

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 213 OF 2014

Abasaheb S/o Damodar Pathe

Age : 33 Yrs., Occ. : Labour,

R/o : Bhoyegaon, Tq.

Gangapur, Dist. Aurangabad.

..... APPLICANT/

[ORIGINAL RESPONDENT]

V E R S U S

1. Lalita W/o Abasaheb Pathe

Age : 26 Yrs., Occ. Household,

R/o : C/o Isaram Uttamrao

Matkar, N-9, H-Sector,

in front of Central Bank of

India, T.V.Centre, HUDCO,

Aurangabad.

2. Prashant S/o Abasaheb Pathe

Age : 6 Yrs., Occ. : Nil,

U/g of his real mother R – 1,

R/o : C/o Isaram Uttamrao

Matkar, N-9, H-Sector,

in front of Central Bank of

India, T.V.Centre, HUDCO,

Aurangabad.

..... RESPONDENTS/

[ORIGINAL PETITIONERS]

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Mr. H.V.Tungar, Advocate for the Applicant.

Mr. D.S.Kore, Advocate for R – 1 & 2.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 20th JANUARY, 2015

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ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. By consent of the learned counsel for the Applicant and the learned counsel for respondent Nos. 1 and 2, the Criminal Revision Application is taken up for its final hearing.

2. Heard Mr. H.V.Tungar, learned counsel for the Applicant and Mr. D.S.Kore, learned counsel for respondent Nos. 1 and 2.

3. The challenge in the present Revision Application is amount of maintenance granted by the learned Judge of the Family Court, Aurangabad in Petition E-249/2012 in favour of respondent Nos. 1 and 2.

4. The relations as husband and wife, between the

applicant and respondent No. 1, is an admitted fact. Respondent No. 2 is their child. The separation is also not denied by the husband. Respondent Nos. 1 and 2 were required to file maintenance proceedings u/s 125 of the Code of Criminal Procedure before the Family Court, Aurangabad, since they were finding themselves unable to maintain as wife was without any source of income. She has pointed out in her application about the fact that the applicant's family is having irrigated agricultural field and through that field he is getting income of ₹ 3,00,000/- [Rupees Three Lacs only] to ₹ 4,00,000/- [Rupees Four Lacs only] per annum. It is also pointed out by the wife that the present applicant is a Contractor and he earns ₹ 30,000/- [Rupees Thirty Thousand only] to ₹ 40,000/- [Rupees Forty Thousand only] per month. The learned Judge of the Family Court, after considering the fact that the respondent Nos. 1 and 2 are getting the maintenance @ ₹ 3,000/- [Rupees Three Thousand only] per month in view of the order passed by the learned Magistrate in Criminal Misc. Application No. 137/2012, found that respondent No. 1 is entitled to receive the maintenance @ ₹ 2,000/- [Rupees Two Thousand only] per month and her son respondent No. 2 is entitled to

receive the maintenance @ ₹ 1,000/- [Rupees One Thousand only] per month.

5. The only contention which is canvassed before me by the learned counsel for the husband is that the Family Court has not fixed the income of the present applicant and, therefore, the order of maintenance is excessive in nature. Looking to the affidavit filed on behalf of the present applicant in the proceedings before the Family Court, it is clear that he is a member of joint family. Even according to the applicant, the agricultural land is his ancestral property, therefore, definitely he has share in such agricultural field. Though the respondent No. 1 has pointed out that the income from the agricultural field is ₹ 3,00,000/- [Rupees Three Lacs only] to ₹ 4,00,000/- [Rupees Four Lacs only] per annum, it was for the applicant to point out his exact income. That burden is on the applicant. It is clear that the applicant has failed to discharge the said burden.

Further, the applicant has stated in his affidavit that he is doing labour work and getting ₹ 100/- [Rupees One Hundred only] per day. At the same time, conveniently, the applicant has not given any details of his employment.

In that view of the matter, it is really difficult to held that the applicant is doing labour work.

6. In so far as the quantum is concerned, the learned Judge of the Family Court has correctly appreciated the fact that since the wife and son are getting the maintenance amount from the proceedings filed by them under the Domestic Violence Act, that can be considered while reaching to the figure of quantum and accordingly the figure is reached by the learned Judge. No fault can be located in the order passed by the learned Judge of the Family Court.

7. In view of the above observations, the present Criminal Revision Application is dismissed. Rule discharged.

[V.M.DESHPANDE, J.]

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