



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

1042 CRIMINAL APPLICATION NO. 434 OF 2009

Mhatardev Tukaram Lomte  
Age 45 years, Occ. Service  
R/o. M.S.G. Arts, Science and  
Commerce College,  
Malegaon Camp, Malegaon  
District Nashik

...Applicant

Versus

1. Shobha w/o Mhatardev Lomte  
Age 43 years, Occ. Service  
R/o. Rahuri Factory,  
Shri Shivaji Nagar,  
C/o. Shri Kashinath Bhagwant Joshi  
Rahuri Factory, Tq. Rahuri  
District Ahmednagar

2. The State of Maharashtra  
Through its Secretary,  
Home Department, Mantralaya  
Mumbai

...Respondents

...

Advocate for Applicant : Mr. A N Nagargoje  
Advocate for Respondent No.1 : Mr. N.R. Bhavar  
A.P.P. for respondent No.2: Mr. D.S. Jape

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**CORAM : SHIVKUMAR DIGE, J.**  
**DATED : 21<sup>st</sup> AUGUST, 2024.**

**ORAL JUDGMENT:-**

1. By this application, the applicant has challenged the order dated 2.1.2006, passed by the learned Judicial Magistrate, First Class (for short "the trial court") Rahuri in Criminal Misc. application No. 342 of 2003, as confirmed and modified by the learned Additional Sessions

Judge, Ahmednagar on 27.6.2008 in Criminal Revision Application No. 44 of 2006.

2. It is the contention of the learned counsel for the applicant that the respondent is wife of the applicant. She had filed an application for maintenance before the learned trial court on 27.11.1996. Her application was allowed on 5.1.1997 and by the said order, the maintenance of Rs.500/- was granted to the respondent. The said order was challenged by the applicant before the Sessions Court. The learned Sessions Judge passed the impugned order thereby dismissing the revision application. Learned counsel further submitted that the respondent wife filed HMP No. 140 of 1997 seeking decree of restitution of conjugal rights. In the said proceeding, the applicant filed counter claim seeking decree of divorce on the ground of desertion and cruelty. The learned 3<sup>rd</sup> Joint C.J.S.D. Ahmednagar, by judgment and order dated 28.3.2001 dismissed the petition filed by the respondent wife and allowed the counter claim of the applicant husband. Learned counsel further submitted that as the applicant had filed application for decree of divorce on desertion, hence as per section 125(4) of Cr.P.C. the respondent is entitled for maintenance from the date of decree of divorce i.e. from 28.3.2001 and not from the date of filing of maintenance application i.e. 27.11.1996. Learned counsel relied on the judgment of the Hon'ble Apex Court in the case of **Rohtash Singh vs. Smt. Ramendri and others**, AIR 2000 SC 952.

3. It is the contention for learned counsel for the respondent wife that it is settled principle of law that the respondent is entitled for maintenance from the date of application and not from the date of decree of divorce. Learned counsel further submitted that no ground was taken in the maintenance application by the applicant that the respondent has deserted him. Learned counsel further submitted that the respondent had filed a petition for restitution of conjugal rights. It shows that she was ready to reside with the applicant. Hence, requested to dismiss the writ petition. He relied on the judgment of the Hon'ble Apex Court in the case of ***Rajnish vs. Neha and another***, (Criminal Appeal No. 730 of 2020) (arising out of SLP (Crl.) No. 9503 of 2018).

4. The learned A.P.P. submitted that the appropriate order be passed.

5. I have heard both the learned counsel. Perused the impugned order passed by the Additional Sessions Judge, Ahmednagar. The issue involved in this case is whether the respondent is entitled for maintenance amount from the date of decree of divorce or from the date of filing of maintenance application. In my view, the maintenance application was filed in the year 1996. It was decided in the year 1997. Thereafter, revision was preferred against the said order for granting

maintenance and decree of divorce on the ground of desertion and cruelty has been passed in the year 2001. So the issue of decree of divorce was never raised before the courts below. So this issue cannot be considered in this application, as the said issue was not raised before the courts below. The applicant has been aggrieved only against the order of maintenance. It is settled principle of law that the wife is entitled for maintenance from the date of application. The Hon'ble Apex Court in the case of ***Rajnesh vs. Neha and another (supra)*** has taken a view that the wife is entitled for maintenance from the date of filing of the application and not from the date of decree of divorce. I have gone through the case law cited by the learned counsel for the applicant. The facts of the present case and the cited case are different, hence, cannot be made applicable. Considering all the above facts, I pass the following order:-

#### O R D E R

1. Criminal application is dismissed.
2. Rule discharged.

**(SHIVKUMAR DIGE, J.)**

rlj/