



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.844 of 2010

Rajendra s/o. Asaram Akolkar,
Age 30 years, Occu. Agri. Labour,
R/o. Dadegaon, Taluka Ambad,
District Jalna

.. Petitioner

Versus

1. Vrundavani w/o. Rajendra Akolkar,
Age 26 years, Occu. Tailoring,
2. Kum. Rutuja d/o. Rajendra Akolkar,
Age 6 years, Minor,
3. Kum. Kailas d/o. Rajendra Akolkar,
Age 2 years, Minor,

Respondents No.2 and 3 being minor through
their natural guardian mother Respondent No.1-
Vrundavani w/o. Rajendra Akolkar

All R/o. Dadegaon, Taluka Ambad, District Jalna .. Respondents

Mr. B. R. Kedar, Advocate for Petitioner;
Mr. A. R. Sayyed, Advocate for Respondents

CORAM : S. G. MEHARE, J.

DATE : 12-09-2024

ORAL JUDGMENT :-

1. The petitioner/husband has impugned the judgments and orders of the learned 2nd Judicial Magistrate First Class, Ambad, passed in Criminal Miscellaneous Application No.205 of 2007, dated 18.04.2008 and the learned Sessions Judge, Jalna, in Criminal Revision No.75 of 2008 dated 06.07.2010.

2. It is a matter of maintenance under Section 125 of the Code of Criminal Procedure (for short, "Cr.P.C.).

3. The respondents/wife and two daughters had filed the petition under Section 125 of the Cr.P.C., alleging that the present petitioner/husband has performed a second marriage. He was not maintaining them. They have no sufficient means. It was also the case of respondents that the petitioner/husband had landed property and was making Rs.3,00,000/- per annum.

4. The petitioner appeared and filed reply, denying the allegations. He admitted the relations with them. He had a case that the wife was forcing him to reside separately from her in-laws. On 01.07.2007, the respondent/wife and her daughters had left home. He searched them, and found them at her parent's home. He requested her to cohabit with him. She assured him that she would come later. His parents and relatives requested her to join his company, but she denied. She uttered indecent words against him. She did not like him. She lodged a false report under Section 498A and other sections of the Indian Penal Code against the petitioner.

5. The petitioner had issued notice on 18.12.2007 for cohabitation, but she did not come. Thereafter, the petitioner came to reside in his house in the village Dadegaon. He was maintaining his wife, daughters and parents. She was residing in

the house of the petitioner with his parents. He did not perform a second marriage and was not residing in the village Sonnapur, Taluka Paithan. He was residing in the same village. He is a landless person and has no income. She was asking him for divorce.

6. The learned trial Court allowed the petition and granted Rs.1000/- each to the respondents/wife and two daughters. The petitioner had impugned the judgment and order of the learned trial Court before the learned Sessions Court. The learned Sessions Judge also dismissed the petition.

7. The learned counsel for the petitioner has raised the objection that the material admission of the wife that she was residing in the house of the petitioner, has not been considered and incorrectly interpreted. He submitted that all respondents were residing together, and there was no question of refusal or negligence of the wife and children. Further, he raised the objection that the learned Judicial Magistrate First Class did not frame the correct point for determination. Hence, he was unable to know what the respondent/wife wanted to prove against him. He has referred to the findings of the learned Sessions Judge that the lands standing in the name of the petitioner, and argued that his findings were without evidence. However, he had filed 7/12 extract of Gat No.278/1 in which 41R land was transferred So he

has no land more than 41 R.

8. The learned counsel for the respondents/wife and daughters submits that there is no error on the face of the record. Some new points were raised before the Court for the first time. Hence, that could not be considered. The learned Sessions Judge, as well as the learned Magistrate correctly considered that she had explained in her application that the non-applicant/husband reside in another house with his second wife. Since 2010, except for 50% of the amount awarded by the learned Magistrate, not a single penny has been paid to them. They pulled their life with great troubles. There is nothing to interfere with the case.

