

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

950 CRIMINAL WRIT PETITION NO.859 OF 2016

Bhanudas s/o Poslya Jagtap,
Age 42 years, Occu. Service,
R/o Palsun, Post Dhong, Taluka
Navapur, District Nandurbar.

PETITIONER
(Ori. Non-applicant)

VERSUS

1. Sau. Anita Bhanudas Jagtap,
Age 37 years, Occu. Nil,
2. Kunal s/o Bhanudas Jagtap,
Age 11 years, Occu : Education,
3. Tejas Bhanudas Jagtap,
Age 11 years, Occu : Education,

Res.Nos. 2 and 3 are minors through
Their Guardian mother respondent
No.1, Ali R/o Shrawani, Taluka
Navapur, Distrit Nandurbar

....RESPONDENTS
(Ori. Applicants)

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Advocate for Petitioner Mr. Deepak D. Chaudhari
Advocate for Respondent Nos. 1 to 3 : Mr. G D Jain

...

CORAM : S. G. CHAPALGAONAKAR,J.

DATE : 13.09.2023

ORDER :-

1. The petitioner impugns the common judgment and order passed by the Additional District and Sessions Judge, Nandurbar in Cri. Revision Nos.3/2014 and 7/2013 dated 16.02.2016 by which the

order dated 26.03.2013 challenging grant of maintenance in favour of the respondents has been rejected, whereas the prayer of respondents for grant of enhanced maintenance has been accepted and the applicant has been directed to pay the maintenance of Rs.3,000/- to respondent No.1 and Rs. 2,000/- each to respondent Nos. 2 and 3.

2. Mr. Chaudhari, learned Advocate appearing for the petitioner would submit that although there is no dispute regarding the matrimonial relationship between the petitioner and respondent No.1 so also the fact that respondent Nos. 2 and 3 are born out of the matrimonial relationship, the respondent No.1 has voluntarily left the company of the petitioner along with children. He would submit that the petitioner was always ready to maintain the respondent. Relying upon the specific terminology employed in Section 125 of the Code of Criminal Procedure, he would submit that there is nothing to indicate the neglect on the part of the applicant towards the respondents. In that view of the matter, the learned Magistrate could not have exercised jurisdiction under Section 125 of the Cr.P.C. and granted maintenance in favour of the respondents.

3. He would further submit that the learned Magistrate has granted maintenance from the date of the application, however, no reasons are assigned as to why the maintenance is granted to the respondent from the date of the application and not from the date of the order. In support of his contentions, he relies upon the judgment

of the Hon'ble Supreme Court of India in the matter of *Jaiminiben Hirenbhau Vyas Vs. Hirenbhai Rameshchandra Vyas reported in AIR 2015 Supreme Court 300*.

4. Per contra, Mr. Jain, learned Advocate appearing for the respondents would submit that the petitioner has performed second marriage and he refused to maintain the respondents. He would submit that the respondents have no means to maintain themselves. The petitioner is working as a teacher at Zilla Parishad School and getting salary of more than Rs. 35,000/- per month. He would, therefore, submit that the maintenance of Rs.7,000/- cumulatively granted by the Sessions Court is just and proper. Hence he urges to reject the Criminal Writ Petition.

5. Having considered the submissions advanced, apparently, there is no dispute as regards the relationship between the parties. The respondent No.1 married with the petitioner in the year 1997. The respondent Nos.2 and 3 are born out of the said wedlock. Pertinently, the petitioner has performed the second marriage with one Kantibai, who was working as a cook in Ashram School. Thereafter, he refused to maintain the respondents. Hence, they required to approach the Court of Judicial Magistrate First Class by filing the proceeding under Section 125 of the Cr.P.C. Although petitioner took a stand that he was always ready and willing to maintain the respondents. There is

nothing on record to show that the petitioner has made any effort to bring respondent No.1 for cohabitation or make provision for her maintenance, so also maintenance of the children. In fact, once the petitioner has performed second marriage, it cannot be expected that respondent No.1 would continue cohabitation with the petitioner. The performance of second marriage itself is sufficient reason to justify the action of respondents to stay away from the petitioner. Admittedly, petitioner has not filed any proceeding for restitution of conjugal rights, nor has he issued notice asking respondent to cohabit with him. In this background contention of petitioner that respondent left his company on her volition cannot be accepted.

6. The Salary Certificate of the petitioner is on record, which shows that he works in Zilla Parishad, Marathi School at Nagser and earning monthly salary of Rs.34,168/-. The learned Sessions Judge considering the aforesaid evidence so also probable rise in the income of the petitioner after implementation of 7th Pay Commission, granted maintenance of Rs.3,000/- per month to the respondent-wife and Rs. 2,000/- each to the children, which appear to be bare minimum looking to the status of the family.

7. Mr. Chaudhari, learned Advocate appearing for the petitioner submits that no reasons are recorded in the order passed by the learned Magistrate to grant maintenance from the date of the application. Although there is substance in the contention of Mr.

Chaudhari, however that itself would not be sufficient ground to interfere in the order passed by the Magistrate. The material on record clearly depicts that since before the date of filing of the application, the petitioner deserted respondents and they have no means to maintain themselves. Hence grant of maintenance from date of application is just and proper.

8. In that view of the matter, no fault can be found in the order passed by the learned Magistrate so also in the order of the Sessions Court enhancing the total maintenance amount to Rs.7,000/- per month.

9. For the aforesaid reasons, there is no substance in the Writ Petition. Hence following order :

ORDER

Writ Petition is dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

shp/-