

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

WRIT PETITION NO.830 OF 2015

Dnyaneshwar Madhukar Jagadale : Petitioner.
Versus
Sou. Swati Dnyaneshwar Jagadale & ors. : Respondents.

Mr. Priyal G Sarda for the Petitioner.
Mr. Padmakar Garad for the Respondents.

CORAM : R. M. SAVANT, J.
DATE : 20th February 2017

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 13/01/2015 passed by the learned Additional Sessions Judge, Solapur by which order the Revision Application filed by the Petitioner herein came to be dismissed and resultantly the order dated 19/11/2012 passed by the learned JMFC, Solapur in Criminal Misc. Application No.660 of 2012 came to be confirmed.

2 The Petitioner and the Respondent No.1 were married on 09/05/2007. The Respondent No.1 and the Petitioner are estranged and living separately at present. The Respondent No.1 filed the instant Misc. Application under Section 125 of the Criminal Procedure Code claiming maintenance for herself and the two children born out of the said wedlock. The children are a girl who is 8 years of age and a boy who is 5 years of age at present. The

Application of the Respondent No.1 was founded on the fact that the Respondent No.1 had left the matrimonial house on account of the ill-treatment meted out to her. It was the case of the Respondent No.1 that the Petitioner herein is working as a teacher in one Wamamnrao Haibatrao Deshmukh School at Devghar, Tal. Lonawala since 2005 and his net salary was Rs.20,000/- per month. The Respondent No.1 therefore claims maintenance in the sum of Rs.6,000/- per month for herself and for the two children.

3 It seems that the notice of the application filed by the Respondent No.1 was served upon the Petitioner who appeared in the said case on 12/09/2012 by filing vakalatnama, however, did not file his written statement nor did he produce any evidence in spite of the costs imposed upon him by the Court of the learned JMFC.

4 The learned JMFC having regard to the fact that the Petitioner was working as a teacher and considering the fact that the Respondent No.1 is having responsibility of two children deemed it appropriate to grant maintenance in the sum of Rs.2000/- to the Respondent No.1 and in the sum of Rs.1500/- to each of the children thereby making total maintenance in the sum of Rs.5000/-.

5 The Petitioner aggrieved by the said order dated 19/11/2012

passed by the learned JMFC, Solapur in Misc. Application No.660 of 2012 challenged the same by filing a Revision No.151 of 2013. The learned Sessions Judge having regard to the facts as afore-stated did not deem it appropriate to interfere with the order passed by the learned JMFC granting maintenance to the extent mentioned in the said order dated 19/11/2012 and accordingly dismissed the Revision by the impugned order dated 13/01/2015.

6 The learned counsel for the Petitioner sought to contend that the application was adjudicated upon by the JMFC in the absence of any material produced by the Petitioner and therefore prayed for the matter being relegated back to the learned JMFC for a de-novo consideration of the application. The learned counsel for the Petitioner would also submit that the Petitioner is also questioning the paternity of the children.

7 In my view, it is not possible to accept the contentions of the learned counsel for the Petitioner. As indicated herein above, the Petitioner had appeared in the proceedings on 12/09/2012 before the learned JMFC by filing vakalatnama and in spite of the opportunity being granted did not file his written statement. Hence the Petitioner has to blame himself for not appearing in the matter. It is also required to be noted that the Petitioner had carried the matter in Revision to the Sessions Court against the order passed by the learned JMFC. The Sessions Court also did not find any reason to interfere

with the order passed by the learned JMFC having regard to the quantum of the maintenance granted by the learned JMFC. In so far as the issue of paternity raised by the Petitioner is concerned, it is required to be noted that the Petitioner has not filed any Petition for divorce on the ground of adultery against the Respondent No.1 and hence prima facie the said contention has no merit.

8 In my view, the amount of maintenance granted by the learned JMFC, Solapur, as confirmed by the learned Additional Sessions Judge, Solapur, cannot be said to be excessive and exorbitant for this Court to interfere with in its writ jurisdiction. The above Writ Petition is accordingly dismissed. It is expected of the Petitioner that he would clear the arrears of maintenance within six weeks from date. The Respondent No.1 is allowed to withdraw the amount of Rs.10,000/- deposited in this Court.

[R.M.SAVANT, J]