



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

901 CRIMINAL WRIT PETITION NO. 1212 OF 2018

DATTU S/O. DHANAJI THOMBRE

VERSUS

TAIBAI DATTU THOMBRE

...

Mr. C. V. Thombre, Advocate for the Petitioner

Mr. I. K. Wagh, Advocate for the Respondent

CORAM : Y. G. KHOBRADE, J.

Dated : 17th October, 2024

J U D G M E N T :-

1. Rule. Rule made returnable forthwith. With the consent of both the parties the petition is heard finally.

2. Heard Mr. C. V. Thombre, the learned counsel for the Petitioner and Mr. I. K. Wagh, the learned counsel for the Respondent.

3. By the present Petition, the Petitioner challenges the order dated 23.01.2018 passed by the learned Additional Sessions Judge, Dhule, in Criminal Revision Petition No.111 of 2014 arising out of the order dated 11.09.2014 in Misc. Application No. 324 of 2011 passed by the learned Judicial Magistrate First Class, Court No.2, Dhule.

4. The present Petitioner is the original applicant-husband and the Respondent is non-applicant-wife in Misc. Criminal Application No. 324 of 2011. The Petitioner husband instituted said proceeding for revocation of order dated 23.07.1986 passed in Misc. Cri. Application . 94/1986 by the learned Judicial Magistrate, Dhule.

5. Mr. C. V. Thombre, the learned counsel for the Petitioner canvassed that the Respondent is the legally wedded wife of the applicant. The Respondent had filed Misc. Application No. 94 of 1986 and had prayed for grant of monthly maintenance. On 23.07.1986, the learned Judicial Magistrate passed Judgment and order, wherein, the Petitioner was directed to pay Rs.100/- towards monthly maintenance to the Respondent wife. Thereafter, the Respondent filed Misc. Cri. Application No. 180 of 1989 for recovery of arrears of maintenance. During the pendency of recovery proceeding, the Petitioner and the Respondent entered into compromise. Accordingly, the Petitioner paid Rs.15,000/- towards full and final settlement as per compromise. Therefore, the Respondent waived her right for future maintenance. However, both the courts below failed to consider said fact and dismissed the application and revision. Therefore,

the Petitioner prayed for quashment of order dated 11.09.2014 passed by the Revisional Court as well as order dated 23.01.2018.

6. Per contra, Mr. I. K. Wagh, the learned counsel appearing for the Respondent wife supported concurrent findings of both the courts below. The learned counsel for the Respondent canvass that the compromise between the Petitioner and the Respondent-wife was arrived in Criminal Application No. 180 of 1989 in respect of recovery of arrears of maintenance amount as per order dated 23.07.1986 passed in Misc. Criminal Application No. 94 of 1986, however, the Respondent wife never relinquished her right for future maintenance. Therefore, findings recorded by both the Courts below are just and proper, hence, prayed for dismissal of the petition.

7. Needless to say that initially, the present Respondent Taibai w/o Dattu Thombre had filed Misc. Cri. Application No. 94 of 1986 under section 125 of the Cr.P.C., for grant of maintenance. It is not in dispute that, on 23.06.1986, the learned Judicial Magistrate passed the Judgment and order and directed the present Petitioner to pay Rs.100/- per month towards maintenance to the Respondent w.e.f. 07.05.1986. Since, the Petitioner-

husband failed to pay maintenance amount, therefore, the Respondent wife was constrained to file recovery proceeding bearing Misc. Criminal Application No. 180 of 1989. It is an admitted fact that, in the year 1990, the Petitioner and Respondent entered into compromise in recovery proceeding. Accordingly, the present Petitioner paid sum of Rs.15,000/- to the Respondent wife as per terms of compromise reduced on a stamp paper. The Respondent has not denied the fact that, the Petitioner paid her Rs. 15,000/- toward compromise. However, the Respondent claimed that after compromise she had been to the Petitioner for cohabitation as per said compromise but the Petitioner contracted second marriage and she was driven out of her matrimonial house.

8. Explanation to sub Section 3 of Sec. 125 of Cri. P. C., provides that, if a husband contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

9. *In Deochand Vs. State of Maharashtra, AIR 1974*

S.C. 1488, the Hon'ble Supreme Court held that, a wife is justified in refusing to live with the husband and claiming maintenance from her husband who had contracted another marriage.

10. *In Pellakuru Saymalamma Vs. Pellakuru Sambaiah, 1988 Cri. L.J. 1891*, it is held that, the wife is entitled for the maintenance once she proves that the husband has married with another woman or kept a mistress without further proof of any negligence or ill-treatment on the part of the husband unless the husband proves that he is maintaining the wife by paying something in kind or cash.

11. In case in hand, the Petitioner filed a Misc. Criminal Application No. 324 of 2011 under section 127 of the Cr.P C. and prayed for revocation of order of maintenance dated 23.07.1986 in Misc. Criminal Application No. 94 of 1986 mainly on ground that, the Respondent-wife relinquished her future right of maintenance as per compromise arrived between him and Respondent. Though the Petitioner claimed that, the Respondent relinquished her future right of maintenance as per compromise but the Petitioner failed to prove about relinquishment of right of future maintenance by the Respondent.

12. On 11.09.2014, the learned trial Court passed an order and rejected Misc. Criminal Application No. 324 of 2011. Being aggrieved by said order, the Petitioner preferred Criminal

Revision No. 111 of 2014 before the Sessions Court. On 23.01.2018, the learned Additional Session Judge, (Adhoc-2) Dhule, passed the impugned judgment and order holding that after the Respondent had gone for cohabitation to the Petitioner as per said compromise but second wife of the Petitioner was cohabiting with the Petitioner. Therefore, the Petitioner drove her out of her matrimonial house.

13. Needless to say that, performing second marriage by the Petitioner and procuring of children out of second marriage during subsistence of first marriage with the Respondent is sufficient and bonafide ground to draw the inference that, the Respondent was driven out of her matrimonial house within the meaning Section 125 (3) of Cri. P. C. On perusal of impugned orders passed by both the Courts below it prima facie appears that both the Courts below concurrently held that, the Petitioner failed to prove that, the Respondent relinquished her right of future maintenance as per compromise in Misc. Criminal Application No. 180 of 1989 arrived in the year 1990. Therefore, I do not find that the findings recorded by both the Courts below are perverse, illegal, bad in law and no interference is called at the hands of this Court out to disturb said findings.

14. In view of the above, this petition is liable to be dismissed. Accordingly, the Petition is dismissed. Rule is discharged. The parties to bear their own costs.

(Y. G. KHOBRADE, J.)

Chavan