

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

CRIMINAL WRIT PETITION NO. 119 OF 2007

NARENDRA DHARMRAJ DHOLE

age 35 yrs, Occ. Service,
R/o Pimpalner, Taluka Sakri,
District Dhule.

Petitioner.

VERSUS

1. THE STATE OF MAHARASHTRA
Through its Government Pleader,
High Court of Judicature of Bombay,
Bench at Aurangabad.
2. Sau Karunabai Narendra Dhole,
age 28 yrs, Occ. Tailoring Job.
3. Rahul Narendra Dhole,
age 8 yrs, Occ. Nil.
4. Kapil Narendra Dhole,
age 6 yrs, Occ. Nil.

R/o Plot No.28, Shantikunj Nivas,
Annapurna Bhojnalaya,
Chakradhar Colony, Shirpur,
District Dhule.

Respondents.

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Mr P R Dhale, Advocate for petitioner absent.

APP for Respondent : Mr S P Tiwari

Advocate for Respondent 2-4 : Mr Mukul Kulkarni

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CORAM : V.K. JADHAV, J.

Dated: November 15, 2016

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ORAL JUDGMENT :-

1. None present for the petitioner.

2. Being aggrieved by the judgment and order dated 25.6.2003 passed by the learned Judicial Magistrate First Class, Shirpur in Cri M.A.90/2002 and confirmed by the 4th Additional Sessions Judge, Dhule with certain modifications in respect of the quantum of maintenance by judgment and order dated 6.12.2003 in criminal revision no.125/2003, the original non applicant-husband preferred this criminal writ petition.

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

a] Respondent No.2 is legally wedded wife of petitioner and respondent no.3 and 4 born to them out of their marital wedlock. After marriage respondent no.2 wife was treated well for initial period of one year and after birth of respondent no.3, subjected to ill-treatment by the petitioner-husband. She was subjected to ill-treatment by the petitioner-husband by suspecting about her character. So also he was demanding money for purchasing colour TV etc., and subjecting her to abuses and beating for non-fulfillment of the same. Even after birth of respondent no.4, there was no

change in the behaviour of petitioner-husband. In the month of march, 2001 petitioner husband drove her out of the house after subjecting respondent no.2 wife a severe beating. Due to intervention of the family members petitioner-husband taken respondent no.2 wife for further cohabitation, however, again drove her out from his house alongwith children. Respondent no.2 wife and children were unable to maintain themselves and respondent no.2 wife was not having independent source of income. Thus, respondent no.2 wife alongwith children constrained to file Cri. M.A. No.90/2002 for maintenance @ Rs.1500/- p.m. for herself and Rs.1,500/- each to children. It has stated in the application that petitioner husband has refused and neglected to maintain them though having sufficient means. Petitioner husband is serving as a peon in one college on monthly salary of Rs.6,000/- and his father is also serving as a clerk in Grampanchayat. It is also stated in the application that, petitioner husband is having 5 acres of irrigated land and milking cow and she-buffallows.

b]. Petitioner-husband has strongly resisted said application by filing his say. He has admitted relations, however, contended that respondent no.2 wife was reluctant to cohabit with him and she had an attraction towards her parents. Respondent wife was residing on her own with her parents therefore, she is not entitled to claim separate maintenance. It has also contended that petitioner husband is getting Rs.700/- net salary p.m. and he has to maintain his old parents. Thus, it is not possible for him to pay separate maintenance as claimed.

c]. Both parties have adduced their oral evidence in support of their rival contentions. Learned Magistrate by impugned order dated 25.6.2003 directed the petitioner husband to pay maintenance allowance @ Rs.300/- p.m. to the respondent-wife and Rs.200/- p.m. each to respondents no.3 and 4 from the date of application. Being aggrieved by the same, the petitioner husband has preferred criminal revision no.125/2003 and respondent wife alongwith children also preferred criminal revision no.132/2002 with regard to quantum.

The learned 4th additional Sessions Judge, Dhule by its impugned order dated 6.12.2003 dismissed criminal revision preferred by the petitioner-husband, however, partly allowed the criminal revision preferred by the respondent-wife and thereby modified the order passed by the trial court and accordingly directed the petitioner husband to pay maintenance allowance @ Rs.500/- p.m. to each of the respondents/original applicants from the date of application. Hence, this writ petition.

4. On careful perusal of the judgment and order passed by the learned Magistrate, it appears that, on the basis of evidence adduced by the parties, the learned Magistrate has recorded finding that petitioner husband had refused and neglected to maintain respondent-wife and her children inspite of sufficient means with him. Learned Magistrate has observed that respondent-wife had just cause to live separate and demand maintenance and she is unable to maintain herself and her children. Learned Magistrate has negatived the contention raised by the petitioner-husband that respondent-wife is residing with her

parents without any just cause. On the other hand, learned Magistrate has observed that petitioner-husband has not made any attempts to bring back the respondent-wife for cohabitation. Learned Magistrate has also considered the salaried income of the petitioner husband.

5. On careful perusal of the judgment and order passed by the learned 4th Additional Sessions Judge, Dhule, it appears that, the learned additional Sessions Judge has confirmed the finding recorded by the learned Magistrate. After considering the evidence on record, it appears that the petitioner husband is not getting less than Rs.3145/- p.m. by way of salary. Furthermore, in addition to this, he has agricultural land by way of his additional source of income. Thus, considering the needs of the growing children and standard of living, the learned Additional sessions Judge has rightly modified the order by directing the petitioner-husband to pay maintenance allowance @ Rs.500/- p.m. to each of respondents.

6. So far as finding of refusal and neglect to maintain respondent-wife and children by the petitioner-husband is concerned, both the courts have recorded concurrent finding. Furthermore, considering the standard of living of the family and salaried income and other income of the petitioner-husband, the learned Additional Sessions Judge has correctly modified the quantum of the maintenance. I do not find any reason to interfere in the order passed by the courts below. There is no substance in the writ petition. Hence, following order.

O R D E R

I. Criminal Writ Petition is hereby dismissed. Rule discharged.

sd/-

(V.K. JADHAV, J.)

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aaa/-