



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

916 CRIMINAL WRIT PETITION NO. 796 OF 2015

Ambadas Shivram Auti
VERSUS
Shantabai Ambadas Auti

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Advocate for the Petitioner : Mr. A.K. Gawali

Advocate for Respondent: Mr. Shubham S. Pawar h/f Mr. R.R. Karpe

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CORAM : SHIVKUMAR DIGE, J.
DATED : 9th AUGUST, 2024.

PER COURT :-

1. The petitioner has challenged the order dated 23.02.2009 passed by the Judicial Magistrate, First Class, Shrigonda (for short "the trial court") in complaint No. 72 of 2007 and the judgment and order dated 19.3.2015 passed by the learned Additional Sessions Judge, Ahmednagar in Criminal Revision No. 53 of 2009.

2. It is the contention of the learned counsel for the petitioner that the petitioner was married with the respondent in the year 1972. After marriage, the respondent disclosed the petitioner that she has been married with him without her will and she did not like the petitioner and therefore, she deserted the petitioner without any reasonable cause and started residing with her father and mother at her parental house. In spite of several efforts made by the petitioner,

convincing the respondent to return to her matrimonial home and perform her matrimonial duties, the respondent refused to stay alongwith the petitioner. Learned counsel further submitted that the respondent was willingly stayed with her parents and brother and has flatly refused to cohabit with the petitioner. Thereafter, the petitioner performed second marriage with Girijabai. He had begotten two children from the said marriage. Learned counsel further submitted that after approximately 30 years from the date of marriage, in the year 2007, the respondent only in order to harass the petitioner, during his old age, at the behest of her relatives, filed the proceeding under Section 125 of the Code of Criminal Procedure (for short "Cr.P.C.") for getting maintenance. Learned counsel further submitted that the petitioner has led the evidence before the trial court to prove his case that the respondent has herself deserted the petitioner, hence as per Section 125(4) of Cr.P.C. she is not entitled for maintenance but the trial court has not considered this fact and has granted maintenance of Rs.1000/- p.m. to the respondent.

3. It is the contention of learned counsel for the respondent that the respondent is the wife of the petitioner. In cross examination, the petitioner has admitted that the respondent stays at a distance of two kilometers from his village. He further submitted that there was no quarrel between the respondent and the petitioner. He further

admitted that he cannot say whether the respondent liked him or not. They were staying together for one year. Learned counsel further submitted that the petitioner has admitted that he never tried to bring back the respondent from her parental house nor he had sent any notice through advocate to the respondent to come for residing with him. The learned counsel further submitted that the petitioner has Bagayati land in his name. Learned counsel further submitted that the petitioner's monthly income is more than Rs.15,000/-. He does the dairy business. The respondent is his wife. Though after 30 years, she filed an application, she is entitled for maintenance from the petitioner, as she is unable to maintain herself. She has no source of income. Hence, requested to dismiss the writ petition.

4. I have heard both the learned counsel. Perused the impugned orders passed by the trial court and the learned Sessions Judge. While dismissing the Criminal revision filed by the petitioner, the Sessions Judge has observed that the petitioner has neglected and refused to maintain the respondent. He has not provided any maintenance to her. Respondent wife is unable to maintain herself. The petitioner has sufficient means of income to pay maintenance. Therefore, the Sessions Judge has dismissed the revision application of the petitioner. I do not find any infirmity in it. In my view, in the cross examination, the petitioner has specifically admitted that he did

not take any steps to bring back the respondent from her parental house. He has admitted that he was not aware whether the respondent had herself gone to her parental house or with any other persons. Learned counsel for the petitioner is harping on the point that for 30 years, the respondent has not come to stay with the petitioner, for 30 years the respondent has maintained herself, so after 30 years, she cannot claim maintenance from the petitioner. In my view, in the maintenance application, the respondent has stated that she was staying with her parents and brother. They were maintaining her. After 30 years, if she is unable to maintain herself, she has no alternative but to seek maintenance from the petitioner, who is her husband. For 30 years the maintenance was not claimed cannot be a ground to deprive the respondent, who is wife of the petitioner, for getting maintenance. In view of the above, I pass the following order:-

O R D E R

Writ petition is dismissed.

(SHIVKUMAR DIGE, J.)

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