

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 831/2018

Shri Mahendra S/o Rambhauji Bhende

..VS..

Sau. Shilpa W/o Mahendra Bhende

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri G.G. Bade, Advocate for the petitioner

CORAM : Z.A.HAQ, J.

DATED : 15/10/2018

Heard.

The respondent, for herself and on behalf of her son, (aged about 2 years) had filed an application under Section 125 of the Code of Criminal Procedure seeking directions against the present petitioner to pay the maintenance. After conducting the trial, the learned Magistrate, by the judgment dated 07/09/2016 directed the present petitioner to pay Rs. 3,000/- per month towards maintenance to the minor son. The claim of the present respondent for maintenance was dismissed.

Being aggrieved by the judgment passed by the learned Magistrate dismissing her claim for maintenance, the present respondent had filed revision application before the Sessions Court which is allowed by the impugned judgment. The learned Sessions Judge has recorded that the present respondent is entitled for Rs. 4,000/- per month towards maintenance from the present petitioner. Being aggrieved by the judgment passed by the Sessions Court, the petitioner has filed this writ petition.

The contention of the petitioner is that he is willing to pay the maintenance to his son and is paying also however, according to the petitioner, the respondent is not entitled for maintenance from the petitioner as she is residing separately without any justification. The submission made on behalf of the petitioner that he is willing to pay the maintenance for the child and is also paying, the same has to be accepted, considering the fact that the petitioner has not challenged the order passed by the learned Magistrate directing him to pay the maintenance for the minor son however, this does not absolve him of the liability to maintain his wife who is not able to maintain herself.

The advocate for the petitioner has pointed out that Tanta Mukh Samiti had made an attempt to resolve the dispute between the petitioner and the respondent, and the parties had arrived at a settlement on 29/07/2015, and the respondent had agreed to cohabit with the petitioner, however, subsequently she filed *pursis* before the Family Court stating that she would not cohabit with the petitioner as the petitioner had given threats to her during the mediation process. Relying on these facts, it is argued on behalf of the petitioner that as the respondent is voluntarily residing separately without any justification, she is not entitled to claim maintenance from the petitioner.

After going through the judgment passed by the Sessions Court, I find that the learned Sessions Judge has delved into all the relevant aspects in detail. The learned Sessions Judge has recorded that the petitioner filed petition praying for decree for restitution of conjugal rights only after

notice of the proceedings filed by the respondent seeking maintenance was served on him. It is not the case of the petitioner that the respondent is capable of maintaining herself. The petitioner has not been able to show that the conclusions of the learned Sessions Judge regarding the quantum of maintenance are without any basis.

It cannot be said that the impugned judgment suffers from any illegality or perversity of such nature that interference by this Court in the extra-ordinary jurisdiction is necessitated.

The writ petition is **dismissed**. No costs.

JUDGE

Ansari