

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

CRIMINAL WRIT PETITION NO.242 OF 2007

Sanjay s/o. Raosaheb Chavan,
Age. 28 years, Occ. Agriculture,
R/o. Manjri, Tq. & Dist. Latur. ... Petitioner

VERSUS

Manisha w/o. Sanjay Chavan,
Age. 24 years, Occ. Service,
R/o. Manjri, Tq. & Dist. Latur,
A/p, Nath Nagar, Latur. ... Respondent

Mr.Nitin Jagadale h/f Mr.V.D. Salunke, Advocate for
the petitioner
Mr.M.S. Shaikh h/f Mr.S.S. Deshmukh, Advocate for the
respondent

CORAM : S.M.GAVHANE, J.
RESERVED ON : 19.06.2018
PRONOUNCED ON : 27.06.2018

JUDGMENT: -

1. By this petition under Article 227 of the Constitution of India the Petitioner/husband has prayed to quash and set aside the order dated 18.12.2006 passed by the learned Ad-hoc Addl. Sessions Judge, Latur in Criminal Revision No.76 of

2006 directing him to pay monthly maintenance of Rs.600/- to the respondent/ wife from the date of application i.e. 27.05.2005.

2. By order dated 22.09.2008 rule was issued and interim relief in terms of prayer clause "C" was granted pending the hearing and final disposal of this Writ Petition.

3. Facts which are relevant to decide this petition are that the respondent/wife had filed Criminal MA No.279 of 2005 u/s 125 of the Criminal Procedure Code against the petitioner in the Court of JMFC, Latur, claiming monthly maintenance of Rs.1,500/- each for herself and her son applicant No.2, contending that her marriage with the petitioner was solemnized on 04.05.1999 and from the said wedlock applicant No.2 Pawan was born. The petitioner, his parents and sister abused, starved and caused mental cruelty to her, saying her to bring Rs.50,000/- from her parental house to start grocery shop and thus drove her out of the house after

beating her and thus refused and neglected to maintain her and her son though the petitioner is having sufficient means to maintain them and she was unable to maintain herself and her son. Said application was partly allowed by the JMFC, Latur by order dated 06.05.2006 and monthly maintenance of Rs.500/- from the date of application i.e. 27.05.2005, was granted to applicant No.2 son only and claim of the respondent/wife was rejected.

4. Aggrieved by the above order of rejecting her claim of maintenance, the respondent/wife had filed Criminal Revision No.76 of 2006 in the Sessions Court at Latur, which was allowed by the Ad-hoc Addl. Sessions Judge, Latur by judgment and order dated 18.12.2006 directing the petitioner/husband to pay monthly maintenance of Rs.600/- to the respondent/wife/original applicant No.1 from the date of application i.e. 27.05.2005 with further direction to him to pay costs of Rs.600/- through out to her on setting aside the order impugned in the said

revision.

5. It is the above said order dated 18.12.2006 passed in the Criminal Revision Application is impugned in the present Writ Petition by the petitioner/husband mainly on the grounds that he never neglected or refused to maintain the respondent and her minor son. The respondent herself left his company. He never ill-treated the respondent for unlawful demand as alleged in the application claiming maintenance. The claim of the respondent for maintenance was rightly rejected by the learned JMFC, as the respondent is Government employee i.e. Anganwadi Sevika/attendant and getting income of Rs.1,500/- per month and the learned JMFC had rightly observed that the respondent is able to maintain herself. It is contended that Revisional Court has wrongly observed that the respondent is entitled to monthly maintenance of Rs.600/- from the date of application.

6. Mr. Nitin Jagdale, learned counsel appearing for the petitioner/husband inviting my attention to the Exh. "B" order dated 30.06.2004 and Exh. "C" list of Anganwadi Madatnis submitted that, respondent is serving as Anganwadi Madatnis/attendant since 2004. Moreover, learned counsel on inviting my attention to the order dated 22.09.2008 of this Court submitted that it is not in dispute that the respondent/wife is working as Anganwadi Madatnis and at the relevant time of said order her salary was around Rs.2,000/- per month. Thus, according to learned counsel, respondent was able to maintain herself. He further submits that, petitioner only possesses 30 R land as mentioned in 7/12 extract (Exh. "A") and therefore it cannot be said that petitioner/husband has sufficient means as held by the Revisional Court. Lastly, it was submitted on behalf of the petitioner that in the above circumstances when the respondent was able to maintain herself and the petitioner has no sufficient means, the impugned order directing the petitioner to pay monthly maintenance of Rs.600/- to the

respondent/wife is not legal and proper and it deserves to be set aside by allowing the Writ Petition. Learned counsel has not made submission disputing other findings recorded by the Revisional Court.

