IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1261 OF 2015

Haribhau s/o Vithal Farate,
Age : 59 years, Occu. Agriculture,
R/o. Mandavgan Farata, Tq. Shirur,
Dist. Pune. .. **Petitioner**

Versus

1. The State of Maharashtra.

2. Shalan w/o. Haribhau Farate,
Age : 46 years, Occu. Nil,
R/o. Loni Vyanknath, Tq. Shrigonda,
Dist. Ahmednagar.
At Present R/o. Mohininagar, Kedgaon,
Tq. & Dist. Ahmednagar. .. **Respondents**

.....
Mr Arvind S. Kale, Advocate for the petitioner
Mr S. W. Mundhe, AGP for respondent No. 1
Mr P. B. Shirsath, Advocate for respondent No. 2
.....

CORAM : V.K. JADHAV, J.
DATED : 25.11.2016.

PER COURT :-

1. Heard finally with the consent of the learned counsel appearing on behalf of the respective parties. Being aggrieved by the Judgment & Order dt. 06.08.2015 passed by the learned *Ad hoc* Additional Sessions Judge,

Ahmednagar in Criminal Revision No. 69 of 2011, the original non-applicant/husband has preferred this Criminal Writ Petition.

2. Brief facts giving rise to filing of the present Criminal Writ Petition, are summarized as under:

The respondent-wife had filed an application bearing Criminal Misc. Application No. 54 of 2008, u/s 127 of the Code of Criminal Procedure, before the Judicial Magistrate First Class, Shrigonda, for enhancement of the maintenance amount granted to her initially by the Court in the year 1987 and thereafter enhanced till the year 2000. The learned Judicial Magistrate First Class, Shrigonda, has, by Judgment & Order dt. 18.12.2010, enhanced the maintenance amount to the extent of Rs. 100/- per month only in addition to Rs. 500/- per month granted in the earlier proceedings. Being aggrieved by the same, the respondent-wife had approached the Sessions Court, Ahmednagar by filing Criminal Revision No. 69 of 2011. By the impugned Judgment & Order dt. 06.08.2015, the ld. Addl. Sessions Judge, Ahmednagar allowed the said Criminal Revision with costs and thereby directed the present petitioner to pay maintenance @ Rs. 1500/- per month from the date of filing of the said Criminal Revision. Hence, this writ petition.

3. The learned counsel for the petitioner submits that, the respondent-wife has shown the age of the petitioner before the Magistrate as 43 years, though the petitioner is more than 55 years of age. He further submits that, the ld. Addl. Sessions Judge has not given any reason in the impugned Judgment & Order as to why the amount of maintenance was required to be enhanced from Rs. 600/- as granted by the Magistrate to Rs. 1500/-. The learned counsel for the petitioner submits that, the respondent-wife had instituted Special Civil Suit No. 6 of 2005 before the Civil Judge Senior Division, Shrigonda for the relief of cancellation of instrument, declaration and perpetual injunction in respect of her share in the ancestral property owned and possessed by her father and other family members. The Civil Judge, Sr. Divn., Shrigonda by Judgment & Order dt. 26.03.2010 partly decreed the suit and accordingly determined the share of respondent-wife to the extent of 1/6th share in the suit land. The learned counsel submits that, in the said civil proceedings, the respondent-wife has specifically pleaded that she is in possession of her share of land and she is getting income therefrom. The learned counsel submits that, the respondent-wife has suppressed the material fact from the Court. Thus, the ld. counsel for the petitioner submits that, the matter be remanded.

4. The learned counsel for the respondent-wife submits that, the petitioner-husband had never raised any objection for his age as shown before the Magistrate as well as before the Revisional Court at any point of time. The learned counsel submits that, the ld. Addl. Sessions Judge has considered rise in the prices of essential commodities compared to the year 2002 and also compared the rise in the income of the petitioner-husband and accordingly, granted the enhancement @ Rs. 1500/- per month, which is just and reasonable. The ld. counsel submits that, the Magistrate though considered the rise in the prices of the essential commodities and the rise in the income of the petitioner-husband, only enhanced the maintenance @ Rs.100/- in addition to Rs.500/- per month granted in the earlier proceedings. The learned counsel submits that, the ld. Additional Sessions Judge quashed and set aside the Judgment & Decree passed by the CJSD, Shrigonda and remanded the matter. The ld. counsel submits that, the petition is *devoid* of merits and same is liable to be dismissed.

5. It is manifest that, there has been substantial rise in the prices of the essential commodities in the year 2010 compared to the year 2002. Though the respondent-wife filed Criminal Misc. Application No. 54/2008 for

enhancement in the maintenance amount, which she was getting @ Rs. 500/- per month as per order passed on earlier occasion, the ld. Magistrate in the year 2010 enhanced the maintenance only by Rs. 100/-. The ld. Magistrate has observed that, there has been substantial rise in the prices of essential commodities. The learned Magistrate by giving reference to the admissions given by the petitioner-husband has also observed that, the petitioner husband is getting more income compared to his income in the year 2002. The ld. Addl. Sessions Judge has also given reference to those admissions wherein the petitioner-husband unequivocally admitted that, he owns Gut No. 166, 212 and 173 and he is having undivided share in the said agricultural lands. Further, he has also admitted that, he is a labour on behalf of Government for digging wells. The ld. Addl. Sessions Judge has also given reference to the 7/12 extract placed before the trial Court by the parties which unmistakably shows that the petitioner-husband owns certain agricultural lands. I do not think that, the Judgment & Order passed by the ld. Addl. Sessions Judge, Ahmednagar, is without reasoning.

6. The respondent-wife had instituted a Special Civil Suit No. 6 of 2005 claiming share in the ancestral property owned and possessed by her

father and other family members from father's side. Though the Civil Court has determined 1/6th share in the suit land by way of partition by metes and bounds, the said Judgment & Decree is now set aside by the *Ad hoc* District Judge-3, Ahmednagar, vide Judgment & Order dt. 05.10.2015 passed in R.C.A. No. 417 of 2012. In view of this, I do not find any fault in the impugned Judgment & Order. There is no substance in the writ petition. Hence, the following order.

ORDER

[I] The Criminal Writ Petition is hereby dismissed with costs.

[V. K. JADHAV]
JUDGE