

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1917 OF 2025

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Manik Dadu Mhatre

...Petitioner

Versus

Bhakti Manik Mhatre & Ors.

...Respondents

Mr. Kishor Patil i/b Rukmini Khairnar, for the Petitioner.

Ms. R. S. Tendulkar, APP, for the Respondent - State.

CORAM: MADHAV J. JAMDAR, J.

DATED: 16 APRIL 2025

P.C.:

1. Heard Mr. Kishor Patil, learned Counsel appearing for the Petitioner.
2. The challenge in the present Writ Petition is to the Order dated 7th November 2022 passed by the learned 5th JMFC, Vasai in Criminal Miscellaneous Application No.2 of 2020 as well as to the Order dated 3rd February 2025 passed by the learned Additional Sessions Judge, Vasai in Criminal Revision Application No.30 of 2024.
3. It is the main contention of Mr. Patil, learned Counsel appearing for the Petitioner that the learned Civil Judge, Senior Division, Vasai by Order dated 7th April 2022 has granted maintenance of Rs.6,000/- per month as permanent alimony to the Respondent and her son. He states

that proceedings under Section 125 of the *Code of Criminal Procedure, 1973* (“CrPC”) have been filed bearing Criminal Miscellaneous Application No.2 of 2020 and the same have been decided on 7th November 2022 by which an amount of Rs.2,000/- per month has been directed to be paid to Respondent No.1 and an amount of Rs.2,000/- has been directed to be paid to the Respondent No.2 - son. It is his submission by relying on the decision of the Supreme Court in ***Rajnesh v. Neha***¹ that if the order passed in the previous proceeding requires any modification or variation, it would be required to be done in the previous proceeding. He therefore submitted that if Respondent Nos.1 and 2 wanted some modification, then the same should have been done by making an appropriate application in said Marriage Petition No. 292 of 2018. He further submitted that the learned Additional Sessions Judge, while deciding Criminal Revision Application No.30 of 2024, has not given any reasons and therefore the said Order is required to be quashed and set aside.

4. For appreciating the contention of Mr. Kishor Patil, learned Counsel appearing for the Petitioner, it is necessary to set out certain factual aspects :-

i. The marriage between the Petitioner and Respondent No.1 was solemnized on 5th May 2011.

ii. The Respondent No.2 - son was born on 27th June 2012. Thus,

¹ (2021) 2 SCC 324

today the Respondent No.2 is 13 years old.

- iii. The Petition under Section 13(1)(i-b) of the *Hindu Marriage Act, 1955* for dissolution of marriage bearing Marriage Petition No.292 of 2018 was filed on 13th July 2018.
- iv. During the pendency of the said Marriage Petition, Respondent No.1 - wife and Respondent No.2 - son filed Application under Section 125 of CrPC bearing Criminal Miscellaneous Application No.2 of 2020 in the Court of JMFC, Vasai seeking that maintenance of Rs.25,000/- be directed to be paid to them. The said Application was filed on 17th January 2020.
- v. By the Judgment and Decree dated 7th April 2022, the learned Civil Judge, Senior Division, Vasai dissolved the marriage between the Petitioner and Respondent No.1 by decree of divorce passed in said Marriage Petition No.292 of 2018 and directed payment of Rs.6,000/- per month as permanent alimony to the Respondent No.1 and Respondent No.2.
- vi. Subsequently, by impugned Order dated 7th November 2024 passed by the learned JMFC, Vasai, the present Petitioner was directed to pay monthly maintenance of Rs.2,000/- per month to the Respondent No.1 - wife and Rs.2,000/- to the Respondent No.2 - son in addition to the said amount of maintenance of Rs.6,000/- granted in Marriage Petition No.292 of 2018.

vii. The said Order dated 7th November 2024 of the learned JMFC is confirmed by learned Additional Sessions Judge, Vasai by the impugned Order dated 3rd February 2025.

5. For appreciating the submission of Mr. Patil, learned Counsel appearing for the Petitioner, it is also necessary to set out Paragraph No.128 of the decision of the Supreme Court in **Rajnesh** (supra), which reads as under:

“128. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:

128.1. (i) Where successive claims for maintenance are made by a party under different statutes, the court would consider an adjustment or set-off, of the amount awarded in the previous proceeding(s), while determining whether any further amount is to be awarded in the subsequent proceeding.

128.2. (ii) It is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding.

128.3. (iii) If the order passed in the previous proceeding(s) requires any modification or variation, it would be required to be done in the same proceeding.”

6. The Supreme Court in Paragraph No.128.1 has specifically directed that where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment of the amount awarded in the previous proceedings while determining

whether any further amount is to be awarded in the subsequent proceeding.

7. Thus, the contention of Mr. Patil, learned Counsel for the Petitioner relying on Paragraph No.128.3 that if the order passed in the previous proceedings requires any modification or variation, it would be required to be done in the same proceeding, is not applicable to the facts of the present case. As noted herein above, during the pendency of the Marriage Petition No.292 of 2018, an Application under Section 125 of CrPC has been filed on 17th January 2020.

8. Perusal of the record shows that the learned JMFC, Vasai on the basis of material on record in the said proceeding, has held that an amount of Rs.6,000/- granted in Marriage Petition No.292 of 2018 is not sufficient to maintain the Respondent No.1 and Respondent No.2 - son. It is required to be noted that the learned JMFC has taken into consideration that the Petitioner is doing business of milk and he has one stable. It is required to be noted that the son is 13 years old. Thus, even the aggregate maintenance granted to him of Rs.8,000/- per month is also not adequate. Even the aggregate maintenance of Rs.8,000/- per month granted to wife is minimum.

9. It is also required to be noted that Mr. Patil, learned Counsel for the Petitioner is right in contending that the learned Additional Sessions Judge has not passed the order in Appeal by taking into consideration

the entire material on record. However, as maintenance of only Rs.2,000/- per month to the Respondent No.1 and Respondent No.2 i.e. wife and son each is granted in addition to the maintenance of Rs.6,000/- per month granted to both of them in the Marriage Petition, no interference in the impugned Order under Article 227 of the Constitution of India is warranted.

10. Accordingly, Writ Petition is dismissed, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]