

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4447 OF 2017

Suvarna Satish Chapre and Others.

...Petitioners.

Versus

Satish Balasaheb Chapre and Another.

...Respondents.

Mr. Uday Nighot for the petitioner.

Mr. M. R. Tidke, APP for the respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : January 17, 2024.

P. C. :

1. Heard.
2. Petition takes exception to the order dated 6th February 2017 partly allowing the petition and granting maintenance to the minor children and rejecting the relief of maintenance to the petitioner-wife.
3. None appears for the respondent-husband. As none had appeared for the respondent-husband who had filed connected writ petition challenging the same order of grant of maintenance to the children, the connected writ petition has been dismissed for non prosecution by an order of even date.

4. Learned counsel appearing for the petitioner submits that the parties were married in the year 2001 and the twins were born to them in the year 2005. He submits that the respondent deserted the petitioner and children in the year 2008 and subsequently the petition came to be filed for restitution of conjugal rights in which a sum of Rs.6,000/- per month was granted to the petitioner till the respondent resumes co-habitation, which he did not resume. He submits that the petitioner was constrained to file an application under section 125 of the Cr.P.C. for maintenance of Rs.10,000/- per month for herself and the children. He submits that the claim of the petitioner for her own maintenance came to be rejected for the reason that the petitioner was a graduate and had done a beauty parlour course and can earn something for her support. He submits that the provisions of section 125 of the Cr.P.C. has nothing to do with the earning capacity of woman and only requirement to be satisfied is that the person is unable to maintain herself. He submits that the trial Court has lost sight of the fact that twins were small and as such she was required to stay at home for looking after the children.

5. Considered the submissions and perused the record.

6. The facts are not in dispute as regards the marriage as well as birth of children. It is also not in dispute that the petitioner has been

granted a sum of Rs.6,000/- per month towards her maintenance till the respondent resumes co-habitation in the petition seeking restitution of conjugal rights.

7. The trial Court while considering the application under section 125 of the Cr.P.C. has, on the basis of documentary evidence in the form of salary slips of the respondent, arrived at the finding that the respondent was earning a monthly income of Rs.30,000/- or so in the year 2016. The trial Court has considered the expenses which are incurred by the respondent, i.e., a sum of Rs.6,000/- per month being paid to the petitioner, Rs.45,000/- per year as school fees to the children, Rs.48,000/- per year as EMI of home loan in which the petitioner is residing, Rs.12,000/- per year for the stationery and uniform of children and Rs.15,000/- per year towards other miscellaneous expenses of children. The trial Court after deducting the expenses which were incurred by the respondent towards the maintenance of petitioner and children, has arrived at a finding that the salary in the hands of respondent was Rs.14,000/-. The trial Court, refused to grant maintenance to the petitioner by relying upon the decision of Madhya Pradesh High Court in ***Mamta Jaiswal v. Rajesh Jaiswal II (2000) DMC 170*** which held that highly qualified lady cannot sit idle to extract money from the husband. The trial Court

considering the undisputed position that the petitioner is a graduate and has completed a beauty parlour course, rejected the application for maintenance. The trial Court failed to take into consideration the denial of the petitioner during the cross-examination that she is not doing any business or employment and is not earning money. Although the trial Court held that the respondent has not produced any documentary evidence to show the income of the petitioner, the trial Court rejected the application for maintenance of petitioner.

8. Learned counsel appearing for the petitioner has rightly relied upon the decision of this Court in the case of ***Vimal v. Sukumar Anna Patil [1981 Cri.L.J. 210]*** wherein this Court has held that the expression unable to maintain herself occurring in section 125(1)(a) of the Cr.P.C. only connotes that the wife has no other means or source to maintain herself and it has nothing to do with her potential earning capacity. The said decision is squarely applicable to the facts of the present case and as such the finding of trial Court that as the petitioner is capable of earning something for herself, she is not entitled to be granted maintenance is liable to be quashed and set aside.

9. Although the claim of maintenance has been rejected on the erroneous ground which has been quashed and set aside as stated

above, the fact remains that the petitioner was getting maintenance of Rs.6,000/- per month in the petition for restitution of conjugal rights and the trial Court has rightly granted maintenance to the children.

10. Learned counsel appearing for the petitioner submits that the salary certificate of the respondent was of the year 2016 and subsequently the home loan EMI have also ceased as also there is increment in the income of respondent. At that stage of deciding the application under section 125 of the Cr.P.C., the income of respondent was taken into consideration which after all permissible expenses was assessed at Rs. 14,000/- per month and as such the trial Court granted maintenance to both the children @ Rs. 2,000/- per month from the date of filing petition till the date of order and @ Rs.3,000/- per month from the date of order in addition to the maintenance @ Rs.6,000/- per month which was granted to the petitioner.

11. Considering the submission of change of circumstances, the petitioners are entitled to move an application under section 127 of the Cr.P.C., for enhancement of maintenance. As far as the present petition is concerned, considering a sum of Rs.14,000/- which remains in the hands of respondent per month after paying all expenses of the children as well as the maintenance to wife, in this petition I am not

inclined to grant any maintenance to the petitioner wife. However, the finding as regards potential capacity of the petitioner is quashed and set aside. The petitioner is entitled to file appropriate application seeking maintenance considering the change in circumstances which the Court would consider on its own merits and in accordance with law.

12. Writ petition stands disposed of in above terms.

[Sharmila U. Deshmukh, J.]

This order is corrected as per Speaking to the Minutes order dated 9th February, 2024.