

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 277 OF 2008

Bhagchand s/o Kacharu Magar,
Age – 30 years, Occ – Labourer,
R/o – Indira Nagar, Shevgaon,
District – Ahmednagar.

..Petitioner

Versus

Sow. Laxmi @ Madhubala w/o Bhagchand Magar
Age – 25 years, Occ – Business,
R/o – C/o – Ratan Dolas, Gaikwad
Jagaon, Tq – Georai, District – Beed.

..Respondent

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Advocate for the Petitioner : Mr. M.PKale
Advocate for Respondent : Ms. Sawari M. Patil h/f Mr. M.M. Patil
Beedkar

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CORAM : S.G. MEHARE, J.

DATED : JULY 23, 2024

ORAL JUDGMENT :-

1. Heard learned counsel for the petitioner and learned counsel for the respondent.
2. The application under Section 125 of the Criminal Procedure Code filed by the respondent was dismissed by the learned Judicial Magistrate First Class, Georai, by the impugned order dated 22.08.2007. The learned Magistrate held that there were no pleadings as regards administering the abortion pills. On the contrary, there was evidence that the petitioner/husband took her to the hospital to provide treatment for conceiving. Further, the learned Trial Court also disbelieved the respondent/wife for not disclosing the name of the

woman residing with the petitioner/husband for the last six months. Doubting the evidence led by the respondent/wife, the learned Magistrate dismissed the application. However, after examining the records and evidence, the learned Additional Sessions Judge set aside the findings of the learned Judicial Magistrate First Class. The learned Additional Sessions Judge recorded the finding that there was evidence to believe that a lady was residing with the applicant, and he did not tell her name to the respondent. The process under Section 494 of the Indian Penal Code was issued against him. Considering the background of the parties, the learned Additional Sessions Judge held that the parties are staying in such a backward area and hail from lower strata of society, it cannot be expected from them that they will retaliate for injustice with promptness, as has been happening in the Urban areas.

3. Learned counsel for the petitioner would submit that the learned Additional Sessions Judge did not frame the points for determination. The learned Additional Sessions Judge did not discuss the evidence and record its own reason. The evidence led before the learned Magistrate was not sufficient to believe that the petitioner had refused or neglected to maintain her. Therefore, the impugned order is erroneous.

4. Per contra, learned counsel for the respondent has vehemently argued that the dispute between the husband and wife

had a checkered history. Initially, she conceived, but she was aborted by administering the abortion pills. After the first dispute, the matter was settled before the Women Cell. She went to cohabit with the petitioner. However, she found that a lady whose name was kept secret had resided with the petitioner for the last six months. In one fine morning, she was again driven away from the house and thereafter, she filed a complaint. Considering her family background, the learned Additional Sessions Judge has correctly considered that concrete proof could not be expected from the respondent/wife. The complaint under Section 494 was filed, and the process was issued against the petitioner and others. It was the petitioner/husband who hid the name of the woman who was residing with him in the same house. Barely sending a notice for cohabitation is not sufficient to the second proviso to Section 125. The respondent/wife specifically contended that one lady was residing with the petitioner and that her name was hidden from her. So, that was the correct ground for residing separately. That apart, during the proceeding, no offer to maintain her as such was given. So, she might have an opportunity to explain the reasons for refusing to live with the petitioner/husband. The learned Additional Sessions Judge has correctly appreciated the evidence. The issue under Section 397 would be examining the legality and propriety of the impugned order. No specific points for determination are required to be framed. If the points are not framed

and the Court records the finding based on the evidence, passing such an order is not fatal.

5. Perused the papers. There are two contrary judgments. The learned Magistrate refused to entertain the application under Section 125 of the Criminal Procedure Code. However, the learned Additional Sessions Judge reversed the said judgment. No specific points for determination have been framed. However, the finding recorded by the learned Additional Sessions Judge reveals that he appreciated the evidence produced before the learned Magistrate. Regarding the residing of a woman in the house of the petitioner, the Court believed that the respondent/wife has reason to reside separately. Nothing is pointed out to this Court that the petitioner ever offered the respondent/wife during the maintenance proceeding that] he was ready to fetch her back and maintain her. The overall material placed before the Court was sufficient to believe that the respondent/wife was refused and neglected to be maintained by the petitioner. To show his bonafide, he has not produced on record anything that he ever offered her the maintenance during the period of litigation.

6. The Court does not find substance in the petition for the above reasons. Hence, the petition stands dismissed. No order as to costs.

7. Record and proceeding be returned to the learned Trial Court.
8. Rule stands discharged.

(S.G. MEHARE, J.)