

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

CRIMINAL WRIT PETITION NO. 787 OF 2015

SAW RADHABAI W/O PANDURANG AMLAPURE
VERSUS
PANDURANG S/O KISHAB AMALPURE AND ANOTHER

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Advocate for Petitioners : Mr V B Dhage
Advocate for Respondent no.1 : Mr D M Shinde h/f Mrs
S.M. Zarkar

APP for Respondent No.2: Miss R P Gour

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CORAM : V.K. JADHAV, J.

Dated: September 14, 2016

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PER COURT :-

1. Heard finally with the consent of the parties.
2. Being aggrieved by the Judgment and order passed by the Judicial Magistrate First Class, Kandhar dated 10.6.2013 in Misc Criminal Application No.49/2011 and also by the judgment and order passed by the Additional Sessions Judge, Kandhar dated 5.1.2015 in Criminal Revision Application No.0800014/2013, the original applicant-wife preferred this criminal writ petition.
3. Brief facts, giving rise to the present writ petition

are as follows :-

The petitioner-wife had filed an application under section 127 (1) of the Code of Criminal Procedure for enhancement of her maintenance granted earlier from Rs.1,000/- to Rs.10,000/-. The learned Judicial Magistrate First Class, Kandhar, by its impugned order dated 10.6.2013 enhanced the maintenance from Rs.1,000/- to Rs.2,000/- from the date of application. Being aggrieved by the same, the petitioner-wife has preferred Criminal Revision Application no.14/2013 before the Sessions Court, Kandhar and the learned Additional Sessions Judge, Kandhar by impugned order dated 5.1.2015 partly allowed the revision petition and directed the respondent-husband to pay the enhanced maintenance allowance @ Rs.4,000/- p.m. to the applicant instead of Rs.2,000/- p.m. as granted by the learned Magistrate from the date of order. Hence, this writ petition.

4. The learned counsel for the petitioner submits that, the respondent-husband was directed to pay the maintenance allowance of Rs.1,000/- p.m. to the

petitioner-wife in view of the compromise effected between the parties on 17.3.2002 and thereafter in the year 2011, the petitioner-wife had filed application under section 127 of the Code of Criminal Procedure for enhancement of the maintenance amount. Learned counsel submits that, compared to the year 2002 there is substantial rise in the prices of essential commodities as well as the cost of living. Furthermore, salary certificate of respondent-husband is placed before the trial court and the same is marked as Exh.31. In the year 2012 basic pay of the respondent-husband was enhanced to tune of Rs.22,160/- and he was also getting DA, house rent allowance and transport allowance. After deductions, respondent-husband is getting net salary of Rs.14,000/- approximately. Furthermore, respondent-husband is also having landed property and is getting income from the said agricultural land. The learned counsel submits that, thus the petitioner-wife is entitled to the enhanced maintenance allowance as claimed in the application. Learned counsel submits that, the Additional Sessions Judge though enhanced the maintenance allowance @ Rs.4,000/- instead of

Rs.2,000/- as granted by the Magistrate, granted said enhanced allowance from the date of order instead of granting it from the date of application.

5. Learned counsel for respondent-husband submits that, there is no substantial rise in the salary of respondent-husband and there is no any evidence of his income from the agricultural source. Respondent-husband is required to spend amount on the education of his three children. Furthermore, his net salary after deductions is very meager. Thus, considering the evidence placed on record, the Additional Sessions Judge, Kandhar has rightly enhanced the maintenance amount @ Rs.4,000/- p.m. from the date of order.

6. On careful perusal of the judgment and order passed by the Additional Sessions Judge, Kandhar in Criminal Revision Application No.14/2013, it appears that, the Additional Sessions Judge, Kandhar has considered the total deductions from the salary of the respondent-husband. Furthermore, the learned Additional Sessions Judge, Kandhar has also considered

income of the respondent-husband from agricultural land. The petitioner-wife is certainly entitled to living standard as being enjoyed by the respondent-husband. On careful perusal of evidence, the learned Additional Sessions Judge, Kandhar has observed that, the respondent-husband is getting salary more than Rs.25,000/- p.m. Thus, considering the needs of the parties, and their standard of living, the learned Additional Sessions Judge, Kandhar has rightly enhanced the maintenance allowance @ Rs.4,000/- p.m. from Rs.2,000/- p.m. as granted by the learned Magistrate. I do not find any fault in the impugned judgment and order passed by the Additional Sessions Judge, Kandhar except that the learned Additional Sessions Judge, Kandhar has granted enhanced maintenance allowance from the date of order instead of the date of application. Learned counsel for respondent-husband, at this stage, submits that, if this Court is inclined to modify the order passed by the Additional Sessions Judge, Kandhar to the extent of grant of enhanced maintenance allowance from the date of application, in that event, respondent-husband may

be permitted to pay the arrears of maintenance in six installments. Learned counsel for the petitioner submits that, respondent-husband may be permitted to pay the arrears of maintenance in four (o4) installments instead of six installments. In view of the above, following order would meet the ends of justice.

ORDER

- I. Writ Petition is hereby partly allowed.
- II. The Judgment and order passed by the Additional Sessions Judge, Kandhar dated 5.1.2015 in Criminal Revision Application No.14 of 2013 is hereby modified to the following effect :-
 - a] The Respondent No.1-PANDURANG S/O KISHAB AMALPURE is directed to pay enhanced maintenance allowance @ Rs.4,000/- (Rs. Four Thousand) p.m. to the applicant from the date of application.
 - b] The respondent no.1-husband shall pay the arrears of maintenance allowance @ Rs.4,000/- p.m. in four equal monthly installments commencing from October, 2016.

III] Criminal Writ Petition is accordingly disposed of.

Sd/-

(V.K. JADHAV, J.)

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