9. The burden is on the respondent/wife to prove that the petitioner/husband refused and neglected to maintain her and the children, and she was unable to maintain herself.

10. So far as the interpretation of the admission of the applicant/wife is concerned, the Court is of the view that it was not in the way as the learned counsel for the petitioner argued. It was the admission of the wife with further explanation that the petitioner/husband is residing with his second wife. Though it was the explanation of the admission, it was relevant to express the intention. In the context of his residence with another woman at another place made the situation clear. destroyed such admission. It can not be said that the petitioner and respondents were

residing together under one roof. It was argued that it was a big Wada in which many family members were residing. He is maintaining his parents. He did not examine his parents to establish that he was maintaining them.

11. The learned Magistrate has recorded the findings that the 7/12 extract produced on record does not speak of independent title of the land. However, the learned Additional Judge appears to have committed mistake in reading the 7/12 extract which was prepared after the order of the learned Magistrate was passed. He is correct that at the time of the appreciation of evidence by the learned Magistrate, the 7/12 extract was not directly standing in the name of petitioner.

12. The learned counsel for the petitioner has vehemently argued that respondent/wife admitted that she was doing labour work and getting wages of Rs.40/- per day. So, it cannot be said that she had no income and was unable to maintain herself. He also argued that her material admissions are not appreciated properly.

13. The law is well-settled about income. Barely the wife making money is not a ground for throwing the petition. It is an admitted fact that the respondent/wife and her two children were residing together. It is to be examined whether the income of the wife is sufficient to maintain herself and two daughters. A prudent man

would not be agreeable that such a meagre is sufficient source of income. Her liabilities were more than what she was earning. Therefore, her admission of earning Rs. 40 does not make her disentitled to maintenance.

14. So far as the grounds of incorrect framing of the points for determination by the learned Magistrate is concerned, this ground has been raised by the learned counsel for the petitioner before this Court for the first time. No such ground was raised before the Revision Court.

15. Be that as it may, after going through both judgments, it appears that the petitioner understood the case of maintenance and the law that he refused and neglected to maintain them. He had resisted the petition. He filed a written statement. He led the evidence. Therefore, it was sufficient to draw the inference that the petitioner understood the matter. Therefore, if the points for determination have been framed in another form, it does not mean that the impugned judgment of the learned Magistrate is legally defective and incorrect.

16. The petitioner has been enjoying the interim stay since 01.10.2010. Thereafter, the matter was listed on 12.11.2013, and orders were passed that the petition can be decided finally at an early date. Thereafter, time was granted, and by consent, the matter was listed on 26.11.2013. On 26.11.2013, the learned

counsels for the parties made a statement together that there was a possibility of over all settlement between the parties. The Court gave the next date 10.12.2013. Since thereafter, the matter has not listed. It was listed for the first time on 04.08. 2023 but it could not be heard as the Court time was over. Thereafter, on 10.07.2024, this Court listed the matter on the weekly board for final hearing on 06.08.2024. The learned counsel for the respondent/wife stated that it is a maintenance matter. The stay is running against his client. The matter is ready for hearing. Hence, it may be heard on the next date. Therefore, it was listed for final hearing.

17. This is a matter of maintenance. The petitioner had secured the stay order in 2008, and the respondent/wife was waiting for the fruits for sixteen years without receiving any money, except depositing 50% of the amount as directed by this Court while granting the stay.

18. Be that as it may, after having gone through the impugned judgments and orders, the Court is not satisfied that there is a *prima facie* defect or error in law. Hence, the petition is liable to be dismissed.

ORDER

- i) The criminal writ petition stands dismissed.

- ii) The petitioner is directed to clear the arrears of the maintenance as per the impugned order within six months from today and continue to pay monthly maintenance to the respondents until the order of the learned Judicial Magistrate First Class, Ambad, is quashed and set aside by any other court of law.
- iii) Rule stands discharged.
- iv) Pending criminal application stands disposed of.

(S. G. MEHARE)
JUDGE

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