



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1183 OF 2011

Nagorao Manikrao Palwade,
Age-35 years, Occu-Service,
R/o. Jagannath Sadan, Plot No. 6,
Vidya Nagar, Parali Vaijinath,
Tq. Parali Vaijinath,
Dist. Beed

...PETITIONER

VERSUS

Sangita Nagorao Plawade,
Age-31 years, Occu-Private Job,
R/o. C/o. Uttamrao B. Lahane,
Prabhavatggi Nagar, Near Datta Mandir,
Jintur Road, Parbhani, Dist. Parbhani

...RESPONDENT

Mr. Sanjay Mundhe, Advocate for the Petitioner
Mr. D. V. Katneshwarkar, Advocate for the Respondent

CORAM : ABHAY J. MANTRI, J.

DATE : 20th APRIL, 2026

JUDGMENT :

1. Heard. **Rule.** Rule is made returnable forthwith and heard finally with the consent of the parties at the stage of admission.
2. The Petitioner/husband of the Respondent has preferred this Writ Petition challenging the judgment and order dated 24-11-2008 passed by the learned Sessions Judge, Parbhani in Criminal Revision Application No. 38/2006, whereby the Revision was



dismissed and confirmed the Judgment and order dated 29-04-2006 passed by the learned Judicial Magistrate First Class, Parbhani (for short, the '*JMFC*') in Misc. Application No.273/2004, whereby the maintenance of Rs. 1500/- per month was granted to the Respondent.

3. Heard the rival contention of the parties and have gone through the impugned judgments and the record.

4. At the outset, it appears that the Respondent, being the wife of the Petitioner, has filed an application for the grant of maintenance under Section 125 of the Cr. P. C. The learned JMFC, after considering the material before him, by order dated 29-04-2006, allowed the application and directed the Petitioner to pay a maintenance of Rs. 1500/- to the Respondent.

5. The Petitioner challenged the said order before the learned Sessions Judge, Parbhani, in Criminal Revision Application No.38/2006. The learned Additional Sessions Judge, Parbhani, by order dated 24-11-2008, dismissed the Revision and confirmed the order passed by the learned Magistrate. Hence, this Petition is preferred by the Petitioner.

6. Learned Advocate for the Petitioner vehemently contended that the Respondent left the matrimonial house after two days of the marriage without any sufficient reason and refused to live



with the Petitioner, and therefore, as per Section 125 (4) of the Cr. P. C., the Respondent, is not entitled to maintenance. To buttress his submissions, he drew my attention to the finding recorded in the Divorce proceeding bearing No. HMP No.7/2007 and argued that the learned Magistrate, as well as the learned Sessions Judge, had not considered the facts recorded as per the said findings in their proper perspective and erred in granting maintenance.

7. Secondly, he canvassed that on 09-04-2003, the petitioner had filed a Petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, and the same was decreed on 23-11-2004. Despite the passing of the decree, the Respondent did not turn to cohabit with the Petitioner. Therefore, he propounded that in view of the decree in the Petition of restitution of conjugal rights and findings recorded in para 21 of the Divorce proceeding, the petitioner demonstrated that the Respondent herself voluntarily left the company of the Petitioner without sufficient reason. Therefore, the Respondent is not entitled to maintenance. However, the learned Trial court, as well as the learned Additional Sessions Judge, have not considered the said facts and have erred in granting maintenance. Therefore, he urged that both orders be set aside.

8. Per Contra, the learned Advocate for the Respondent strenuously submitted that the learned Magistrate in para 10 and 11



of the order dated 29-04-2006 has considered the facts about passing of the decree in the Petition of restitution of conjugal rights and after considering the same, has awarded the maintenance and the learned Sessions Judge, also considered the said findings and dismissed the Revision. Therefore, it cannot be said that findings recorded by the learned Magistrate as well as learned Sessions Judge are illegal or contrary to the evidence on record and as such, he urged that no interference is warranted in this Petition.

9. At the outset, it appears that the Respondent filed a maintenance proceeding before the learned Magistrate. During the pendency of the said application, the Petitioner/Husband obtained the decree for restitution of conjugal rights on 23-11-2004. The learned Magistrate in para-Nos. 10 and 11 have dealt with the passing of the decree for restitution of conjugal rights, and after considering that the judgment and order was passed. Similarly, the learned Sessions Judge has also dealt with the decree of restitution of conjugal rights in para 6 of the judgment. Therefore, in my view, both the courts below have, after considering the decree passed under the restitution of conjugal rights, accordingly, passed the order of maintenance. No illegality is found in the said findings.

10. Secondly, it appears that after the passing of the maintenance order, the Petitioner had filed a divorce proceeding



before the learned CJSD on 10-01-2007, and the same was decided on 24-02-2009. Therefore, findings recorded in the said judgment in para. No. 21 is subsequent in nature. Those were not available when the maintenance orders were passed. Therefore, those findings are not helpful to the Petitioner in support of his contention to demonstrate that the Respondent herself left the company of the Petitioner without sufficient reason, or she refused to live with the Petitioner. On the contrary, the learned Magistrate as well as the learned Sessions Judge have dealt with the evidence on record and categorically held in para 13 that the Respondent had tried to cohabit with the Petitioner, but the Petitioner refused and neglected to maintain her. Therefore, I do not find any merit in the submission of the learned Advocate for the Petitioner, contending that the Respondent has left the company of the Petitioner without sufficient reason or refused to live with the Petitioner.

11. It is pertinent to note that it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain her due to financial constraint as long as he is capable of earning. Furthermore, the Petitioner failed to point out that he has no sufficient means of income to maintain the Respondent. Besides, the judicial note can be taken that there are rises in the prices of essential commodities and therefore, the



maintenance amount granted to the Respondent appears to be too meagre to satisfy her daily needs.

12. It is worth noting that Section 125 of the Code of Criminal Procedure is a social welfare provision, which must be subjected to an extensive beneficial concern, and this understanding has been extended to maintenance. Similarly, it must be borne in mind that the right to maintenance under Section 125 of the Code of Criminal Procedure is not a benefit received by the wife but rather a legal and moral duty owed by the husband to maintain his wife. Undisputedly, the wife does not reside with the Petitioner, and the Petitioner has not paid any maintenance amount to the Respondents for her livelihood or to satisfy her daily needs. These facts themselves are sufficient to grant maintenance to the Respondent.

13. Thus, considering the above discussion, it appears that the orders passed by the learned Magistrate and confirmed by the learned Sessions Judge are just and proper and therefore, no interference is warranted in the said judgments and orders in writ jurisdiction. Consequently, *the Petition, being bereft of merit, stands dismissed. Rule is discharged.* No order as to costs.

14. Needless to clarify that the Petitioner is directed to pay the entire arrears of maintenance amount to the Respondent, if he

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has not paid, till this date, within sixty days from today, failing which,
the Respondent is entitled to take appropriate steps.

[ABHAY J. MANTRI, J.]

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