

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL WRIT PETITION NO. 1091 OF 2017**

Tulshiram Fakirrba Sonavane ...Petitioner

Versus

The State of Maharashtra & Anr. ...Respondents

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Mr. S. C. Arora, Advocate for Petitioner.

Mr. A. P. Basarkar, A.P.P. for Respondent No. 1-  
State.

Mr. V. B. Garud, Advocate for Respondent No. 2.

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**CORAM : V.M. DESHPANDE, J.**

**DATE : 22ND MARCH, 2019**

**ORAL JUDGMENT :**

01. Rule. Rule is made returnable forthwith.  
Heard finally by consent of both the parties.

02. Petitioner-husband is represented by Mr.  
S. S. Arora. Respondent No. 1-State is represented  
by Mr. A. P. Basarkar and Respondent No. 2-wife is  
represented by Mr. V. B. Garud. The learned Counsel  
for the petitioner assailed in this petition the  
Judgment and Order passed by learned Additional  
Sessions Judge-2 Aurangabad on 4.7.2017 in Cri.  
Revision No. 279 of 2015, whereby the learned  
Revisional Court dismissed the revision. According

to the learned Counsel for the petitioner, the Order passed by the learned Revisional Court is cryptic one and the learned Revisional Court has not considered the case of the petitioner at all from the point of the agricultural land that was given to the respondent No. 2.

03. On the other hand, Mr. Garud the learned Counsel for the respondent No. 2 supported the impugned Judgment.

04. There is no dispute that the respondent No. 2 is legally married wife of the petitioner and their matrimony is still in existence. There is no dispute amongst the parties that first application under Section 125 of the Cr. P. C. was filed by the respondent No. 2-wife in the year 1987 and it was registered as 93/1987 and the said was granted and petitioner husband was directed to pay maintenance the of Rs. 100/- per month. Subsequently, respondent No. 2 was required to file an application under Section 127 of the Cr. P. C. for enhancement in the year 1993 and it was registered as Misc. Application No. 145/1993 and the said was also allowed and the maintenance was enhanced from Rs. 150/- to Rs. 325/-. There is also no dispute that subsequently in 1997 the wife filed the petition for

enhancement before the Family Court, Aurangabad and the said was registered as Petition No. 1369/1997. However, the learned Judge of the Family Court on 6.7.1998 allowed the said application and enhanced the maintenance amount from Rs. 325/- to 425/-.

05. Be that as it may, in the year 2012 the respondent No. 2 filed application under Section 127 of Cr. P. C. for enhancement of the maintenance and the said was registered as Misc. Cri. Appln No. 247 of 2012. The said was allowed by the learned Magistrate on 25.11.2015 and the petitioner-husband was directed to pay maintenance @ Rs. 2000/- per month.

06. Feeling aggrieved thereby the revision was preferred before the Revisional Court and the learned Revisional Court on 4.7.2017 passed the impugned Judgment.

07. Before the Revisional Court it was pointed out by the present petitioner that in order to provide the maintenance, the husband had purchased and delivered agricultural land to the wife and therefore, she is not entitled for the maintenance. This particular position is seriously disputed by the learned Counsel for the respondent-wife Mr.

Garud. However, fact remains that this particular submission is germane and goes to the root of the matter.

08. When such submission was made before the learned Judge, Revisional Court, it was expected from the learned Revisional Court to decide the said aspect and record the finding in accordance with law. However, perusal of the impugned Judgment would reveal that the learned Judge of the Revisional Court has not bestowed his thoughtful consideration on the said issue and has mechanically dismissed the revision. In that view of the matter, the prejudice is caused to the husband. Therefore, in my view, this Court should exercise the power of remand and shall remit back the matter to the Revisional Court, deciding the matter afresh. Consequently, I pass following Order;

**ORDER**

(i) Petition is allowed.

(ii) The Judgment and Order in Cri. Rev. Application No. 279 of 2015 datd 4.7.2017 is hereby quashed and set aside.

(iii) Cri. Rev. Application No. 279 of 2015 filed by the petitioner is restored to the file and

The Additional Sessions Judge, Aurangabad is directed to decide the said revision afresh after giving an opportunity of hearing to the parties to revision afresh within six months from the date of appearance of the parties.

(iv) Both the parties are directed to appear before the Revisional Court on 2.4.2019 so that fresh notices need not be issued.

(v) With this, the petition is disposed of.

**[V.M. DESHPANDE]**

**JUDGE**

*Dahibhate/-*