7. Mr.M.S. Shaikh, learned counsel appearing for the respondent/wife on the other hand submitted that petitioner has neglected to maintain the respondent, though, she is unable to maintain herself and the petitioner is having sufficient means. It is submitted that documents Exhs. 33 and 34 i.e. Exhs. "B" and "C" produced with the petition by the petitioner do not specifically show that, respondent Manisha w/o Sanjay Chavhan is working as Anganwadi Madatnis. Even if it is said that she is working as Anganwadi Madatnis she gets only Rs.740/- per month as a honorarium as per order Exh. "B" dated 30.06.2004. Further, it is submitted that post of Anganwadi Madatnis/attendant is of temporary nature and therefore according to learned counsel appearing

for the respondent, it cannot be said that the respondent/wife has permanent and regular source of income to state that she is able to maintain herself. Thus, according to the learned counsel the Revisional Court has rightly awarded monthly maintenance of Rs.600/- from the date of application to the respondent/wife and hence, there is no reason to interfere with the impugned order in the writ jurisdiction of this Court.

8. To support his submission that the petitioner is rightly directed to pay maintenance to the respondent/wife, learned counsel appearing for the respondent has relied upon the decision of the Hon'ble Supreme Court in the case of Shailja & Anr. Vs. Khobbanna in Criminal Appeal Nos.125-126 of 2017 dtd. 18.01.2017. In the said case the Family Court had directed payment of maintenance for an amount of Rs.15,000/- per month to the appellant-wife and Rs.10,000/- per month to the son. The High Court while considering the correctness of said order of

the Family court did not accept the contention of the respondent/husband that the appellant-wife was working. All that was held was that the appellant-wife was capable of earning and therefore maintenance was reduced to an amount of Rs.6,000/- from Rs.15,000/- for her and Rs.6,000/- from Rs.10,000/- for her son. In the appeal the Hon'ble Supreme Court observed that whether the appellant No.1 is capable of earning or whether she is actually earning are two different requirements and held that merely because she is capable of earning is not sufficient reason to reduce the maintenance awarded by the Family Court. Accordingly order passed by the High Court was set aside and that of the Family court was restored.

9. I have carefully considered the submissions made by the learned counsels appearing for the petitioner and the respondent. With their assistance, I have perused the impugned judgment and order. Here it may be mentioned that though the record and proceeding was called from the Revisional Court, the

Revisional Court on 15.11.2016 submitted only part "A" i.e. judgment in Criminal Revision No.76 of 2006 and it is reported that parts "C" and "D" have been destroyed.

10. In view of the submissions made by the learned counsels appearing for the parties, the only aspect which is required to be considered is whether the respondent/wife, is unable to maintain herself and the Revisional Court was justified in directing the petitioner/husband to pay her maintenance as per the impugned order?

11. As recorded in the order dated 22.09.2008 of this Court, there is no dispute that the respondent/wife is working as Anganwadi Madatnis. Considering the same, it can be said on the basis of Exh."B" order that said order is regarding appointment of respondent/wife, when she was not married and therefore, her name in said order is mentioned as Smt. Khandagale Manisha Chandrakant.

This order shows that the respondent was appointed as Anganwadi Madatnis and nature of the said appointment was temporary basis and on honorarium of Rs.740/- per month. Therefore, it can be said that name at Sr.No. 65 in the list of Anganwadi Madatnis Exh. "C" is of the respondent.

