IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1222 OF 2015

Shaikh Ishaq s/o Shaikh Sultan ..PETITIONER

VERSUS

Maimuna begum w/o Shaikh Ishaq & ors. ..RESPONDENTS

Mr Anil M. Gaikwad, Advocate for petitioner;
Mr A.R. Syed, Advocate for respondents

CORAM : N.W. SAMBRE, J.

DATE : 17th March, 2016

ORAL ORDER :

By the present petition under Article 227 of the Constitution of India, the petitioner – husband, challenges the judgment and order dated 26th June, 2015, passed by the Principal Judge, Family Court, Nanded, in Petition-E-91/2014 (MCA No.68 of 2012), thereby awarding maintenance of Rs.3,000/- per month to respondent no.1 – wife and Rs.4,000/- per month each to respondents no.2 and 3 – daughters, in exercise of powers under section 127 of the Code of Criminal Procedure.

2. It is the claim of the petitioner that he is serving as a Cashier in a nationalised bank and though the salary certificate speaks of Rs.40,000/- as his monthly income, upon deductions he is receiving just Rs.19,000/-. It is the claim of the petitioner that apart from his own maintenance, he is

also required to maintain his second wife, children and old parents. Learned Counsel appearing on behalf of the petitioner would submit that the application under section 127 of the Code of Criminal Procedure filed within six months from the date of earlier order under section 125/127 of the Code of Criminal Procedure, was not maintainable and should have been rejected at the threshold.

3. Learned Counsel would then submit that the age of the children is wrongly mentioned as 15 years and 13 years, whereas in fact, they have already attained majority.

4. Learned Counsel appearing on behalf of the respondents opposed the application on the ground that the learned Principal Judge of the Family Court, after considering the income of the present petitioner, has passed the order impugned.

5. Having bestowed my thoughts to the submissions made, it is noted that the respondents have produced copy of the judgment delivered in earlier application No.124 of 2009 at Exh.26, copy of salary certificate of the petitioner at Exh.28, copy of letter issued by the Chief General Manager of the State Bank of Hyderabad at Exh.27, copy of sale deed at Exh.29, copies of school receipts at Exh.33, copies of medical expenses receipts at Exh.34, copies of coaching classes receipt at Exh.35 and again copies of medical expenses receipts at Exh.36.

6. Based on these documents, the learned Principal Judge of the Family Court has proceeded to analyze the documentary evidence brought on record and has inferred that the gross salary of the petitioner is Rs.40,405/-, whereas take-home salary is Rs.19,571/- The petitioner has obtained loan of Rs.12 Lacs for purchase of house property and the 7/12 extract placed on record depicts that there is agricultural property independently mutated/held by his father.

7. I have applied my mind to the said observations.

8. Having taken note of the monthly income of the present petitioner and the fact that the father of the petitioner has independent holding *qua* the agricultural land, it will be inappropriate to say that the learned Principal Judge has ordered payment of monthly maintenance allowance at an exorbitant rate.

9. It is further required to be noted that the agricultural property must also be giving substantial income to the petitioner and as such, his contentions that he is required to maintain his parents and the second family and that the amount of maintenance awarded is exorbitant, also does not hold any substance.

10. In view thereof, Criminal Writ Petition being sans merit stands dismissed.

(N.W. SAMBRE, J.)

amj