

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.  
BENCH AT AURANGABAD.**

**CRIMINAL WRIT PETITION NO. 475 OF 2016**

Vishwanath S/o Parashram Khambalkar,  
Age : 47 years, Occu. Service,  
R/o. At Post Wakodi, Tq. Kalamnuri,  
Dist. Hingoli.

... Petitioner

**VERSUS**

1. Prathmesh S/o. Vishwanath Khambalkar,  
Age : 15 years, Occu. Education,  
through Guardian Suvarna d/o Sheshrao Pole,  
R/o. PWD Quarters, Hingoli, Tq. and Dist. Hingoli.

2. The State of Maharashtra,  
through its Police Station, Hingoli,  
Tq. and Dist. Hingoli.

... Respondents

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Mr K. M. Nagarkar, Advocate for the petitioner  
Mr P. S. Agrawal, Advocate for respondent No. 1  
Mr S. J. Salgare, APP for respondent No. 2  
.....

**CORAM : A. M. DHAVAL, J.**

**DATE : 10<sup>TH</sup> NOVEMBER, 2017.**

**ORAL JUDGMENT:**

1. Rule. Rule returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at admission stage.

2. This petition is filed under article 227 of the Constitution of India to quash and set aside the order dt. 13.08.2015 passed by ld. JMFC, Hingoli granting maintenance of Rs. 4,000/- per month, which was confirmed by District and Sessions Judge, Hingoli vide order dt. 04.02.2016 in Cri. Revn. No. 34/2015, and for reduction of the maintenance amount.

3. Heard ld. advocate Shri. K. M. Nagarkar for the petitioner, Shri. P. S. Agrawal, ld. advocate for respondent no. 1 and Shri. S. J. Salgare, ld. APP for respondent No. 2/State.

4. Respondent No. 1 herein the son of petitioner, aged 15 years, had filed through his guardian mother Cri. M.A. No. 171/2014 u/s 125 of Cr.P.C. before the ld. JMFC, Hingoli, for maintenance of Rs. 5,000/- per month. There is no factual dispute that the petitioner has divorced his wife in 2004 and since then the present respondent no. 1 was residing with his wife. The wife of petitioner is serving as Police Constable. Respondent no. 1 claimed that the present petitioner holds irrigated agricultural land of 7 acres & 08 R at Wakodi, Tq. Kalamnuri and was earning Rs. 4.00 lakhs per annum therefrom. Besides, he was serving as a Gramsevak and was earning

Rs. 30,000/- per month while he was studying in 9<sup>th</sup> std. Hence, he claimed maintenance of Rs. 5,000/- per month.

5. Ld. JMFC, Hingoli recorded that, the present petitioner was getting salary of Rs. 22,941/- per month as a Gramsevak and his take home salary was Rs. 19,769/-. Besides he assumed that, there was agricultural income of Rs. 2,00,000/- per annum. Total income of petitioner was assumed to be Rs. 4,40,000/- per annum and the expenses of respondent no. 1 were assumed to be Rs. 8,000/- per month. The ld. trial Judge held that, mother and father of the respondent no. 1 should equally share the expenses of him. Hence, he awarded the maintenance amount to the tune of Rs. 4,000/- per month from the date of application dt. 05.07.2014. In Cri. Revn. No. 34/2015, the Addl. Sessions Judge refused to interfere with the order of ld. JMFC and dismissed the revision.

6. It must be noted here that, the challenge to the impugned orders cannot be at par with the appellate powers or the powers of revision as no second revision is maintainable. The powers under article 227 can be invoked if there is serious illegality resulting into miscarriage of justice.

7. After hearing the parties, I find following facts material.

- (i) The mother of respondent no. 1 has taken divorce and was serving as Lady Police Constable and getting salary of Rs. 33,000/- per month. There was no liability on her except her son.
- (ii) The petitioner was earlier agriculturist. Later on, he joined as a Gramsevak. His mother, new wife and new wife's son are dependent upon him.

8. I agree with the submissions that the father cannot avoid his liability to maintain his son even after divorce with his first wife on the ground that the son is residing with his mother. I find it unnecessary to interfere with the factual findings recorded by the ld. trial Judge and later same were confirmed by Sessions Judge. However, I find that the approach of the ld. JMFC as well as the Sessions Judge in determining the quantum is erroneous. The mother of the child was earning Rs. 33,000/- per month and there was no other liability except her son. On the other hand, the petitioner is getting salary income of Rs. 19,769/- plus agricultural income and he has to maintain his mother, new wife and son studying that time in 2<sup>nd</sup> std. The ld. trial judge considering the higher expenses required for education, assumed that respondent

no.2 would be requiring Rs. 8,000/- per month. It is a matter of common sense that the education is available at different economical levels right from free of charge to Rs. 1.00 lakhs per month. The child has to spend for his education as per financial status of his parents. Besides at the time of imposing the liability on parents, the ld. trial Judge should have considered the difference in the income of father and mother as well as the difference in the liabilities thereon. There is admission that, the petitioner was spending Rs. 2,000/- per month for his son from 2<sup>nd</sup> wife.

9. Considering the facts, I find that, it was wrong legal approach to call upon the petitioner to share 50% expenses of his son. Looking to the facts of the case, I hold that it is necessary to modify the order and reduce the maintenance allowance from Rs. 4,000/- to Rs. 3,000/- per month. Hence, the following order.

**ORDER**

- (i) The Criminal Writ Petition is allowed.
- (ii) The impugned order of maintenance granted by ld. JMFC, Hingoli at Rs. 4,000/- in Cri. M.A. No. 171/2014 and confirmed by the Addl. Sessions Judge, Hingoli in Cri. Revn. No. 34/2015, is

modified and maintenance is reduced to Rs. 3,000/- per month from the date of application i.e. 05.07.2014.

9. Rule is made absolute in the above terms with no order as to costs.

**[ A. M. DHAVALA ]**  
**JUDGE**

sgp