12. In paras 37 and 38 of the impugned judgment, the learned judge has referred the evidence of witness No.4-Kashinath (Exh.30) of petitioner and evidence regarding the appointment order and list Exhs.33 and 34 i.e. exhibits "B" and "C" filed in the petition. Said paragraphs 37 and 38 are reproduced as under:

"37. The witness No.4 at Exh.30 Kashinath has deposed that the applicant is serving as attendant in Anganwadi at Latur since 03.07.2004 and getting honorarium upto Rs.740/- per month. He has produced the documents at Exhs. 33 and 34. He has admitted in his cross examination that, the name of Manisha is not shown in the Yadi at Exh.34 of Anganwadi Sevika. Manisha Sanjay Chavan is not working as Anganwadi Sevika or Anganwadi Attendant. The post of Anganwadi attendant is of temporary nature. No

pay is provided for the post of Anganwadi attendant. The said post is getting honorarium from scheme of Central Government and does not get the facilities of Government Servant. It is assigned duty of cooking food, sweeping, etc. Mansiha w/o Sanjay Chavan is not working in Anganwadi Latur.

38. Thus, it is seen from the above evidence of both the sides that, no name of the applicant as Manisha w/o Sanjay Chavan is seen from the list at Exh. 34 or even office order at Exh. 33. Moreover, as per the evidence of DW.No.4 Kashinath, the said post of attendant is temporary in nature. A person can be removed from that post at any time. Moreover, the said post is getting honorarium up to Rs.740/-. Even though we presume that the applicant No.1 is serving as alleged by the opponent, then also it cannot be said that, though she is earning something for her livelihood, she is not disentitled to get the maintenance allowance as per the provisions of Section 125 of the Criminal Procedure Code. The said honorarium is also not sufficient to maintain the applicant No.1."

13. From the above paragraphs it is clear that post of Anganwadi Attendant on which the respondent was appointed on 03.07.2004 is of temporary nature and respondent was getting honorarium of Rs.740/- per

month when appointment Exh."B" was issued. So also, it can be said that Anganwadi Madatnis gets honorarium from the scheme of Central Government and said post has no facilities of Government servant. Moreover, it appears that a person can be removed from the said post at any time. Therefore, I find that respondent/wife who is appointed as Anganwadi Madatnis cannot be said to be in permanent service. As per order dated 22.09.2008 of this Court it was noted that at the relevant time of said order salary of Anganwadi Madatnis was around Rs.2000/- per month. However, when appointment of respondent was temporary as per order Exh."B" it cannot be said that she has permanent source of income so as to say that said income is sufficient and she is able to maintain herself. It appears that the learned Revisional Court referring the decisions in the case of Dnyanoba @ Dnyandeo Mahadeo Kamble Vs. Sow.Mukta Dnyanoba Kamble, 2002 Cri.L.J.,4459 of this Court and in the case of Ramavtar Sharma Vs. Santosh 2001 Cri.L.J.,2650 (Rajasthan High Court) observed that

income of the respondent cannot to said to be sufficient to maintain herself and she cannot be denied maintenance on the ground that she is earning. As regards sufficient means to the petitioner, in the impugned judgment the learned Judge has after referring 7/12 extract of the land and the evidence of the petitioner, observed that petitioner is having 30 Guntha land and so also he does labour work and therefore on holding that the petitioner is having sufficient means, awarded monthly maintenance of Rs.600/- to the respondent. No fault can be found with the said finding of the Court because the petitioner has income from the land besides his income from labour work.

14. For the foregoing reasons, I hold that the respondent/wife is unable to maintain herself and therefore the Revisional Court was justified in directing the petitioner/husband to pay her maintenance as per the impugned order. If according to the petitioner the respondent is in permanent

service as Anganwadi Madatnis and is having regular income so as to disentitle her to claim maintenance he can approach the concerned Court and show how she is not entitled to maintenance. He can request the Court to alter the maintenance amount by filing appropriate proceeding. Thus, having regard to the circumstances present in the case and the evidence relied upon by the parties which is considered by the Revisional Court when the Revisional Court is justified in directing the petitioner to pay maintenance to the respondent, there is no reason to exercise writ jurisdiction to quash and setaside the impugned order, as requested by the petitioner. Therefore, there is no merit in the Writ Petition. Accordingly, the same is dismissed. Rule is discharged. Parties shall bear their own costs.

[S . M . GAVHANE , J .]