

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

49 CRIMINAL WRIT PETITION NO.1143 OF 2022

**RAFIQ SHABBIR SAYYED AND OTHERS
VERSUS
AFSANA W/O. RAFIQ SAYYED AND OTHERS**

Mr. Dhananjay A. Mane, Advocate for the petitioners

Mr. S. P. Katneshwarkar, Advocate for the respondent Nos. 1 to 3

CORAM : KISHORE C. SANT, J.

DATE : 10th APRIL, 2023

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1. Heard the learned advocates for the parties. With the consent of the parties the matters is taken up for final disposal.

2. The husband original respondent has approached this court challenging the judgment and order dated 10-02-2022 passed by the learned District & Sessions Judge, Latur rejecting PWDVA No. 1/2019 by which the judgment and order passed by the learned JMFC, Chakur dated 02-12-2017 given in Criminal Application No. 61/2014 is confirmed.

3. Facts in short are that, the respondent wife filed criminal Misc. Application No. 61/2014 in the court of learned JMFC, Chakur. Said application came to be allowed by judgment and order dated 02-12-2017 directing the husband to pay an amount of Rs.3,000/- to the wife and amount of Rs.2,000/- each to respondent Nos. 2 and 3. Thus, total amount of Rs.5,000/- was directed to be paid per month. Rs. 50,000/- was directed to be paid towards compensation and Rs.1,000/- per month towards house rent.

4. The husband challenged the order by filing criminal appeal No.14/2016. It was main ground that the husband did not get proper opportunity to defend the proceedings. The learned Additional District Judge, Latur by its order dated 07-03-2017 allowed the appeal. It was directed to the husband to pay 50% of the total amount of arrears. In case there is failure to pay the amount right of the husband to give defense evidence was taken away. He was further directed to continue to deposit of Rs.4000/- per month to all the respondents. Parties were

directed to appear before the trial court on 01-04-2017. This order was passed taking into the consideration and grounds raised in the appeal that the husband could not get sufficient opportunity to give his defense evidence in the trial.

5. After remand the matter was again heard by the learned JMFC, Chakur. The learned JMFC, disposed off said application stating that husband did not remain present even after remand. Neither he continued to pay an amount towards maintenance to the respondents. He passed fresh order directing to pay the maintenance amount/compensation amount and rent amount as per earlier order.

6. The husband thereafter again preferred Criminal Appeal No. 1/2019. Same came to be rejected by confirming the order passed by the learned JMFC, Chakur by its judgment and order dated 10-02-2022 and against which present petition is filed.

7. Learned advocate for the petitioners submits that husband did not appear after remand in the trial court since R & P was not received by the trial court and thereafter because of drought situation he was required to shift Gulbarga, Karnataka. He came to know about the judgment and order passed by the trial court only when he had been to his native place for attending some festival on 07-12-2017. Though he tried to contact his lawyer but his lawyer did not respond him and therefore, he directly went to the court and made an enquiry in the court. Whereupon he came to know that matter is already dismissed and thereafter he filed an application for certified copies and then filed an appeal. Both the courts below have considered this conduct of the husband that neither he took part in the proceeding after remand, nor he paid the amount as directed by the learned Sessions Court.

8. In this court it is again submitted that husband would deposit 50% of the amount of arrears but he should be given an opportunity to putforth his defense in the trial court by

remanding the matter.

9. The learned advocate for the respondents vehemently opposes the petition stating that the conduct of the petitioners do not inspire any confidence. No case is made out to show indulgence in such cases. This court under Article 227 need not exercise the jurisdiction looking to the conduct of the petitioner and prayed for dismissal of the petition.

10. Considering the submission and considering the reasons given by the trial court as well as learned Sessions Court in the appeal, this court finds that both the courts below have rightly considered the conduct of husband.

11. During pendency the parties were referred to the mediation at Latur. However, no dispute could be settled between the parties. This court taking overall situation in to consideration feels that no purpose would be served even by remanding the matter for the second time in view of the conduct

of the husband. When the matter was remanded by the Sessions Court, it was duty of the petitioner to take proper followup of the case and to avail opportunity to lead defense evidence. It is clear that it is the conduct of the petitioner which shows that though he was given sufficient opportunity he did not avail the same and challenged the orders.

12. Considering above, this court finds that no case is made out to call for interference in the writ petition. Therefore, the criminal writ petition stands dismissed.

[KISHORE C. SANT, J.]

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