

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

CRIMINAL WRIT PETITION NO. 363 OF 2004

Hemant s/o. Omkar Patil .. Petitioner
Age. 32 years, Occ. Labourer,
R/o. Jarandi, Tq. Soyagaon,
Dist. Aurangabad.

Versus

1. Sou. Pramila Bai w/o. Hemant Patil .. Respondents
Age. 28 years, Occ. Business,
R/o. At present Khokarpat,
Tq. Amalner, Dist. Jalgaon.
2. The State of Maharashtra,
Through G.P.,
High Court of Judicature of Bombay,
Bench at Aurangabad.

Mr. Milind Madhu Joshi, Advocate for the petitioner.
Mr. A.S. Sawant, Advocate for respondent No.1.
Mr. P.N. Kutti, A.P.P. for respondent No.2/State.

CORAM : Z.A. HAQ, J.

DATED : 21.11.2016

ORAL JUDGMENT :-

. Heard Mr. Milind Madhu Joshi, Advocate for the petitioner, Mr. A.S. Sawant, Advocate for respondent No.1 and Mr. P.N. Kutti, A.P.P. for respondent No.2/State.

02. The petitioner has challenged the order passed by the Sessions Court by which the Revision filed by the respondent (wife) is allowed. The order passed by the learned Magistrate rejecting the application filed by her, under section 125 of Cr.P.C. is set aside and the petitioner is directed to pay maintenance of Rs.1000/- per month from the date of the application.

03. The submission on behalf of the petitioner (husband) is that the learned Additional Sessions Judge has committed an error in setting aside the finding recorded by the learned Magistrate that the respondent No.1 (wife) is earning and maintaining herself and therefore she is not entitled to claim maintenance from the petitioner (husband). It is further submitted that the respondent No.1 (wife) failed to establish that the petitioner owned properties and was having sufficient income to maintain respondent No.1 (wife).

04. With the assistance of learned advocates for the respective parties, I have examined the record. I find that the conclusions of learned Magistrate that the respondent No.1 (wife) is not entitled for maintenance from the petitioner (husband) were not proper and not based on proper appreciation of evidence on record. The learned Additional Sessions Judge has considered the

relevant aspects in paragraph No.7 of the impugned judgment and has recorded that the respondent No.1 (wife) was unable to maintain herself. The findings recorded by the learned Additional Sessions Judge are proper and cannot be faulted with.

05. As far as the ability of the petitioner to maintain respondent No.1 (wife) and about the income of the petitioner is concerned, the learned Additional Sessions Judge has relied on the documentary evidence (Exh.23) i.e. crop statement which shows that agricultural land was standing in the name of the petitioner. Though there is no documentary evidence on record to show that the petitioner (husband) owned flour mill and was deriving income from it, considering the fact that the petitioner (husband) owned agricultural land and further considering the amount of maintenance i.e. Rs.1000/- per month granted by the Sessions Court, it cannot be said that the conclusions of the learned Additional Sessions Judge on this point suffer from any illegality or perversity.

06. I see no reason to interfere with the impugned order. The writ petition is dismissed. Rule is discharged. In the circumstances, parties to bear their own costs.

. If the petitioner (husband) has deposited any amount with the Registry of this Court or before the subordinate Court, it be given to the respondent No.1 (wife) along with interest on it, if any.

[Z.A. HAQ, J.]