

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

CRIMINAL WRIT PETITION NO. 35 OF 2018

Sanjay s/o. Narayanrao Jondhale,
Age: 48 years, Occu. Service,
R/o. Janta Colony, Nanded
Tq. & Dist. Nanded.

... **PETITIONER**

Versus

1. Padmini w/o. Sanjay Jondhale,
Age: 35 years, Occ. Household and Business,
R/o. At present Rahul Nagar, Parbhani,
Tq. and Dist. Parbhani.
2. Tanushri d/o. Sanjay Jondhale,
Age: 13 years (Minor), Occ. Education
3. Digambar @ Sonu s/o. Sanjay Jondhale,
Age: 09 years (Minor), Occ. Nil.,
Both Respondent No.2 and 3 are minors under
guardianship of mother i.e. Resp. No.1
Resp.Nos.2 and 3, R/o. At present
Rahul Nagar, Parbhani,
Tq. and Dist. Parbhani.

... **RESPONDENTS**

...
Advocate for Petitioners : Mr. B.G. Deshmukh
...

CORAM : MANGESH S. PATIL, J.
DATE : 15.10.2019

JUDGMENT :-

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

2. The petitioner is the husband of the respondent no.1 and father of the rest of the respondent nos.2 and 3. He is impugning the concurrent findings of the two Courts below allowing the respondents' proceeding filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as the D.V. Act).

3. The learned advocate for the petitioner submits that there was not enough evidence revealing about he having committed any domestic violence against the respondent no.1. In fact no opportunity was extended to him to contest the matter. It was decided *ex parte* by the Magistrate. Even the appeal preferred by him has been dismissed overlooking all these aspects. The learned advocate for the petitioner would further submit that the respondents have been misusing the process of the Court. In spite of having obtained maintenance in the instant proceeding, they also independently obtained maintenance under the provisions of Section 125 of the Cr.P.C. from him. They are not entitled to such additional benefit.

4. The learned advocate would then submit that even according to the Magistrate, the net salary of the petitioner was Rs.8312/- and by virtue of the present order which grants maintenance to the respondents @ Rs.2500/- per month each the aggregate comes to Rs.7500/-. Besides, by virtue of the order passed in a proceeding under Section 125 of the Cr.P.C. the respondents

have been awarded maintenance, @ Rs.1000/- per month to the respondent no.1 herein and Rs.500/- per month to each of the respondent nos.2 and 3 which in aggregate comes to Rs.2000/- per month. If both these figures are added the petitioner is now required to pay a total sum of Rs.9500/- to the respondents. It would *ex facie* put him to great hardship. At least while determining the quantum all these factors ought to have been considered by the two Courts below.

5. I have carefully gone through the papers. The learned advocate for the petitioner has also tendered across the bar a copy of the judgment in Criminal Revision no. 112 of 2015 passed by the learned Additional Sessions Judge, Parbhani dated 25.10.2016 as also a copy of the written statement filed by the petitioner and other relatives before the Magistrate in the present case. Both these documents are taken on record.

6. It is trite that a wife is not entitled to claim more than the maintenance to which she is otherwise entitled to by filing separate proceeding under different statutes. But then it is also important to note that the maintenance awarded to the respondents in the instant proceeding by the impugned judgment and order passed by the Magistrate dated 24.08.2015 was clearly taken into consideration by the Magistrate while deciding their right under Section 125 of the Cr.P.C. The observations to that effect can be

found in paragraph no.7 of the judgment of the learned Additional Sessions Judge in Criminal Revision No. 112 of 2015. It is thus apparent that the learned Magistrate who decided the proceeding under Section 125 of the Cr.P.C. has taken into consideration the order passed in the instant proceeding and has rightly calibrated the quantum of maintenance and has awarded just Rs.1000/- per month to the respondent no.1 and Rs.500/- per month to each of the respondent nos.2 and 3. It therefore cannot be said that the respondents are getting anything more than to what they are legitimately entitled to, although they had resorted to two different proceedings for claiming the maintenance one under Section 12 of the D.V. Act and the other under Section 125 of the Cr.P.C.

7. Now coming to the income of the petitioner, the Magistrate has clearly taken into consideration his net income, statutory deductions etc. and then has fixed the quantum of maintenance. The learned Additional Sessions Judge has also examined these aspects and has found that he was only entitled to rebate on account of statutory deductions from his gross salary. He has found that his gross salary was Rs.30,809/- and the statutory recovery was Rs.4560/-. It is after factoring in such deduction to which the petitioner is entitled to that the quantum of maintenance has been fixed by the Magistrate on the basis of objective assessment of the income of the petitioner

and the need of the respondents. Those have been neatly examined once again by the learned Additional Sessions Judge in appeal. Considering all these aspects, I find no sufficient and cogent reason to interfere with the concurrent findings of the two Courts below which are both based on correct appreciation of the matter in hand.

8. As a last resort the learned advocate for the petitioner requested that at least the matter may be remanded for a decision afresh by the Magistrate by extending an opportunity to the petitioner to contest the proceeding which has been decided *ex parte*. However, it is pertinent to note that no such request has been made in the revision. For that matter even no such request was made before the lower Appellate Court. On the contrary as can be seen from the observations in paragraph no.6 of the judgment of the Appellate Court, attempt was made to demonstrate as to how the petitioner was at fault and was indolent in prosecuting his case before the Magistrate. The learned Additional Sessions Judge has given cogent and sufficient reasons as to why and how he is not entitled to agitate about the Magistrate having decided the matter *ex parte*. The learned advocate for the petitioner also concedes that even in the appeal memo filed before the lower Appellate Court there was no request for remanding the matter. It is in view of such fact situation the petitioner is also not entitled to seek any remand of the matter.

9. The Writ Petition is dismissed. The rule is discharged.

[MANGESH S. PATIL, J.]