has been divorced by her husband is included in first part of Explanation (b) to Section 125(1). She can claim maintenance under Section 125(1). A close scrutiny of the

phraseology used in Clause (b) of the Explanation to section 125(1) shows that it is in two parts. The first part deals with a wife who has been divorced by her husband which, in our view would, normally, apply to parties professing the Muslim religion or whereunder a customary law applicable to some Hindus, the husband is entitled to unilaterally divorce the wife. This is because the words used are that the. "woman has been divorced by the husband". The second part deals with the case whether the wife has obtained a divorce from her husband. This contemplates the wife moving the Court for a decree for divorce and the wife obtaining a decree for divorce from her husband. Undoubtedly, in either of the two situations falling is Clause (b), the wife has not remarried. If this is the true interpretation of Clause (b) of the Explanation, then in our view, the respondent's case cannot fall under the said Clause (b).

7. The facts of the above case of Bhagwan Raoji Dale (cited supra) were that the husband has preferred the proceedings of restitution of conjugal rights before an application for maintenance proceedings. Pending the application for maintenance, the petition for restitution of conjugal rights was heard and the decree was passed. Then the husband had filed execution proceedings but the wife failed to comply with the decree for restitution of conjugal rights. That led to the husband's filing Hindu Marriage Petition for divorce. The husband relied upon the earlier decree passed in the petition for

restitution of conjugal rights and the Darkhast (execution proceeding). Despite the service of notice of the divorce petition, the wife remained absent and the decree was passed.

8. The facts of this case are altogether different. The husband never filed restitution proceeding. The divorce petition was filed when the application under Section 125 of the Criminal Procedure Code was pending. It was filed on the ground of cruelty. On the fact itself, the case of Bhagwan Raoji Dale is distinguishable. Therefore, with due respect to this Court, the Court is of the view that the ratio laid down in the case of Bhagwan Raoji Dale would not assist the petitioner.

9. As far as the ratio laid down in the case of Deb Narayan Halder (cited supra), it was based on the fact and evidence that there was no demand of dowry ever. Thus, there was no reason for the husband to ill-treat his wife. They lived together for a long period. In a nutshell, it was proved that the wife left the house of the husband without any reasonable cause. This is the ground in Section 125 of Criminal Procedure Code to refuse the maintenance allowance.

10. Herein the case, from the cross-examination of the wife as read before this Court, it does not reveal that she had no reasons to leave the house of the applicant. On the contrary, she had explained that she was ill-treated in a short span of time. Therefore, she was to leave the husband's house. She had expressed willingness to cohabit

before the Women Cell and filed the restitution proceedings. Even in divorce petition, she has expressed her willingness to join. Again the case of Deb Narayan is distinguishable on facts.

11. The third case of Mamta Jaiswal (cited supra) is also distinguishable on facts. In the said case, the wife was doing the job and earning salary. She was highly qualified. It was the question raised that in what way Section 24 of the Hindu Marriage Act has to be interpreted. Whether a spouse who has capacity of earning but chooses to remain idle, should be permitted to saddle other spouse with his or her expenditure? Whether such spouse should be permitted to get pendente lite alimony at higher rate from other spouse in such condition? Reading paragraph nos. 7, 8 and 9 of the said judgment, it is barely the observation and by way of the guidance how the qualified person should live a life and get the society progressed. On the contrary, the order impugned before the Court was not modified. Therefore, that case would not help him.

12. In the case of Rohtash Singh (cited supra), relied upon by the learned counsel for the respondent, it has been held that though the marital relations came to an end by the divorce granted by the Family Court under Section 13 of the Hindu Marriage Act, the respondent continues to be "wife" within the meaning of Section 125 Cr.P.C. on account of Explanation (b) to Sub-section (1) for the limited purpose of claiming maintenance allowance from her ex-husband.

Considering the ratio laid down in this case, though the petitioner claims that he has obtained the decree of divorce under Section 13 of the Hindu Marriage Act on the ground of cruelty, the respondent continues to be his wife and therefore, he is liable to pay the maintenance. The similar view has been taken in the case of Shakuntala (cited supra).

13. The discussions made above led this Court to record the finding that the order impugned before the Court is not erroneous on the face of record. The petitioner/husband has no grounds to interfere with the impugned orders. In the result, the petition fails and accordingly stands dismissed.

14. Rule is discharged.

(S.G. MEHARE, J.)