

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 90 OF 2003

Dnyaneshwar Vitthal Yemul,
Age 40 years, Occu. Service,
R/o. Yaodhanagar, Room No. 2,
Bhistbag Naka, Ashiyana
Construction, Ahmednagar,
Dist. Ahmednagar.

....Petitioner.

Versus

1. Nayana Dnyaneshwar Yemul,
Age 33 years, Occu. Private Service,
2. Manali Dnyaneshwar Yemul,
Age 12 years, Occu. Education,
3. Nikhil Dnyaneshwar Yemul,
Age 10 years, Occu. Education,
Respondent No. 2 and 3 through
Natural Guardian Respondent No. 1

All R/o. C/o. Balaram Narayan Bhusa,
D-13, Room No. 97, Pratikshanagar,
Sayan Koliwada, Mumbai,
at Mumbai Sayan.

...Respondents.

Mr. A.B. Gatne, Advocate for petitioner.

Mr. N.B. Suryawanshi, Advocate for respondents.

CORAM : T.V. NALAWADE, J.
DATED : 12th June, 2015.

JUDGMENT :

- 1) The petition is filed to challenge the judgment and order of Judicial Magistrate, First Class, Ahmednagar delivered in

Criminal Misc. Application No. 260/2000. The J.M.F.C. has granted maintenance in favour of present respondents under the provisions of section 125 of Criminal Procedure Code. The decision was challenged by both the sides by filing criminal revision. In revision filed by the present respondents, Sessions Court enhanced the amount to make it Rs. 750/- per month in favour of each of the respondent and so, the decision given in Criminal Revision No. 215/2001 by the learned Additional Sessions Judge, Ahmednagar is also challenged in the present proceeding. Both the sides are heard.

2) The submissions made show that during the pendency of the present proceeding, the maintenance granted in favour of respondent No. 2 - Manali, daughter of petitioner came to be cancelled. She turned major. It can be said that respondent No. 3 - Nikhil, son of the petitioner must have crossed the age of 23 years at present and so, there will be no liability on the petitioner to pay the maintenance to Nikhil. Thus, there will be the liability only in respect of the wife, if the present petitioner does not succeed in the present matter.

3) In the maintenance application, the wife and two minor issues of the present petitioner had contended that after

the marriage, there was cohabitation in Pune up to the year 1991. It is contended that the husband was transferred to Latur from Pune in the year 1991 and as there was no arrangement for residence, the wife started staying in Ahmednagar, where the husband used to pay visit once or twice in a month. Then husband was transferred to Ahmednagar. There was no grievance till 1990. The wife has contended that after 1990 the husband started giving illtreatment to her.

4) It is the case of wife that the husband was asking her to bring Rs. 25,000/- from her father and to force this demand, he was giving illtreatment. Allegations are made that he used to take suspicion about her character and out of this suspicion, on 22.5.1999, he drove her out of the house with two children. It is the case of wife that she made many attempts to return to the matrimonial house, but the husband refused to accept her and ultimately, married second wife in August 1999. It is her case that she is unable to maintain herself and the issues and the husband has not made any provision for their maintenance. It is the case of wife that husband is permanent employee in M.S.E.B. and he is getting Rs. 7000/- per month as a salary. It is her case that the husband and his parents own immovable property and they make income from other sources also. She had prayed for

maintenance of Rs. 1500/- for each.

5) The husband contested the matter by filing written statement. He contended that he had filed divorce proceeding against the wife and he got exparte divorce against wife and so, the wife is not entitled to get any maintenance. It is his case that the parents of the wife are in garment business and she helps them in the business, so there is no need to give maintenance to her. He has denied the allegations of illtreatment.

6) The husband has taken stand that he has taken divorce from the Court and so, there is no question of considering his defence that wife had left his company. It was necessary for him to prove that the wife was making income and she cannot say that she is unable to maintain herself. No record is produced to prove such business of the parents of the wife and involvement of the wife in such business. On the other hand, the husband has admitted that he is employed in M.S.E.B. The burden was on him to prove that he was not getting salary as contended by the wife. It appears that salary certificate for January 2001 was produced to show that gross salary of petitioner was Rs. 6768/-. Though husband contended that his take home salary was Rs. 1300/- per month, the deductions only

in respect of income tax and professional tax can be considered. Other deductions towards repayment of loan, provident fund cannot be considered. The children were taking education and it was necessary to consider the needs of the children also. The total amount of Rs. 1500/- was granted by the learned J.M.F.C., which was less than 1/3 of the net income of the husband. This amount was enhanced to make it Rs. 2250/- per month. It was around 1/3 of salary amount and three persons were to live on the amount of Rs. 2250/-. Thus, meager amount is granted by the Sessions Court even after enhancing of the amount. Considering the present situation, this Court holds that there is no need to interfere in the order made by the learned J.M.F.C. which is partly modified by the learned Sessions Judge.

7) In the result, the petition stands dismissed.

[T.V. NALAWADE, J.]

ssc/