

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION N O. 408 OF 2018

Mr. Pawankumar Mishra **...Petitioner**
Versus
Mrs. Priyanka Pawankumar Mishra & Anr. **...Respondents**

Mr. Sanjay Gunjkar for petitioner.
Mr. Vishal Rankhambe for Respondent No. 1.
Mrs. Rutuja Ambekar, APP for Respondent/State.

CORAM : S. S. SHINDE, J
DATE : 27th June 2019

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1. Heard learned counsel appearing for petitioner. He submits that, Respondent No. 1 is receiving more than Rs. 50,000/- per month towards salary. It is submitted that at the relevant time when the impugned order was passed by the Magistrate, petitioner was out of employment. He further submits that petitioner presently receiving Rs. 56,000/- towards salary. He submits that when the wife is receiving salary more than Rs. 50,000/- per month, the order passed by the Magistrate directing the petitioner to pay Rs. 10,000/- towards maintenance is not maintainable. He submits that, parents of the petitioner are financially dependent upon salary of the petitioner. Therefore, relying upon pleadings, grounds taken in the petition and annexures thereto, learned counsel submits that, petition may be allowed.

2. On the other hand, learned counsel appearing for Respondent No. 1 invites attention of this Court to the findings recorded by the Magistrate

while allowing the application below Exhibit-5 in Criminal Misc. Application No. 3822 of 2015 and submits that, the Trial Court has seen documents and recorded the findings that Respondent No. 1 is getting salary of Rs. 35,000/- per month and respondent is working in highly reputed IT company.

3. Upon appreciating rival contentions and upon perusal of reasons assigned by the Court below and the documents placed on record, this Court is of the opinion that the view taken by the Trial Court is reasonable, plausible and no interference is cause for in the writ jurisdiction. Learned counsel appearing for the petitioner has made an attempt to tender across the bar several documents and submitted that, the salary of the Respondent No. 1 is more than Rs. 50,000/- however, said documents are not filed in the proceedings of lower court, said documents can not be taken on record to appreciate the aforesaid contention of the petitioner.

4. Since there is no perversity in the findings recorded by the Trial Court, writ petition deserves no consideration and accordingly same stands rejected.

5. The Trial Court is directed to hear and dispose of the Criminal Mis. Application No. 3882 of 2015 as expeditiously as possible however, within 4 months from the receipt of this order.

6. Needless to observe that if the party is not causing appearance on the date fixed for hearing, the learned Magistrate may issue bailable warrant for securing presence of the parties, unless for compelling reasons parties are

not attaining the hearing and application for exemption is filed.

7. An observations made herein above are confined to the adjudication of present petition only.

[S.S. SHINDE, J.]