

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

CRIMINAL WRIT PETITION NO. 840 OF 2018

**SAYYED NASIR HUSEN
VERSUS
SAYYED JABIN NASIR AND ANOTHER**

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Mr. N. C. Garud, Advocate for Petitioner
Mr. M.M. Choudhari Advocate for Respondent No.1

**CORAM : S. G. CHAPALGAONKAR, J.
DATE : 04.11.2023**

PER COURT:

1. The petitioner husband impugns the order granting maintenance under Section 125 of Code of Criminal Procedure in favour of wife. It is the contention of the petitioner that respondent/wife had instituted Criminal Misc. Application No. 32 of 2014 for grant of maintenance invoking the provisions of 125 of Code of Criminal Procedure before the Judicial Magistrate First Class, Ahmednagar. It has been partly allowed vide order dated 09.01.2014. The petitioner preferred Revision Application No. 152/2017 before Sessions Court, Ahmednagar which came to be dismissed vide order dated 7.8.2018. Therefore, husband has approached this court.

2. Mr. Garud, the learned Advocate appearing for petitioner would submit tht that respondent wife had already moved proceeding under Protection of Women from Domestic Violence Act, 2005 for various reliefs. Her appliaction bearig P.V.D.V.A. No.464/2015 has been allowed

vide order dated 5.10.2017 and maintenance amount of Rs.2,500/-p.m. alongwith monthly rent allowance @ 1,500/- has been granted. Mr. Garud would submit that, respondent wife is entitled to recover maintenance under either of the provisions or atleast, there must be some adjustment of the amount. However, this aspect is not considered by the Court below. He would further submit that, respondent wife left the company of the husband on her own volition. Relying upon her cross-examination, he would submit that respondent is not willing to join company of husband although the husband is ready and willing to maintain her. As such, she is not entitled for maintenance under provision of Section 125 of Code of Criminal Procedure.

3. Mr. Choudhary, learned Advocate for respondent/wife submit that, petitioner husband is a businessmen having sound sources of income. He has performed three marriages and neglected to maintain respondent wife. He would further point out that, petitioner had moved a petition for adjustment of amount deposited by him in execution proceeding. Accordingly said proceeding was carried further in Criminal Revision Application No. 96/2019 wherein Revisional Court allowed the petition filed by husband and directed adjustment of maintenance amount that is payable under section 125 of Code of Criminal Procedure and Protection of Women from Domestic Violence Act, 2005. Therefore, there is no substance in criminal writ petition.

4. Having considered submissions advanced, it can be gathered that, learned JMFC, Ahmednagar after considering the evidence of respondent wife, particularly, the document depicting that, respondent husband has sufficient means has fixed maintenance amount @ Rs.2,500/-. Considering price index, the amount of Rs.2,500/- quantified

by way of maintenance cannot be said to excessive and exorbitant. Therefore, the submissions on quantum of maintenance advanced on behalf of petitioner cannot be accepted. So far as adjustment of maintenance amount under provision of Section 125 of Code of Criminal Procedure and Protection of Women from Domestic Violence Act, 2005 is concerned, the right of petitioner for adjustment of amount has been approved by Sessions Court in Criminal Revision Application No. 96/2019. In that view of the matter, no further directions are required. The order of Sessions Court would govern.

5. The third contention raised on behalf of petitioner husband is that, the respondent wife has voluntarily left his company and therefore, she is not entitled for the maintenance. Perusal of reasoning adopted by learned JMFC as well as learned Sessions Judge shows that the petitioner husband has failed to maintain respondent wife. It is matter of record that the petitioner had performed his second marriage with respondent and first wife is also residing with him. Apparently petitioner appears to have neglected respondent wife. Hence, contention in this regard holds no water.

6. No perversity can be found in the view taken by courts below.

7. In view of the aforesaid observations there is no merit in writ petition. Writ petition is dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-