

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

CRIMINAL WRIT PETITION NO. 1602 OF 2018

Shaikh AbdulMustak s/o Shaikh Abdul Majid,

Age : 30 years, Occu.: Service,

R/o.: Dargah Road, Parbhani,

District : Parbhani.

.... PETITIONER
(Ori. Non-applicant)

VERSUS

Sumayya Begum d/o Mujiboddin,

Age : 26 years, Occu.: Service,

R/o.: Near Police Quarters,

Majalgaon Road, Pathari,

Taluka : Pathari, District : Parbhani.

.... RESPONDENT
(Ori. Applicant)

...

Mr. Sudarshan J. Salunke, Advocate for petitioner.

...

CORAM : MANGESH S. PATIL, J.
DATE : 30.01.2019

ORAL JUDGMENT :-

Heard.

2. Rule. Rule is made returnable forthwith.

3. In this writ petition, the petitioner who is the husband is impugning consistent findings of the two courts below, whereby the Magistrate awarded maintenance to her @ Rs.3000/- per month from the date of the application and which was confirmed in the revision.

4. The learned advocate for the applicant vehemently submitted by referring to the decisions in the case of **Jaiminiben Hirenbai Vyas and another Vs. Hirenbai Rameshchandra Vyas and another, 2015 ALL RC(Cri.) 376 (SC)**, that both the courts below have committed a gross illegality in not assigning any reason as to why the maintenance was being granted from the date of the application which was mandatory by virtue of the provisions of Sub-section 2 of Section 125 of the Cr.P.C. For this reason alone the orders passed by both the courts below suffer from gross illegality.

5. The learned advocate further submitted that in a

subsequent proceeding preferred by the respondent under Section 12 of the Protection of Women from Domestic Violence Act, 2005, a lump-sum alimony has been awarded to her and even the petitioner is entitled to seek appropriation and conciliation of the amount of maintenance awarded to her.

6. The learned advocate then submitted that the petitioner has since been suspended and therefore, even this fact should taken into account and maintenance may be fixed accordingly.

7. I have carefully perused both the impugned orders. It is a matter of record that the learned Magistrate has not assigned any reason as to why he was directing the maintenance to be paid from the date of application. Needless to state that it is a mandatory provision and whenever a Magistrate awards maintenance making it applicable from the date of the application or even from the date of the order, in either case he must record reasons therefor. Therefore, ex-facie the Magistrate has committed an error in not assigning any reason

while awarding the maintenance from the date of the application.

8. However, it is equally important to note that this point was never argued before the Sessions Judge in the revision preferred by the petitioner and it is only for the first time the point is being raised before this Court. True it is that being a pure question of law, it can be raised even at this juncture. However, the fact remains that it was never brought to the notice of the Revisional Court, which has confirmed the finding of the Magistrate of awarding the maintenance from the date of the application, but no reasons are assigned even by the Sessions Judge.

9. But then bearing in mind the fact that the application for maintenance was filed on 4 March 2013 and it was decided on 31 October 2013 merely within eight months, in my considered view, merely because the Magistrate has not assigned any reason for awarding the maintenance from the date of the

application, this Court in the writ jurisdiction need not intervene since the period is being so short.

10. In this regard it is also important to note that the petitioner is a constable and on the date of the order he was earning a salary of Rs.25,000/- per month and the Magistrate has awarded the maintenance @ Rs.3,000/- per month. Therefore, taking into account the period of eight months, he would be liable to pay barely Rs.24,000/- more which is not even his one month's salary.

11. Taking into account all these aspects, the petitioner is not entitled to make any capital of absence of reasons for awarding the maintenance from the date of the application.

12. So far as the reconciliation of the quantum of maintenance by virtue of a subsequent order passed under Section 12 of the Domestic Violence Act, indeed that is a matter which could be taken into account and necessary

reconciliation of the amount of maintenance to be awarded to the respondent in an aggregate can be done. However, that is possible only in an appropriate proceeding to be initiated by the petitioner and that factor cannot be taken into consideration in this writ petition.

13. In view of the above state of affairs, in my considered view the writ petition is liable to be dismissed at the threshold, of course, granting liberty to the petitioner to file appropriate proceedings for reconciliation of the maintenance to be awarded to the respondent in aggregate.

ORDER

The writ petition is dismissed.

Rule is discharged.

The petitioner is at liberty to initiate an appropriate proceeding in the light of the above observations.

(MANGESH S. PATIL, J.)