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

CRIMINAL WRIT PETITION NO. 1076 OF 2015

Chandrasen S/o Sudam Kharsade,
Age: 61 years, Occu: Labourer,
R/o Wasanwadi, Tq. and Dist. Beed

..PETITIONER
(Orig. Non-applicant)

VERSUS

Antikabai W/o Chandrasen Kharsade,
Age: 56 years, Occu: Household,
R/o Kanadighat, Tq. And Dist. Beed

..RESPONDENT
(Orig. applicant)

Mr H. V. Tungar, Advocate for petitioner

CORAM : N.W. SAMBRE, J.

DATE : 10th March, 2016

ORAL ORDER :

By the present petition under Article 227 of the Constitution of India, the petitioner - husband challenges the order passed by learned Additional Sessions Judge – 2, Beed, dated 24th July, 2015, thereby modifying the order passed by learned Judicial Magistrate First Class, 4th Court, Beed, dated 13th October, 2014, whereunder, in exercise of powers under section 127 of the Code of Criminal Procedure, the learned Magistrate had granted enhanced maintenance at Rs.2,500/- per month (Rs.2000 + Rs.500) with effect from 27th January, 2014 – the date of application under section 127 of the Code of Criminal Procedure. The learned Additional Sessions Judge – 2, however, by aforesaid order reduced the same to Rs.2,000/- per month (Rs.1,500 + Rs.500), but maintained the date of its effect, i.e. 27th January, 2014.

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2. Mr Tungar, learned Counsel appearing on behalf of the petitioner would strenuously urge that in absence of specific findings, in relation to income of the petitioner, the Court below ought not to have enhanced the maintenance amount from Rs.500/- to Rs.2,500/- per month. He would then submit that there is multi-fold increase in the maintenance, without ascertaining the source of income of the petitioner.

3. Learned Counsel appearing on behalf of the petitioner has relied upon the judgment of Gujarat High Court, in the matter of **Sakarben Shambhubhai Rabari vs. Shambhubhai Masharubhai Rabari Kalotara**, reported in **GLR 2014 3 2108**, with a view to substantiate his contention that the Court below is required to first record findings as regards income of the petitioner and then to order payment of maintenance. He has drawn support from the judgment of this Court, in the matter of **Shabuktabano Ayyaz Inamdar & anr. vs. The State of Maharashtra & anr.**, reported in **2013 CJ (Bom.) 1216**.

4. Apart from above, he submits that the 7/12 extract and the revenue entries in 8-A extract speak of holding of land by father of the petitioner and in this background, enhancement as ordered is not sustainable.

5. With the assistance of the learned Counsel, I have perused the orders passed by learned Magistrate and Sessions Judge. Learned Magistrate, while dealing with the evidence adduced has considered certain admissions given by the petitioner, such as, his father owns 5

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Hectares 30 R of land. Once it is brought on record that the father of the petitioner is owner of the land almost about 13 Acres, the same is required to be appreciated having regard to the fact that, it is not the case of the petitioner that he is residing separate from his father. Apart therefrom, as regards the finding on quantum of income, having regard to the admissions, as to the nature of crops as are cultivated and availability of irrigation facility along with the dairy that was operated by the petitioner, the same was formed to be the basis for awarding enhancement. In my opinion, even if there are no specific findings, the enhancement having been based on admissions given by the petitioner, does not call for any interference in the findings *qua* income of the petitioner.

6. One more aspect of which this Court must take note of is that the petitioner has not come out with a case that he is not residing with his father or he is not getting any income from the sources as mentioned in application under section 127 of the Code of Criminal Procedure. The advanced age of the petitioner will hardly be of any assistance to him as the income fetched from agricultural source is not sought to be connected with that of his independent source of income, which according to him is the income fetched from labour work. In my opinion, learned Court below has rightly appreciated evidence of the petitioner, particularly the admissions given and has accordingly passed an order of enhancement of maintenance under section 127 of the Code of Criminal Procedure.

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7. Reliance placed on behalf of the petitioner on the decisions cited supra has hardly any application to the instant case, particularly in the background of admissions on his part.

8. In view thereof, the petition fails and stands rejected.

(N.W. SAMBRE, J.)

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