



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

CRIMINAL WRIT PETITION NO. 281/2023

Amol Mahadeo Dongre

.. Petitioner

versus

Sau. Leena w/o Amol Dongre and another

.. Respondent/s

.....
Mr. V.A. Patait, Advocate for the petitioner

Mr. P.K. Mohta, Adv. for Respondent no.1

Ms. Shamsi Haider, APP for Respondent no.2
.....

CORAM: ANIL L. PANSARE, J.

DATED : 7th September, 2023.

PC:

Heard.

2. On previous date i.e. on 1st September, 2023, the following order was passed:

“ *It appears that both the Courts below have passed order of maintenance without taking into consideration the law laid down by the Hon’ble Supreme Court in the case of Rajnesh vs. Neha and another. (2021) 2 SCC 3241.*

Learned counsel for the respondent no.1 seeks time to take instructions.

Stand over to 7.9.2023. ”

3. The learned counsel for the respondent no.1 fairly submits that the law laid down in the case of Rajnesh (supra), has indeed been not followed. He, however, submits that the proceedings were filed before the learned Magistrate in the year 2013, whereas the judgment in the case of Rajnesh has been rendered on 4th November 2020. The learned Magistrate has passed the order on 4th September 2019. The

learned Sessions Court, however, has passed on 17.01.2023.

4. The Hon'ble Supreme Court has given directions to follow the law laid down in Rajnesh's case in all the pending cases too. In that sense, though the learned Magistrate is justified in not considering the judgment, but the learned Sessions Court ought to have considered the said judgment. In fact, the parties to the litigation ought to have pointed out and complied with the aforesaid judgment. Having not done so, the order passed by the Sessions Court will have to be set aside. Hence the following order :-

ORDER

- (i) The Writ Petition is allowed.
- (ii) The impugned order dated 17.01.2023 passed by the learned Additional Sessions Judge, Akola, is quashed and set aside, by restoring Criminal Appeal No.22/2021 (Sau.Leena vs. Amol).
- (iii) The matter is remanded back to the learned Sessions Court, Akola to consider it afresh, in the light of the ratio laid down in Rajnesh's case (supra).
- (iv) The parties shall appear before the Sessions Court, Akola on 21.09.2023.

[ANIL L. PANSARE, J.]