

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

WRIT PETITION NO.4329 OF 2016

Nilesh Ravindra Nikalje

...Petitioner

Versus

Sou. Priya Nilesh Nikalje & Ors.

...Respondents

.....

Mr. Prashant Daulatrao Patil for the Petitioner.

Mr. Prashant Mohan Patil for the Respondent No.1.

Mr. P.H. Gaikwad-Patil, APP for the Respondent No.3-State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 28th SEPTEMBER, 2017.

P.C.:-

By this Petition, the Petitioner herein has challenged the judgment dated 24.10.2016 whereby the learned Judge of Family Court, No.5, Pune has directed the Petitioner-husband to pay to the Respondent -wife maintenance of Rs.3,500/- p.m. and Rs.3,000/- p.m. to the Respondent No.2-child from the date of filing of the application i.e. 18.3.2014.

2. Heard Mr. Prashant Daulatrao Patil, the learned counsel for the Petitioner and Mr. Prashant Mohan Patil, the learned counsel for the Respondents. I have perused the records and considered the submissions advanced by the learned counsels for the respective

parties.

3. The learned counsel for the Petitioner has sought reduction of maintenance mainly on the ground that the Petitioner has no capacity to pay the amount as directed by the learned Judge of the Family Court. In this regard, it would be appropriate to refer to the findings recorded by the learned Judge in paragraph 23 of the impugned judgment. The learned Judge after considering the evidence of the respective parties held that the Petitioner was working in Alkem Laboratories Pvt. Ltd. and that he had admitted that his gross salary in the month of July-2013 was Rs.23,827/-and net salary is Rs.22,807/-. The Petitioner had also admitted that he has resigned from Alkem Laboratories Pvt. Ltd. and that he was employed in Glenmark Company wherein his gross salary was Rs.21,340/-. The learned Judge has observed that though the Petitioner has claimed that he was relieved from Glenmark Company from 1.9.2014 his Bank records clearly show that there were regular deposits in his saving accounts. The learned Judge has given the details of the amount so deposited in the account of the Petitioner. The Petitioner had not disclosed to the Court the source of the said income and in these circumstances, the learned Judge had observed that the Petitioner had not come before the Court

with clean hand and that he had suppressed his actual income. Before awarding maintenance to the Respondents, the learned Judge had taken into consideration the regular income of the Petitioner and has held that the Petitioner has capacity to pay the maintenance.

4. In assessing the quantum of compensation, the learned Judge has observed that the Respondent No.1 is unemployed and has no source of income and the minor child is presently of four years of age and is in custody of the Respondent No.1 since birth. Considering the age, needs and reasonable wants of the wife and the child, particularly education, medical and other expenses of a growing up child, coupled with steep rise in cost of living, the amount so awarded cannot be said to be exorbitant.

5. At this stage, the learned counsel for the Petitioner tendered across the Bar a salary certificate for the month of August-2017. Relying upon the said certificate, he submits that the Petitioner is now employed in Chola Business Services Ltd. and is drawing gross salary of Rs.14,500/-. The learned counsel for the Respondents disputes the genuineness of the said salary certificate. In the circumstances, the quantum of maintenance cannot be reduced on the basis of the

certificate produced by the learned counsel for the Petitioner in the course of the argument.

6. In the light of above facts and circumstances, I do not find any merit in the Petition. The Petition is therefore, dismissed. The amount deposited by the Petitioner in the trial court pursuant to the order of this Court is ordered to be paid to the Respondents.

(ANUJA PRABHUDESSAI, J.)