

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 338 OF 2015

Santosh s/o Tejerao Jadhav,
 Age : 37 years, Occ: Business,
 R/o Hindavi Motors, Near Datta Mandir,
 Biloli Road, Narsi, Tq. Naigaon,
 Dist. Nanded. ... **Petitioner**

Vs.

1. The State of Maharashtra,
 Through Protection Officer,
 Tahsil Office, Ardhapur.
2. Kalpana w/o Santosh Jadhav
 Age: 30 years, Occ: Household,
 R/o at present Kamtha (Bk)
 Tq. Ardhapur, Dist. Nanded. ... **Respondents**

Mr. Anilkumar B. Dhongade, Advocate for the Petitioners.
 Mr. B.V. Virdhe, APP for Respondent-State.
 Mr. A.M. Gaikwad, Advocate for Respondent No. 2.

CORAM : MANGESH S. PATIL, J.
DATE : 26.07.2018

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally.

2. The husband has moved this writ petition impugning the order of dismissal passed by the learned Additional Sessions Judge in Criminal Appeal No. 5 of 2013 preferred under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the D.V. Act), thereby confirming the interim maintenance

granted under Section 23 of that Act by the J.M.F.C., Ardhapur in favour of the respondent nos. 1 and 2 herein @ Rs.20,000/- per month in a proceeding initiated under Section 12 of that Act.

3. The learned advocate for the petitioner husband submits that the quantum of interim maintenance fixed by the learned Magistrate and confirmed by the learned Additional Sessions Judge is exorbitant and grossly disproportionate to the income that was being earned by the petitioner. The income has been arrived at on the basis of surmises and conjectures. They have misdirected themselves by only taking in to account the need of the son simultaneously ignoring the actual income and ability of the petitioner to pay it. Though there is a consistent finding, the observations and the conclusions are grossly erroneous, perverse and arbitrary.

4. He would further point out that though the receipt was placed on record by the respondents to show that the respondent no.1 was paying huge money as a school fees for her son, in fact no such fees was paid at all and that has been transpired when an enquiry was made with the concerned school. Thus, according to the learned advocate the respondents have resorted to forged receipt to claim the benefit.

5. The learned advocate would further submit that though the petitioner was having an agency of a two-wheeler, since thereafter it has been terminated. Even if the income from the agency is taken in to

consideration, still quantum of interim maintenance fixed was on a higher side. Even in respect of agricultural land, only by referring to the nature of crops that were being grown, the income has been assumed to be sufficient to provide interim maintenance when it is not the fact. He would further point out that, in fact due to hailstorms and drought, a paltry sum of Rs.7,000/- or Rs.4,000/- have been awarded to the petitioner by the State Government by way of aid in the year 2014 and 2015 and thus he would submit that ignoring all these facts and circumstances the learned Magistrate has awarded interim maintenance and illegally confirmed by the learned Additional Sessions Judge may be brought down.

6. The learned advocate for the respondents strongly opposes the petition. He submits that there is a consistent finding of fact by the two Courts below and this Court may not re-appreciate the evidence in a writ jurisdiction so as to arrive at a different figure and quantum of the the interim maintenance. He would point out that the petitioner has six acres of land in which cash crops have been yielded. Though there could have been drought or hailstorms that is not a consistent phenomena. There are no dependents on him. Besides he has been earning handsomely from his business as a two-wheeler agent of a renowned company. Taking in to account the need of the respondents coupled with the income being derived by the petitioner from the business and agriculture, the assessment made by the learned Magistrate and

confirmed by the Sessions Court that his income is around Rs.40,000/- per month and the need of the respondents is to the tune of Rs.20,000/- per month is unassailable. It cannot be said that the observations and the conclusions drawn by the learned Magistrate in arriving at such a conclusion was either perverse, arbitrary or capricious which could have enabled the learned Additional Sessions Judge to intervene. The writ petition may be dismissed.

7. At the outset, it is necessary to note that since it is only an interim maintenance that has been fixed by the Magistrate and still the main proceeding is to be decided, the assessment of the income of the petitioner and the need of the respondents can only be assessed by resorting to some guess work by taking in to account whatever material that was available with the Magistrate.

8. By referring to the extent of land and the nature of the crops that were being grown, the learned Magistrate had concluded that the petitioner was in good economical condition but even a rough assessment as to the agricultural income that was being received by him was not made by the Magistrate.

9. As regards the income from the automobile agency he has referred to the figures based on the income tax returns. He has noted that in the year 2007-2008 his income was Rs.86,860/- and the next year it was Rs.1,44,995/-, a year thereafter it was Rs.1,26,670/- and in

the year 2010-2011 it was just about Rs.1,50,000/-. It also appears that on the basis of such increase in the income every year perhaps the Magistrate had perceived that it would keep on increasing even thereafter. Now the petitioner has produced a certificate issued by the concerned company (Exhibit-E) in this writ petition showing that he had received a commission of Rs.3,35,000/- in the year 2010-2011 and Rs.2,43,750/- in the year 2011-2012. But then simultaneously, the petitioner has also produced on record an intimation about termination of agency dated 28.02.2015 (Exhibit-H) showing that his agency stood terminated w.e.f. 22.07.2015. Though the learned advocate for the respondents vehemently disputes this fact and submits that he still continues with the agency, at this juncture there is no material to substantiate this stand of the learned advocate. Be that as it may, the fact remains that it is only subsequent to the order passed by the Magistrate and the appeal preferred by the petitioner was dismissed that the agency seems to have been terminated. If at all that is a fact, the petitioner may have his own remedies to get the maintenance awarded to the respondents curtailed. Since it is only a subsequent event no comment can be made on that. It would be apposite to decide the rights between the parties as on the date on which the Magistrate fixed the interim maintenance.

10. Thus, though it was inevitable for the Magistrate to have resorted to some guess work being an interlocutory stage to arrive at

some conclusion as regards the income of the petitioner, even accepting the aforementioned figures and even taking a rough estimate of agricultural income that was being received by him, the conclusion of the Magistrate that he was earning around Rs.40,000/- per month is certainly exorbitant. In terms that would come to an annual income of Rs.4,80,000/- on the date of passing of the order on 15.01.2013.

11. The learned Sessions Judge has also seems to have overlooked this aspect and has readily confirmed it by dismissing the appeal. Taking into account the fact that in fact he was dealing with the impugned order in appeal, he should have arrived at his independent conclusion on facts. That having not been done, the income assessed by the learned Magistrate being unreasonable and is not borne out from the material that was available before him and the failure of the learned Additional Sessions Judge in arriving at his own conclusions about the income of the petitioner, in my considered view, this Court has to intervene in exercise of the writ jurisdiction.

12. At this juncture, I am surprised as to how, though the original matter has been lodged in the year 2011, for last almost seven years it has not been disposed of finally and is still lingering. Be that as it may, taking in to account the over all conspectus of the matter and the material on record, in my considered view it would be just and proper to fix the amount of interim maintenance @ Rs. 10,000/- per month from

the date of the application i.e. 05.10.2011. The impugned orders of the Magistrate and the one passed by the learned Additional Sessions Judge stand modified to that extent. The writ petition is partly allowed.

13. The rule is made absolute in above terms.

(MANGESH S. PATIL, J.)

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