

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1096 OF 2022

RAJENDRA NANABHAU SALKE

VERSUS

SHOBHA RAJENDRA SALKE AND OTHERS

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Advocate for Petitioner : Mr. Kakde Yuvraj Vijayrao

APP for Respondent No.3/State : Smt. D. S. Jape

Advocate for Respondent No.1 & 2 : Mr. Tungar Nikhilesh K.

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CORAM : KISHORE C. SANT, J.

DATE : 17th JANUARY 2023.

Per Court :

1. This is a case arising out of the proceeding challenging the order dated 08.06.2022 passed by the learned Sessions Judge, Ahmednagar in Criminal Revision No.177/2019. The Revision was filed by respondent/wife and son of the petitioner challenging the order dated 22.10.2019 passed by the learned Judicial Magistrate First Class, Parner rejecting the application under Section 125 of the Code of Criminal Procedure (Cr.PC. for short). It is the case of the petitioner that he did

not receive notice of Revision that was filed in the learned Sessions Court. At the relevant time, he was not residing at Lucknow and the notice was sent on the address at Lucknow. He therefore prays for setting aside the order or alternatively prays that the matter be remanded the Sessions Court for decision afresh.

2. The learned Advocate for respondent submits that in fact there is sufficient material on record that at the relevant time, though the petitioner was admitted in the Military Hospital, Bhatinda, however the notice was specifically sent on that address and the address was given by giving pursis below Exhibit-9 in the Revisional Court. Thus, in fact the petitioner was served. Now only to abide the responsibility to pay the maintenance, he is coming in the case that he was not served and the order is ex-parte. The learned Sessions Court by considering the case has rightly awarded a maintenance of Rs.5000/- per month to respondent/wife and the order even on merits need not be set aside.

3. Considering that the learned JMFC had rejected the application under Section 125 of Cr.P.C. and the learned Sessions Judge allowed the

Revision by directing to pay the maintenance to the wife. Without going into the aspects as to whether the notice was served or not served, this Court feels that in the interest of justice it would be proper to remand the Criminal Revision to the Sessions Court for decision afresh by putting some conditions and by testing bonafide of the petitioner.

4. It is reported that as on today, the amount of arrears of maintenance is of Rs.3,50,000/- from the date of original application filed in the Court of learned JMFC dated 27.11.2017. Thus the interest of justice would be served, if the petitioner is directed to deposit an amount of Rs.1,50,000/- in the Sessions Court towards conditions for remand of the matter. If the amount is deposited in the Sessions Court at Ahmednagar within a period of four weeks from today, the proceeding of Criminal Revision No. 177/2019 is restored. The learned Sessions Judge shall make an attempt to decide the Revision as early as possible and preferably within six months from today. In addition to deposit of the amount, the petitioner shall also continue to deposit Rs.2500/- per month to the respondent/wife till Revision is decided.

5. The Sessions Court to decide and to deal with the amount deposited pursuant to the order passed by this Court.
6. The Writ Petition is disposed off in the aforesaid terms.

[KISHORE C. SANT, J.]

Najeeb.