

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Amk

CRIMINAL WRIT PETITION NO. 2826 OF 2005

Shri Vijaykumar Vinayak Joshi

.. Petitioner

Vs.

Kum. Rasika Vijay Joshi & Ors.

.. Respondents

Mr. Rajan Pawar i/b S. S. Kulkarni for the Petitioner.

CORAM : M.S.SONAK, J.

DATE : 10th DECEMBER, 2015.

P.C.

1. The challenge in this petition is to the order dated 26.08.2005 made by the Additional Sessions Judge, Nashik enhancing the amount of maintenance from Rs.500/- to Rs.1500/- in respect of the petitioner's two daughters, who at that time, were unmarried.

2. Mr. Rajan Pawar, learned Counsel for the petitioner has submitted that the Sessions Judge has ignored the relevant material whilst proceeding to modify the order made by the JMFC. Learned Counsel submitted that the two daughters were already getting maintenance @ Rs.1500/- p.m., in pursuance to the interim orders made in Hindu Marriage Petition No. 101 of 2002. That apart, the mother of the two daughters i.e. the petitioner's ex-wife was also employed as staff nurse and was, at the relevant time drawing salary of Rs.10,000/- p.m. On account of the mother's service, respondent-daughters had benefit of free education, medicines and clothes. The Sessions Judge also failed to appreciate that at the relevant time the petitioner was also required to maintain his own mother. The learned Counsel, therefore, submitted that non consideration of all these material facts renders the impugned order of enhancement vulnerable.

3. Having heard the learned Counsel for the petitioner and perused the records, my judgment there is no case made out to interfere in the

impugned order. The Sessions Judge has taken into consideration the aspect of interim maintenance in Hindu Marriage Petition No. 101 of 2002. The Sessions Judge has rightly observed that the same was only an interim order and, therefore, would not have survive the post the disposal of the main petition. That apart, the Sessions Judge has rightly held that even if the said amount is taken into consideration, enhanced maintenance was due and payable to the respondents. The petitioner's daughters were staying with the mother. Therefore, the mother must be bearing the responsibility in the matter of their upkeep. The mere circumstance that the mother is staff nurse and was earning the salary, is not a ground for the petitioner to refuse to contribute the maintenance to his two daughters. Even taking into consideration the aspect of free medicines, education and clothing, it cannot be said that the award of maintenance @ Rs.1500/- each, is in any manner excessive or disproportionate.

4. The Sessions Judge has neither erred on principle nor it can be said that the impugned order suffers from any jurisdictional error. In such circumstances, there is no case made out to interfere with the impugned order. This petition is, therefore, dismissed.

5. Mr. Pawar, learned Counsel for the petitioner, has submitted that the respondents must have been married and, therefore, the liability of the petitioner cannot continue. At this stage no cognizance can be taken of this submission, however, if there is any change in the circumstances, it is for the petitioner to take out an appropriate proceeding in the matter. Such liberty is always available in such matters.

6. In view of the aforesaid observations, this petition is dismissed. There shall be no order as to costs.

(M.S.SONAK, J.)