

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 419 OF 2016

Bushrabano w/o. Shaikh Imran,
Age 23 years, Occu. Nil,
R/o. C/o. Mhmd Kasam Musa Bagwan,
148, Joshi Peth, Jalgaon.
Tal. & Dist. Jalgaon.

....Petitioner.

Versus

1. The State of Maharashtra
2. Shaikh Imran Haji Akhbar Bagwan,
Age Major, Occu. Business,
R/o. Behind Nurani Masjid,
Shahu Nagar, Jalgaon,
Tq. & Dist. Jalgaon.

....Respondents.

Mr. Girish Nagori, Advocate for petitioner.

Mr. S.J. Salgare, APP for respondent/State.

Mr. A.G. Talhar, Advocate for respondent No. 2.

CORAM : T.V. NALAWADE, J.

DATED : 23rd January, 2017.

ORAL JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) The petition is filed to challenge the order made by learned Judicial Magistrate, First Class, Jalgaon in Criminal Misc. Application No. 308/2012 and also the judgment delivered by Sessions Court, Jalgaon in Criminal Revision Application No. 40/2014. The proceeding was filed before J.M.F.C. for

maintenance and the present petitioner, wife had claimed the maintenance at the rate of Rs.10,000/- p.m. The husband, respondent contested the matter. The J.M.F.C. granted the maintenance at the rate of Rs.2,000/- p.m. by order dated 18.1.2014. The Revisional Court has confirmed this order. Both the sides argued on the quantum only.

3) The submissions and the evidence show that there was licence issued by the Local Body, Jalgaon in favour of respondent husband to run spare parts shop and respondent was running the shop under the name and style as 'Kohinoor Spare Parts Shop'. He was selling auto spare parts. In view of these circumstances, by order dated 16.1.2017, this Court had directed the husband to produce some record like income tax returns or sales tax returns as such record must be only within the knowledge of husband. In response to this order, today only the zerox copy of intimation given by Local Body, Jalgaon with regard to cancellation of licence of shop came to be produced. This document shows that on 8.1.2015 after filing of the maintenance proceeding the husband applied to the Local Body for cancellation of licence of shop and licence came to be cancelled on 17.3.2015. When maintenance proceeding was pending, it can be said that only to create some record such step was taken by the husband. He has not come with any specific

case as to how he is earning his livelihood. There is allegation against him that he married second wife.

4) There is more record against the husband which is 7/12 extract in respect of agricultural land which shows that he is taking banana crop in the land. This document again shows that financial condition of the husband is quite sound. No record in respect of sale proceeds of the banana crop is produced by the husband at any time. Some record is there to show that one land is standing in the name of his mother and in one land, which is standing in the name of his father, banana crop is being taken. Parties are Muslims. In view of these circumstances, even if the record standing in the names of mother, father and brother is ignored, it can be said that the financial condition of the relatives of husband is quite sound and nobody is depending on the husband for the livelihood.

5) The learned counsel for husband submitted that in domestic violence proceeding filed under the Protection of Women from Domestic Violence Act, 2005, the Magistrate has made order of Rs.2,000/- for maintenance and order of Rs.2,000/- for rent in favour of present petitioner, wife and so, there is no need to increase the amount of Rs. 2,000/- awarded under section 125 of Criminal Procedure Code. Copy of the order

made in the proceeding filed under the Protection of Women from Domestic Violence Act is on the record and on the basis of this order, it can be said that this amount is in addition to the amount of Rs. 2,000/- awarded under section 125 of Cr.P.C. Thus, the wife will be entitled to get total amount of Rs. 6,000/- for her maintenance and for residence purpose. Considering the status of the parties and conduct of the husband, which is already mentioned, it can be said that the husband has concealed his real income. Due to these circumstances, this Court holds that the amount of maintenance awarded under section 125 of Cr.P.C. needs to be enhanced atleast by Rs.1,000/- to make it Rs.3,000/- p.m. Thus, the wife will be receiving total amount of Rs. 7,000/- p.m. under decisions of the aforesaid two proceedings.

6) In the result, the petition is allowed. The maintenance amount under section 125 of Cr.P.C. is increased to make it Rs.3,000/- p.m. The amount will be payable from the date of proceeding which was filed under section 125 of Cr.P.C.

Rule is made absolute in aforesaid terms.

[T.V. NALAWADE, J.]

ssc/