

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2529 OF 2013**

Yashwant Appa Lande

..Petitioner

Vs.

Vijaykumar Yashwant Lande

..Respondent

Mr. R. H. Patil for the Petitioner

Mr. N. Y. Chavan for the Respondent No.1

CORAM : R. M. SAVANT, J.

DATE : 6th JANUARY, 2017

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 5-12-2012 passed by the Learned Additional Sessions Judge, Sangli, by which order the Revision Application being Criminal Revision Application No.85 of 2012 came to be allowed and resultantly the Judgment and Order dated 26-12-2011 granting maintenance @ Rs.800/- per month to the Petitioner came to be set aside.

2 The Petitioner herein is the father of the Respondent. The Petitioner claims maintenance from the Respondent on the ground that the Petitioner is not in a position to maintain himself and that he is indebted in view of the fact that he had to take loan for undergoing two operations. It is the case of the Petitioner that the Respondent in the partition decree has got 2/3rd share of the property along with his mother. The application filed by the

Petitioner was resisted on behalf of the Respondent by filing a reply. It was the case of the Respondent that both he and his mother were virtually abandoned by the Petitioner as a consequence of which the Respondent was brought up by his maternal grandfather. It was the case of the Respondent that the Petitioner is engaging the Respondent and his mother in one litigation after other. It was the case of the Respondent that his mother had filed an application for maintenance against the Petitioner which application came to be allowed which order is not being complied with by the Petitioner as a consequence of which his mother has filed an application for execution. It was also the case of the Respondent that in the Suit filed a partition decree came to be passed as a consequence of which 1/3 rd share of the property went to the Petitioner. It seems that the Petitioner without waiting for final decree has sold of his 1/3rd share immediately after the preliminary decree was passed in the said partition Suit. The same has been done to avoid payment of maintenance to the mother of the Respondent. It was therefore the case of the Respondent that the Petitioner is in position to maintain himself and no maintenance could therefore be directed to be paid by him.

3 The Trial Court adjudicated upon the application filed by the Petitioner and recorded a finding that the Respondent herein has source of income as he has agricultural property in his name from which he must be deriving income and therefore held that the Petitioner would be entitled to

maintenance @ Rs.800/- per month from the Respondent. The Respondent carried the matter by way of a Revision before the Sessions Court. As indicated above the Sessions Court has by the impugned order dated 5-12-2012 has allowed the Revision Application and has resultantly set aside the order dated 26-12-2011 passed by the Learned JMFC. The Learned Sessions Judge has held that the facts as recorded disclose that the Petitioner is engaging in litigation one after the other. The Learned Sessions Judge has referred to the fact that the Petitioner had also filed a Second Appeal in this court in respect of the partition decree, which Second Appeal came to be dismissed by this Court. The Learned Sessions Judge also alluded to the fact that though the application for maintenance filed by the mother of the Respondent was allowed, the Petitioner is not complying with the said order which has resulted in the mother of the Respondent filing the application for execution. The Learned Sessions Judge from the said fact drew an inference, that since the maintenance has been granted to the mother of the Respondent, the same implies that the Petitioner is a person of means and could pay the maintenance to the mother of the Respondent. The Learned Sessions Judge also observed that though it is the case of the Applicant that he has undergone two operations he has not mentioned the dates, and therefore the said operations could not be related to his alleged indebtedness. The Learned Sessions Judge held that the aforesaid facts have not been taken into consideration by the Learned JMFC and having regard to only the age of the

Petitioner has granted maintenance of Rs.800/- p.m. The Learned Sessions Judge lastly observed that even if the Respondent has sufficient means yet the Applicant i.e. the Petitioner herein has failed to prove that he is unable to maintain himself.

4 In my view, the Learned Sessions Judge has for cogent reasons set aside the order passed by the Learned JMFC, the said reasons can be said to be germane to an application filed under Section 125 of the Criminal Procedure Code. Hence no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]