

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 12 OF 2007

Raosaheb s/o Yashwant Tambe
Age 35 years, Occ. Agriculture
R/o. Goregaon, Tq. Parner
District Ahmednagar

...Petitioner

versus

1. Smt. Thakubai Raosaheb Tambe
Age 28 years, Occ. Household
R/o. Goregaon, Tq. Parner
District Ahmednagar

2. Kum. Rahibai d/o Raosaheb Tambe
Age 12 years, Occ. Household
R/o. Goregaon, Tq. Parner,
district Ahmednagar

...Respondents

.....
Mr. Y.D. Kale, advocate h/f Mr. R.R. Karpe, advocate for the petitioner
Mr. N.B. Patekar h/f Mr. P.R. Katneshwarkar, advocate for respondents
.....

CORAM : V. K. JADHAV, J.
DATED : 1st SEPTEMBER, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the order passed by the Judicial Magistrate, First Class, Parner dated 08.05.2002 in criminal M.A. No. 176 of 1998 and confirmed by the 4th Ad-hoc Additional Session Judge, Ahmednagar on 07.07.2006 in Criminal Revision No. 166 of 2002 with some modification to the extent of quantum of maintenance, the original opponent-husband has preferred present

criminal writ petition.

2. Brief facts giving rise to the present writ petition are as follows.

(a) The respondent No. 1 is legally wedded wife and respondent No.2 is the daughter of petitioner husband. Since the petitioner husband had neglected and refused to maintain both the respondents, they were constrained to initiate maintenance proceeding by filing Criminal M.A. No. 160 of 1990. The learned Magistrate was pleased to allow the said application for grant of maintenance and accordingly directed the petitioner husband to pay maintenance to respondent wife at the rate of Rs.250/- p.m. and Rs.175/- p.m. to applicant No.2 daughter, by order dated 4.1.1994. However, in the year 1998, the respondents had filed Criminal M.A. No. 176 of 1998 contending therein that the petitioner husband is not regular in payment of monthly allowances and the cost of living was increasing day by day. It has also contended that the respondent wife always remained sick and it is difficult for her to maintain herself and her daughter in meager amount of Rs.425/- and that respondent No.2 was taking education. It has also contended in the said application that there is increase in the income of the petitioner-husband comparative to the year when initially the maintenance was granted. Accordingly, respondents requested enhancement of

maintenance amount and subsequently amended the application and prayed for grant of maintenance at the rate of Rs.1500/- for the respondent wife and Rs.500/- p.m. for the respondent daughter.

(b) The petitioner husband has strongly resisted the claim by filing his written statement. It has denied that there is increase in income of the petitioner husband. It has also contended that the petitioner husband is not able to pay maintenance as decided in the earlier proceedings and therefore, there is no question of paying enhanced maintenance amount. It has also contended that he is doing labour work on daily wages at Rs.30/- per day. It has also contended that lands are Jirayat and family members are depending upon him.

(c) Learned J.M.F.C. by its impugned order dated 8.5.2002 in Criminal M.A. No. 176 of 1998 directed the petitioner husband to pay enhanced maintenance of Rs.500/- to applicant respondent No.1 wife and Rs. 500/- to respondent No.2 daughter. The learned 4th Adhoc Additional Sessions Judge, Ahmednagar by order dated 7.7.2006 partly allowed the criminal revision No. 166 of 2002 and thereby directed the respondents to pay the maintenance at the rate of Rs.450/- p.m. to respondent No.1 wife and Rs.375/- p.m. to the respondent No.2 daughter from the date of application. Being aggrieved by the same, the petitioner husband has approached this

Court filing present writ petition.

3. Learned counsel for the petitioner submits that there is no change in the circumstances for alteration of allowance. Though the petitioner husband has examined the Talathi as an independent witness to prove his income, the courts below have not considered the evidence of the Talathi in its proper perspectives. There is no increase in the agriculture income of petitioner-husband compared to the application filed for grant of maintenance decided in the year 1991. During pendency of this writ petition, respondent No.2 daughter got married and she is cohabiting with her husband, thus, she is not entitled for maintenance from the petitioner father.

4. Learned counsel for the respondent wife submits that there is change in the circumstances for alteration of allowance. The petitioner husband was not regular in payment of monthly allowance as granted by the court by order dated 4.1.1994 in Criminal M.A. No. 160 of 1990. Both the courts below have considered the cost of living at the relevant time and further ailments of respondent wife. So far as the witness Talathi examined by the petitioner-husband is concerned, both the courts below have discarded his evidence for the reason that Talathi has not taken into consideration entire holding of the land of petitioner husband and it has also observed that in

routine course the Talathi has given the said certificate of income as per the demand of the petitioner husband. It is a matter of record that without there being any actual partition of agricultural land on the basis of the mutation alone, the names of petitioner husband's sisters and mother came to be mutated in respect of landed property. In fact, the petitioner husband is the alone male member and he is cultivating entire 12 acres of land. It is also a part of record that as compared to the quantum of maintenance in the year 1994, the petitioner husband in the year 1998 is taking cash crops in his agriculture land and certainly there is substantial increase in his income compared to the earlier period. Both the courts below have considered entire evidence on record and accordingly learned Adhoc Additional Sessions Judge, Ahmednagar has rightly worked out the maintenance amount. Learned counsel submits that even the worked out maintenance is also meager amount compared to the present cost of living. No interference is required and writ petition is liable to be dismissed. Learned counsel for the respondent wife however, admits that during pendency of writ petition, respondent No.2 daughter got married and she is cohabiting with her husband.

5. There is no doubt that the cost of living is increasing day by day compared to the year 1994. The respondent wife was in need of more amount for her maintenance and also for maintenance of her

daughter, who was taking education at that time. It is a matter of record that without there being any partition of ancestral land, the names of mother and sisters of the petitioner husband came to mutated in respect of land owned and possessed by the petitioner husband. Thus, the courts below rightly inferred that the said mutation entry was carried out with some ulterior motive. In fact, the petitioner husband is only male member in the family and he is in actual possession of 12 acres of ancestral land. Learned Adhoc Additional Sessions Judge has observed that on perusal of 7x12 extracts Exh.21 to 28, it appears that there is facility of water to irrigate the land, owned and possessed by the petitioner husband and the petitioner husband is taking the crops by irrigating said land. In the year 1990, the Magistrate while granting maintenance in the initial proceeding, has considered the petitioner husband's income by treating the land as Jirayat land. Thus, both the courts below have rightly recorded the finding to the effect that there is substantial rise in the income of petitioner husband from agricultural land.

6. The learned 4th Adhoc Additional Sessions Judge, Ahmednagar enhanced the maintenance amount of Rs.450/- to the respondent wife. I do not find any fault in the impugned judgment and order passed by the learned Sessions Judge except in the change of circumstances that at present respondent No.2 daughter

is not entitled for any maintenance.

7. In the light of above, writ petition is dismissed. Rule discharged.

8. It is made clear that, during pendency of this writ petition, if respondent No.2 got married, the petitioner husband is at liberty to file an application under Section 127 of Cr.P.C. for quashing of order of maintenance granted in favour of respondent No.2 daughter.

(V. K. JADHAV, J.)

rlj/