

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 699 OF 2016

Nitin Bansi Jadhav

Age : 40 years, Occ : Service,

R/o : A/1, Shakti Nagar Society,

Andhawadi Road,

Near Siddivinayak Ganapati Temple,

Vyara, Taluka Vyara,

District : Tapi (Gujarath)

Petitioner

-VERSUS-

1. Sau. Pallavi Nitin Jadhav
Age : 34 years, Occu : Nil,

2. Mitesh Nitin Jadhav
Age : 10 years, Occ : Education,
Through Legal Guardian as
respondent No.1.

Both R/o : C/o : Parashuram Laxman
Kanhaiya, Mhasawad, Taluka Shahada,
District Nandurbar.

Respondents

Mr. A.S. Savale, Advocate for the Petitioner.

Mr. D.M. Pingale, Advocate for Respondent.

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(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 01/07/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the order of the learned Magistrate dated 25.06.2015 by which the petitioner is directed to pay compensation of an amount of Rs.15,000/- to the first respondent and pay Rs.2,000/- per month to respondent No.1 and Rs.3000/- per month to respondent No.2 from the date of its order. The petitioner is also aggrieved by the judgment of the learned Additional Sessions Court, Shahada dated 22.02.2016 by which his Criminal Application and the Criminal Revision filed by the respondent No.1 has been allowed.

3. Mr.Savale, learned Advocate for the petitioner has strenuously criticized the impugned orders. Contention is that the order of the Court granting maintenance should necessarily be made effective from the date of the order and not from the date of the application. Similarly, his net salary was @ Rs.13,000/- as on the date on which

the salary certificate of January 2015 was produced. As on the date of the application which is 28.06.2013, his salary was much less. The quantum of the maintenance allowance, therefore, is unjustifiable and calls for interference.

4. Learned Advocate has taken me through the entire impugned judgments and has also referred to the oral and documentary evidence placed before the Court. He submits that the petitioner was compelled to part with the company of his parents only to satisfy his wife's desire of living separately. He was, therefore, torn between the love for his parents and love for his wife. This led to stress and as such, because of the whimsical attitude of the wife, he started residing with his parents. He neither has the intention of neglecting his wife, nor his parents. Its only because he could not strike a balance in these two relationships which appears to have annoyed the wife and for which the petitioner can not be said to be responsible.

5. He further submits that the order of the Court granting

maintenance allowance necessarily has to take effect from the date of its pronouncement. It cannot be granted with retrospective effect. Both the impugned judgments, therefore, deserve to be quashed and set aside.

6. Learned Advocate for the respondents has supported the impugned orders. He submits that the date of filing an application for maintenance is crucial since it is a presumption in law that an application is filed seeking maintenance allowance only when the claimant finds it difficult to sustain himself/herself. The need for maintenance has to be therefore co-related to the date of filing of the application.

7. He further submits on instructions that the respondents are willing to waive the maintenance allowance as is granted by the learned Additional Sessions Judge only for a period of about five months that is up to 31.06.2013. Considering her need and the difficulties faced in sustaining herself and the child, maintenance as is granted deserves to be made effective from 01.01.2014.

8. I have considered the submissions, as well as have gone through the impugned judgments.

9. There cannot be any debate that lodging of an application for maintenance indicates that the claimant needs financial assistance. Unless there are compelling circumstances, the order granting maintenance has to be made effective from the date of filing of the application since the need for financial assistance is expressed and made evident for the first time when such an application is lodged.

10. In the event such orders are made effective from the date they are passed, there is every likelihood that the opponent would resort to delaying tactics in the hearing of the matter. Even in this case, the application was filed on 28.06.2013 and was decided on 25.06.2015 which is just three days less to two years. The claimant, who has left without financial assistance for this period needs to be compensated. I am, therefore, unable to accept the contentions of Mr. Savale that the orders are to be made effective from the date of their pronouncement.

11. In so far as the capacity of the petitioner to pay maintenance allowance is concerned, the whole issue turns upon his monthly earnings. There is no dispute that the petitioner is employed in a company which has its operation in the State of Gujrath. Though he had stated that his salary is about Rs.13,000/- per month, the salary certificate for January 2015 placed on record would indicate that his gross salary is 15,138/- per month. Net salary is not to be really looked into for the reason that in each and every case, the net salary depends upon the financial liabilities of an individual and which lead to deductions from the salary either for statutory payments or for any other loans to be repaid in installments. As such, the gross earnings of the petitioner are significant.

12. The maintenance granted is Rs.5,000/- per month for both the respondents. Considering the above, I do not find that the amount of maintenance directed to be paid by the petitioner could be said to be beyond his capacity or exorbitant. It is a matter of speculation, as to whether the destitute wife and her child would survive with the

assistance of Rs.5000/- each month, keeping in view that the child is taking education in school.

13. The respondent/wife has graciously offered a concession, which is appreciable. She has prayed for maintenance allowance from 01.01.2014.

14. In the light of the above, this petition is disposed of with the observation that the directions of the learned Additional Sessions Judge, Shahada shall be implemented with effect from 01.01.2014.

15. Rule is discharged.

16. No costs.

(RAVINDRA V. GHUGE, J.)