HUSENBASHA RAHAMAN NADAF
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1747 OF 2023

Barku Namdev Suryawanshi … Petitioner
Versus
Meenabai Barku Suryawanshi and Anr. … Respondents

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Mr. Jayendra D. Khairnar for the Petitioner.
Mr. Anilkumar K. Patil a/w. Laxmikant Patil i/b. Digvijay A. Patil for Respondent No.1.
Ms. Sharmila S. Kaushik, APP for Respondent/State.

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CORAM : M.M. SATHAYE, J.
DATE : 1st OCTOBER, 2026

P.C. :

1. Heard learned counsel for the parties. Perused the record.

2. The Petitioner/husband is challenging the Order dated 29.09.2022 passed by Additional Sessions Judge, Malegaon in Criminal Revision Application No. 81 of 2018. By the said impugned order, the revision filed by Respondent/wife is allowed thereby setting aside the Judgment and Order dated 26.06.2018 passed in Criminal Miscellaneous Application No. 206 of 2013 by 3rd Judicial Magistrate First Class, Malegaon. The learned Magistrate had rejected the application of the Respondent/wife under Section 125 of the Code of Criminal Procedure, 1973 ('CrPC' for short). In revision application filed by Respondent/wife, the application has been allowed directing the Petitioner/husband to pay maintenance of Rs.3,000/- to Respondent/wife from the date of application (19.03.2013).

3. Admittedly, the parties got married sometime in 1992 and four daughters were born from the said wedlock. After a long marital period of about 20 years, on 09.01.2012, the Petitioner filed a complaint alleging adultery against the Respondent/wife. It is not disputed that the Petitioner also filed proceedings for divorce which is decreed by order dated 29.10.2014 in HMP No. 69 of 2014. It is also not disputed that the said decree is confirmed in appeal, because the appeal filed by the Respondent/wife was dismissed for default.

4. Learned counsel for the Petitioner/husband submitted that the Respondent/wife could not have been held entitled to maintenance in view of Section 125(4) of CrPC because the wife was living in adultery and had deserted the husband without any sufficient reason. He submitted that one of the daughters has supported the case of the Petitioner/husband and has deposed against her own mother stating that the mother is in adulterous relationship. He further submitted that copy of complaint against wife for adultery has been filed in another proceedings under Protection Of Women From Domestic Violence Act, 2005. He further submitted that Gat No. 284 at Village Nimgaon to the extent of 1 Hector 19 Are is already transferred in the name of Respondent/wife from which she can earn livelihood either by selling or earning out of it and therefore the Appellate Court was not justified in reversing order passed by the Magistrate.

5. On the other hand, learned counsel for the Respondent/wife supported the impugned order contending *inter alia* that after a long marital life of about 20 years, the husband has chosen to allege adultery against wife and even though one of the daughters has

supported such version, there is no conclusive adjudication about it. He submitted that there is nothing on record to show that the complaint of adultery has been pressed further or has resulted in any proceedings. He submitted that the Petitioner/husband has given fatal admissions about the property allegedly transferred in the name of wife and therefore the wife does not have the said property available for earning. He prayed that no interference is required in the facts and circumstances of the case.

6. I have considered the rival submissions and perused the records.

7. The Petitioner/husband was cross-examined in the present proceedings where he has clearly admitted that Gat No. 284 to the extent of 1 Hectare 19 Are, though given in partition to the Respondent/wife, the said property is in possession of Petitioner/husband himself and he is taking income out of it. He has clearly admitted that statement made on oath in that regard are incorrect. He has also admitted that the statement on oath made by husband that wife is earning Rs.4 to Rs.5 lakh out of said property is also false.

8. In the teeth of such clear admissions, it cannot be believed that the Respondent/wife has such property available with her which can be used for her maintenance.

9. The learned Magistrate, apparently considered the evidence of daughter and held that in the social background where the parties belong, when the daughter is coming forward clearly stating that the

mother is in adulterous relationship, it has to be believed. The Revisional Court, on the other hand, has noted that the decree of divorce is not on the allegation of adultery and has further noted that except for the statement of the daughter, regarding frequent visit of a particular person to the house and spending time with the Respondent/wife, there is no other evidence convincing enough to conclude about adulterous relationship. The Appellate Court has found that the evidence on record is not sufficient to act as statutory bar under Section 125(4) of CrPC. The Appellate Court has also considered the admissions given by the Petitioner/husband about having possession himself of the property allegedly given to the wife.

10. Considering the manner in which the material on record is considered by the Revisional Court and further considering the fact that there is no clear evidence on record about the alleged adultery, in my view, the conclusion drawn by the Appellate Court is the most probable view. The admissions of the Petitioner/husband are sufficient to hold that the said property is not available with the Respondent/wife as a source for maintenance.

11. In the aforesaid facts and circumstances and for the reasons indicated above, there is no reason to interfere. The impugned order does not suffer from any perversity. **The writ petition is accordingly dismissed**. No orders as to costs.

12. All concerned to act on duly authenticated or digitally signed QR verifiable copy of this order.

(M.M. SATHAYE, J.)