

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.4855 OF 2015

Mahesh Kashinath Gaikwad & anr. .Petitioners

Vs.

Mrs.Rajashri Mahesh Gaikwad & anr..Respondents

Ms K.G.Sarangi, Advocate, for the Petitioners

Mr.L.S.Deshmukh, Advocate, for the Respondent
No.1

Mr.A.Kamkhedkar, APP, for the Respondent No.2 –
State

CORAM : REVATI MOHITE DERE, J.

DATE : 07.10.2016

P.C.

. Heard learned counsel for the parties.

2. Rule. Rule is made, returnable
forthwith with the consent of the parties and is
taken up for final disposal. Mr.Deshmukh waive
notice on behalf of Respondent No.1 and the
learned APP on behalf of Respondent No.2 –
State.

3. By this Petition, the Petitioners seek quashing and setting aside of the impugned order dated 02.03.2013, passed by the learned Additional Sessions Judge, Pune in Cri.Appeal No.448 of 2011.

4. Ms Sarangi, learned counsel for the Petitioners submits, that the maintenance awarded by the Appellate Court to the Respondent No.1 is exorbitant and is not justified, in the facts of the case. She submits that the Petitioner No.1 is jobless and has resigned on medical grounds from Government service. She further submits that the Petitioner No.1 is also required to pay an E.M.I. Of Rs.6,774/- per month towards Housing Loan, where the Respondent No.1 is staying with their two children. She submits that the Petitioner No.1 has no other source of income. According to the learned counsel, the Respondent No.1 is well qualified (B.Sc., B.Ed. Degree) and is working in a School

as a teacher. She submits that considering the aforesaid, the impugned order be quashed & set aside.

5. Learned counsel for the Respondent No.1 opposes the Petition. He submitted that the Petitioners have challenged the impugned order dated 02.03.2013, after almost two years and that there are no reasons spelt out in the Petition, justifying the said delay of two years in filing the Petition. He submitted that the Respondent No.1 is not working as is alleged by the Petitioner No.1. He submits that the said amount of Rs.15,000/- which is awarded by the Appellate Court, is towards maintenance for the Respondent No.1 and their children, aged 13 & 14 years. He submitted that the said amount awarded, is inadequate considering, the educational expenses of the children, who are studying in school. According to the learned counsel, the Petitioner No.1 has received all

consequential benefits, pursuant to his resignation. He submits that the Petitioner No.1 is in arrears of maintenance, to the tune of Rs.7,00,000/- till date.

6. Perused the papers. The Petitioner No.1 is Respondent No.1's husband. The Petitioner No.1 and the Respondent No.1 have two children, aged 13 & 14 years. It is not disputed that the said children are studying in a School. It appears that the aforesaid Petition was filed only after the Petitioner No.1 tendered his resignation. No grounds whatsoever, have been set out in the Petition justifying the delay of two years in filing the aforesaid Petition. The order impugned is an order by which interim maintenance was granted. There is no infirmity in the impugned order. The sum of Rs.15,000/-, awarded towards maintenance is for the Respondent No.1 and the two children, aged 13 & 14 years. No interference is warranted in

the impugned order in writ jurisdiction.

7. Accordingly, the Petition stands dismissed.

8. The trial, being Cri.Case No.136 of 2011 which is pending before the learned Judicial Magistrate F.C., Pimpri, Pune is expedited. The learned Judge shall make an endeavour to dispose of the case as expeditiously as possible. Parties to co-operate in the conduct of the trial.

9. Needless to state that the Respondent No.1 is at liberty to file an Execution Application for recovery of the arrears of maintenance. If such an Application is filed, the trial Court to decide the same forthwith.

10. It is made clear that the observations made herein are *prima facie*, and the trial Court

shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)