

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

CRIMINAL WRIT PETITION NO.1304 OF 2017

Pravin S/o Devram Rathod,
Age : 28 years, Occu.: Service,
R/o Roopalchatanda, Dhangarwadi,
Manikdaundi, Taluka-Pathardi,
District Ahmednagar.

... **Petitioner**

Versus

1. Surekha Pravin Rathod,
Age : 24 years, Occu. : Tailoring Work,
R/o Kakaddara, Alhandwadi,
Taluka : Pathardi,
District Ahmednagar.

2. Chaitali Pravin Rathod,
Age : 3 years, Occu.: Nil,
R/o Kakaddara, Alhandwadi,
Taluka : Pathardi,
District Ahmednagar.

... **Respondents**

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Mr. A.T.Kanawade, Advocate for Petitioner.
Mr. A.G.Ambedkar, Advocate for Respondents.

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CORAM : MANGESH S. PATIL, J.

DATED : 4th June, 2018

ORAL JUDGMENT :-

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

2. The petitioner is impugning the order passed by the learned Additional Sessions Judge, Ahmednagar in Criminal Revision No.200 of 2016 dated 18.08.2017, whereby a challenge to the order passed by the learned 2nd Judicial Magistrate First Class, Pathardi in Miscellaneous Criminal Application No.195 of 2015 dated 11.11.2016, granting maintenance under Section 125 of the Cr.P.C. to respondent Nos.1 and 2 @ Rs.4,000/- and Rs.2,000/- per month respectively was rejected.

3. The learned advocate for the petitioner vehemently submits that the learned Magistrate and the learned Additional Sessions Judge have not considered the evidence in the proper perspective. The petitioner is serving as a Conductor in Pune Municipal Corporation and has been earning a gross salary of Rs.18,860/-. His take home pay is barely Rs.13,068/-. He has to maintain his aged parents. Besides, he has been staying in a rented premises at Alandi, Pune. There is no income from agricultural land which is a joint family property and considering his monthly expenses he is

not in a position to pay maintenance to the respondents at the rate granted by the learned Magistrate. The learned advocate would then submit that subsequent to passing of this order even the respondents have been granted ad-interim maintenance in a proceeding instituted by them under the Hindu Marriage Act. Even that amount deserves to be factored in the maintenance awarded to the respondents in the present proceedings.

4. The learned advocate for the respondents vehemently opposes the petition. He submits that the impugned orders have been passed after taking into account the evidence on the record and drawing necessary inference by resorting to the provisions of the Indian Evidence Act. There is ample evidence about the petitioner having neglected the respondents. The income of the petitioner has also been taken into account while awarding the maintenance @ Rs.4,000/- and Rs.2,000/- per month. There are concurrent findings of facts by the two courts below which may not be interfered with and the petition may be dismissed.

5. Admittedly, there are concurrent findings of facts by the two courts below as regards the petitioner having neglected the respondents and about his income. Even in this petition it has been specifically mentioned that his gross salary is 18,860/- and his take home pay is Rs.13,068/-.

6. Apart from the above state of affairs, even the learned advocate for the petitioner has tendered across the bar a salary slip of the petitioner for the month of December-2017 wherein his gross pay reads as Rs.20,593=87. Though the deductions are shown to be Rs.6,071/-, a contribution towards provident fund is Rs.2,120/- and that of the premium of the insurance policy is to the tune of Rs.3,439/-. These being not the statutory deductions, in my considered view, the petitioner is not entitled to seek any benefit from such deductions. Thus, even now, going by the calculations, his net salary would be around Rs.19,000/- to 20,000/- per month. As against this, he has been directed to pay an amount of Rs.4,000/- to Respondent No.1 and Rs.2,000/- to Respondent No.2 per month. Therefore,

apart from the findings recorded by the two courts below, even independent scrutiny of his salary clearly corroborates the inference drawn by the learned Magistrate and confirmed by the learned Additional Sessions Judge.

7. There is no apparent perversity or arbitrariness so as to enable this court to invoke the powers under Article 227 of the Constitution of India.

8. The Writ Petition is dismissed. Rule is discharged.

(MANGESH S. PATIL, J.)

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vmk/-