

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 729 OF 2008

Suresh Kaduba Dalvi
Age- 42 years, Occu. - Labour,
R/o. Gulbheli, Taluka – Motala,
Dist – Buldhana.

..Petitioner

VERSUS

Pratibha Suresh Dalvi
Age – 38 years, Occ – Household,
R/o Wadi, Post – Maldabhadi
Taluka – Jamner, Dist – Jalgaon.
Police Station, Jamner.

..Respondent

...
Advocate for Petitioner : Mr. Parikshit Mantri h/f Mr. Parag V. Barde
Advocat for Respondent : Mr. A.M. Gholap

...
CORAM : S.G. MEHARE, J.

RESERVED ON : AUGUST 13, 2024

PRONOUNCED ON : SEPTEMBER 23, 2024

JUDGMENT :-

1. The petitioner/husband has impugned the order of learned Additional Sessions Judge, Jalgaon passed in Criminal Revision Application No.212 of 2004 dated 10.07.2008.
2. The facts of the case were that the petitioner and respondent were husband and wife. After the marriage, the respondent/wife went to cohabit with the petitioner/husband. However, she did not conceive for three to four years. Thereafter, she had delivered a female child. The father of the respondent/wife took her to his home in 2001, as somebody wrote a letter to him about her

harassment. Since then, the husband never turned up to fetch her back and refused and neglected to maintain her.

3. The petitioner/husband has a case that she cohabited with him for nine to ten years. Thereafter, she started behaving improperly. He tried to fetch her back, but she refused. He sent a notice in August, 2002 to the respondent/wife for cohabitation, but she did not come. Therefore, he never refused and neglected to maintain her. She abandoned him. Hence, she is not entitled to the maintenance under Section 125 of the Criminal Procedure Code.

4. Learned counsel for the petitioner would submit that the learned Additional Sessions Judge erred in law in not appreciating the evidence properly. The respondent/wife did not prove that the petitioner/husband had refused and neglected to maintain her. She left the company of the petitioner at her own accord and stayed with her parents for a long time. The learned Judicial Magistrate has appreciated the evidence correctly and held that she did not prove that the petitioner has refused and neglected to maintain her. He has vehemently argued that the Revisional Court exceeded its jurisdiction setting aside the order of the learned Magistrate. There were no appropriate reasons for setting aside the order of the learned Magistrate. To bolster his arguments, he relied on the case of Deb Narayan Halder Vs. Anushree Halder, 2003 AIR (SC) 3174 and

Sumanbai Ramesh Garje Vs. Ramesh Dagadu Garje, 2014 All M.R. (Cri) 3710. He prayed to allow the petition.

5. Per contra, learned counsel for the respondent/wife has vehemently argued that the learned Additional Sessions Judge has corrected the errors of the learned Magistrate. The material before the Revisional Court was correctly appreciated. The reasons assigned for setting aside the judgment and order of the Magistrate were legal, proper and correct. The case laws relied upon by the petitioner's counsel is on different facts. There was nothing on record to establish that the petitioner/husband ever provided her maintenance. He prayed to dismiss the petition.

6. The arguments of the respective counsels appears that they have no serious controversy on the fact of leaving the house by the wife and staying with the parents. There is also no serious dispute about procuring a child belatedly. Except notice of the month of July/August, 2002 calling upon the respondent/wife to return to cohabit with him, the petitioner has no other evidence. The case of the respondent/wife was very specific that since she was harassed for not delivering a child soon after the marriage and on delivering a female child. Since she was consistently ill-treated and harassed, her father came and took her to his home. The petitioner has nowhere a case that he provided the maintenance to the respondent/wife and the child. It was a case that the respondent/wife left the home in

2001. The notice was issued in the month of July/August, 2002 and she filed the petition under Section 125 of the Criminal Procedure Code on 10.02.2003. The petitioner/husband except dropping the notice calling upon her to cohabit, never made an attempt to bring or fetch her back. The learned Additional Sessions Judge appears to have correctly considered the reasons for staying separately. Her evidence has been correctly believed. The fact reveals that she was abandoned just two years before filing the maintenance application. Thereafter also, the petitioner/husband never tried to fetch her back to cohabit. The case laws relied upon by the petitioner/husband are on different facts. Therefore, they do not come up to his aid.

7. Examining the impugned judgment and order of the learned Additional Sessions Judge, the Court is of the view that the impugned judgment and order is free from infirmities, illegalities and improprieties. The quantum granted to the respondent/wife was just and proper. Therefore, there is no reason to disturb the quantum. For the above reasons, the petition deserves to be dismissed. Hence, the following order :

ORDER

- (I) The writ petition stands dismissed.
- (II) No order as to costs.
- (III) Record and proceeding be returned to the learned Judicial Magistrate First Class, Jamner, if any.

(5)

(IV) Rule stands discharged.

(S.G. MEHARE, J.)

Mujaheed//