

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2791 OF 2010

Smt. Manisha S. Pingle	.. Petitioner
vs.	
Shri Sanjay S. Pingle and anr.	.. Respondent

Mr. Rameshwar N. Gite for the Petitioner.
Mr. Sachin Gite for Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 26 AUGUST 2016.

P.C. :-

1] The petitioner-wife challenges the order dated 4 September 2010 made by the Additional Sessions Judge, Nasik to the extent, the impugned order reduces the amount of maintenance from Rs.5000/- to Rs.3000/-. The petitioner also challenges the modification to the order dated 7 April 2009 made by the Judicial Magistrate First Class (JMC) to the extent, the maintenance is now granted from the date of order and not from the date of application.

2] Mr. R. N. Gite, learned counsel for the petitioner, submits that the revisional court ought not to have reassessed or reevaluated the evidence on record in the exercise of revisional jurisdiction. In any case, Mr. R.N. Gite submits that the finding with regard to income recorded by the Additional Sessions Judge suffers from perversity. The inferences drawn are not based upon any material on record, but the same are in nature of surmises and conjectures. Mr. R.N. Gite submits that by now, the respondent-husband, who is Teacher in Secondary School, must be earning salary of almost Rs.50000/- to

Rs.60000/-. In these circumstances, there was no warrant for reduction of maintenance amount from Rs.5000/- to Rs.3000/- by the Additional Sessions Judge. Mr. R.N. Gite also submitted that there was no reason for the Additional Sessions Judge to deviate from normal rule that the maintenance should be granted from the date of application and not merely from the date of the order. For all these reasons, Mr. R.N. Gite submitted that the impugned order is liable to be set aside and the order dated 7 April 2009 made by the JMFC to restore in its entirety.

3] Mr. Sachin Gite, learned counsel for respondent No.1-husband, submitted that the petitioner-wife in the present case has stayed with the respondent-husband for hardly a month or thereabouts. Further, the petitioner-wife has made baseless and frivolous allegation which she has not been able to substantiate. In terms of Section 125 of Cr.P.C., since, the petitioner has deserted the respondent - husband without a reasonable cause, the petitioner is, in fact, not entitled to any maintenance at all. Mr. Sachin Gite submitted that the petitioner-wife is required to maintain his two minor children from previous marriage, in addition to his own parents. For all these reasons, Mr. Sachin Gite submitted that there is absolutely no warrant to interfere with the impugned order.

4] In the present case, the marriage between the petitioner and respondent No.1 was solemnized on 11 December 2006. Admittedly, the respondent-husband, on the date of such marriage was a widower having two minor children. It is the case of the petitioner that respondent No.1's mother-in-law was also residing with the

family. It is the case of the petitioner that the respondent-husband was having improper relations with the mother-in-law and for this reason, the petitioner in March 2007 left the matrimonial home, never to return.

5] The petitioner has not been able to substantiate the serious allegations made by her. In any case, the material on record establishes that the petitioner has lived with respondent No.1 in matrimonial home for hardly two or three months and soon thereafter, the petitioner has instituted the application seeking maintenance.

6] The inferences drawn by the Additional Sessions Judge cannot be styled as perverse. The Additional Sessions Judge has observed that there is material on record to establish that the petitioner is in a position to earn some amount for herself. In matter of this nature, some limited guess work cannot be criticized as surmises or conjectures. Some limited guess work is inevitable. However, despite this, the Additional Sessions Judge has awarded maintenance of Rs.3000/- per month to the petitioner. This award was never challenged by respondent No.1. Considering the march of time, it will now appropriate to award the petitioner maintenance at the rate of Rs.5000/- per month. This is because, by now, it is reasonable to proceed on the basis that there is substantial increase in the salary of respondent No.1. No doubt, respondent No.1 is required to maintain and look after the educational needs of his two children. The respondent No.1 is also required to look after his aged parents. Considering all these aspects, it will be appropriate if the respondent

-husband is required to pay maintenance at the rate of Rs.5000/- per month to the petitioner-wife from now onwards.

7] This is not a fit case to increase the maintenance amount from the date of application or for that matter from the date of the order made by the JMFC. This is because the impugned order made by the Additional Sessions Judge cannot be said to be one, in excess of jurisdiction. The increase from now, is primarily on the basis that salary of the respondent - husband has increased and further, on account of march of time, it is necessary that the petitioner-wife also secures enhanced maintenance.

8] The aspect that the petitioner-wife has lived with the respondent-husband for hardly two or three months is a relevant aspect. It is possible that the petitioner-wife felt uncomfortable in living with the respondent's family, particularly, since the family comprises of two children from previous marriage and further even the mother-in-law was living with them. The allegation with regard to mother-in-law, does not appear to have been proved. The material on record, therefore, depicts an unfortunate situation. There is no point, therefore, in laying the entire blame upon the respondent-husband alone. The enhancement of maintenance to Rs.5000/- per month from today, will meet the interests of justice.

9] This petition is therefore, partly allowed. The respondent-husband is directed to pay maintenance to the petitioner-wife at the rate of Rs.5000/- per month with effect from 1 August 2016. Such maintenance amount to be paid on or before the 10th day of each

month, without fail. If there are any arrears, the respondent-husband to clear the same within a period of two months from today. If the arrears are not cleared or if there is any default in the matter of payment of maintenance, the petitioner-wife shall be entitled to institute execution proceedings before the appropriate forum.

10] The respondent-husband to pay an amount of Rs.10,000/- to the petitioner-wife towards litigation expenses, again within a period of two months from today.

11] Rule is partly made absolute with costs as aforesaid.

12] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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