

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

CRIMINAL WRIT PETITION NO. 47 OF 2007

Shaikh Shahnoor s/o Sk. Abdul Rehman,
age 35 yrs, Occ. Labour,
R/o Narayanpur, Tq. Gangapur,
District Aurangabad. ..Petitioner.
(orig respondent)

VERSUS

1. Safiyabee w/o Sk. Shahnoor,
age 28 yrs, Occ. Household,
R/o Deolai, C/o Syed Subhan s/o
Syed Kadu, Gat No.84,
Tq. & Dist. Aurangabad.
2. Sk. Kaiser s/o Sk. Shahnoor.
3. Ku. Sabiya d/o Sk. Shahnoor,
age 5 yrs, (applicant No.2 and 3
are minors u/g of their mother,
i.e. respondent No.1) Respondents.
(orig rev petitioners.)

...
Advocate for Petitioner : Mr Mujtaba G Mustafa

...
CORAM : V.K. JADHAV, J.
Dated: September 16, 2016
...

ORAL JUDGMENT :-

1. Being aggrieved by the Judgment and order passed by the Adhoc Additional Sessions Judge, Aurangabad in Criminal Revision No.133 of 2006, the opponent-husband has filed present writ petition.

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

The Respondent-Wife alongwith her children filed a Misc Application No.50/2005 before the Judicial Magistrate First Class, Aurangabad under section 125 of the Code of Criminal Procedure for grant of maintenance @ Rs.1,500/- each. The learned Magistrate by judgment and order dated 31.5.2006 partly allowed the application and thereby directed the petitioner-husband to pay the amount of Rs.150/- p.m. to the respondent no.1-wife and Rs.100/- p.m. each to her children i.e. respondents no.2 and 3 from the date of filing of the application. Being aggrieved by the same, respondent wife alongwith her children preferred Criminal Revision Application No.133/2006, however, the petitioner-husband has not preferred any revision against that order. The learned Adhoc Additional Sessions Judge, Aurangabad by its impugned judgment and order dated 1.11.2006 allowed the revision and thereby directed the petitioner husband to pay an amount of Rs.600/- p.m. to respondent no.1 wife and amount of Rs.350/- each p.m. to respondents 2 and 3

towards their separate maintenance from the date of the original application. Hence, this writ petition.

3. The learned counsel for the petitioner-husband submits that father of the respondent no.1 is the real brother of the mother of petitioner-husband and he is having a land bearing gat no.84 at village Deolai which is situated near Aurangabad city and thus price of the said lands are very high. The mother of the petitioner-husband demanded her share in the said ancestral property, however, her brother denied to give her share. Learned counsel submits that respondent-wife has filed the false complaint against him as well as filed the application for grant of maintenance to harass the petitioner-husband and his family members. The learned counsel submits that, the petitioner-husband is not having any landed property nor is doing any contractor-ship. He is doing labour work and having responsibility of old parents and brother and thus he is unable to pay maintenance at the rate as enhanced by the learned Adhoc Additional Sessions Judge, Aurangabad in the said revision. The learned counsel

submits that, the learned Adhoc Additional Sessions Judge, Aurangabad has not given the petitioner-husband an opportunity of being heard before deciding the revision.

4. The learned counsel for respondent-wife submits that, the counsel for the petitioner-husband remained absent when said Criminal Revision Application was called out for hearing. Thus, the Court had adjourned the matter and posted the same for hearing on a considerably longer date. Learned counsel submits that, the petitioner has not given the details of his income, even though respondent-wife has deposed before the Trial Court that the petitioner-husband has landed property and he is also doing contractor ship business. Learned counsel submits that the Adhoc Additional Sessions Judge, Aurangabad has considered the income of the petitioner-husband as doing a labour work and further rightly held that maintenance granted by the Lower Court is inadequate and accordingly granted reasonable amount of maintenance to the respondents. No interference is required.

5. The learned Magistrate has recorded the findings in the affirmative to the effect that the petitioner-husband has willfully neglected or refused to maintain respondent-wife and children though he is having sufficient means. The petitioner-husband has not preferred any revision before the Sessions Court against the order passed by the Magistrate. Thus, the submissions of the counsel are considered to the limited extent whether the learned Adhoc Additional Sessions Judge is correct in enhancing the maintenance amount as against the maintenance granted by the Magistrate. On careful perusal of the impugned judgment and order passed by the Adhoc Additional Sessions Judge, Aurangabad, it appears that the learned Judge has considered the income of the petitioner-husband by accepting his case of doing a labour work. The learned Judge has observed that the petitioner-husband has definitely an income of more than Rs.100/- per day and in between Rs.100/- to Rs.150/-. It is a matter of record that the petitioner-husband is residing with his parents jointly. Thus, considering the costs of living, standard of living of the parties, the learned Adhoc Additional

Sessions Judge, Aurangabad has rightly granted maintenance @ Rs.600/- p.m. to the respondent-wife and Rs.350/- each to the respondents- children. Even assuming that the petitioner-husband is getting daily wages in between Rs.100/- to Rs.150/- per day, in that way, maintenance amount granted by the Adhoc Additional Sessions Judge, Aurangabad by modifying the order passed by the Magistrate appears to be just and reasonable. No interference is required. There is no merit in the Writ Petition. Hence, following order.

O R D E R

- I. Writ Petition is hereby dismissed.
- II. In the circumstances there shall be no order as to costs.
- III. Rule discharged.

sd/-
(**V.K. JADHAV**)
JUDGE

...

aaa/-