

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

**CRIMINAL APPLICATION NO.1048 OF 2013**

Anjana W/o Machindra Waghmode,  
Age-43 years, Occu, Household,  
R/o. Badalpur, Tal. & Dist. Beed .. **Applicants**  
and another

**Versus**

Machindra S/o Nathu Waghmode,  
Age-48 years, Occu-Agri,  
R/o. Badalpur, Tal. & Dist. Beed .. **Respondent**

Mr. S.S.Thombre, Advocate for the applicants  
Mr.S.J.Salunke, Advocate for the respondent/sole.

**CORAM : A.V.NIRGUDE, J.**  
**DATED : 18.04.2016**

**P.C. :-**

1. This Criminal Application challenges judgment and order dated 15.01.2013, passed by the learned Sessions Judge-1, Beed, in Criminal Revision Application No.47 of 2010.

2. ***The facts leading to this litigation are as under:-***

. Applicant Anjana and her daughter moved an

application under Section 125 of the Criminal Procedure Code in 2009, seeking maintenance from respondent-Machindra. They alleged that applicant/wife Anjana was pregnant with her first child. The respondent-Machindra drove her out and did not care them. Thereafter, they waited till 2009 in a hope that respondent would change his ways, but in-vain.

3. The applicants also asserted that respondent-Machindra owned agriculture land admeasuring 12 Acre and has about Rs.Five Lac income per year.

4. The respondent-Machindra filed reply denying all the allegations. He even denied paternity to applicant No.2 saying that he had no contact with his wife-applicant No.1 for last 12 years, and therefore, there could not have been any child. He also denied that he owned any agriculture land. He asserted that he is a daily wage earner.

5. The learned trial Court on facts held that the applicants are entitled for maintenance as the respondent failed and neglected to maintenance them. The trial Court also accepted the case of applicants that the respondent owns certain land, but observed that the land is with his joint family. The learned Magistrate ordered maintenance

of Rs.1,000/- per month for applicant No.1 and Rs.400/- per month for applicant No.2.

6. The learned Sessions Judge allowed respondent husband's revision partly and reduced the amount of maintenance to Rs.700/- per month and Rs.300/- per month to applicant Nos.1 and 2, respectively.

7. The question now is, whether the findings of learned Sessions Judge-1, Beed are perverse to the evidence on record? At this stage, there is no dispute that the applicants proved their case for maintenance. The only question that remained to be decided on facts of the case is, amount of maintenance.

8. The applicants modestly demanded Rs.1,500/- per month as maintenance way back in the year 2009. It has also come on record that the respondent is able bodied agriculturist capable of earning daily wages. In addition to this, it has also come on evidence that he and his joint family owns agriculture land to the extent of 12 Acre. The learned Sessions Judge, even recorded his findings that if partition took place, the respondent would be entitled at least 5½ Acre land as his share. Despite of this evidence, the learned Sessions Judge, for reasons best known to him thought it fit to reduce the

amount of maintenance.

9. The respondent cannot take defence that he depended on his daily wages alone, if he admitted that he is a member of joint family. He ought to have given details of the income from the land of his joint family to indicate that there is no income for him out of such land.

10. Once the applicants proved that respondent owned certain land, it must be presumed that the land would earn some income to the owner of land. Admittedly, the respondent and his family members depended on their agriculture land for their livelihood. Therefore, it is but natural that the applicants being dependents of the respondent would also depend on such income. The respondent and his joint family should spare some amount from the income of the land for maintenance of the applicants.

11. The learned counsel for the respondent vehemently suggested to me that this Court while exercising the powers given to this Court Article 227 and under Section 482 of the Criminal Procedure Code cannot exceed amount of maintenance which was already granted by the learned Judicial Magistrate, First Class. He pointed

out that the order of the learned Judicial Magistrate, First Class was never challenged by the applicant and therefore it should be presumed that they are consoling to that order. I am afraid, this submission is rather myopic. The learned counsel for the respondent is not aware of the powers given to this Court under 482 of the Criminal Procedure Code. The order of the learned Judicial Magistrate, First Class was passed in 2009 i.e. about 7 years back. Time since then has changed. In any case, the applicants demanded Rs.1500/- per month originally.

12. In view of the changed situation and passage of time, I am inclined to utilize power under Section 482 of the Criminal Procedure Code for doing complete justice and would allow the original application as prayed for.

#### **ORDER**

- I] The application is allowed.
- II] The respondent-Machindra is directed to pay of Rs. 1500/- per month each to the applicants as maintenance.
- III] The respondent shall deposit arrears within one month from today.

**[A.V.NIRGUDE, J.]**