

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

CRIMINAL WRIT PETITION NO.2564 OF 2017

Shri. Shtrugan Pandurang Masal Petitioner
(Patil)

Vs.

1. Jijabai Shtrugan Masal (Patil)
2. Chandrakant Shtrugan Masal (Patil)
3. Varsha Shtrugan Masal (Patil)
4. The State of Maharashtra Respondents

Mr. Gajanan M. Savagave for Petitioner.
None for Respondent nos. 1 to 3.
Mr. S.S. Hulke, APP for the State.

Coram : NITIN W. SAMBRE, J.
Date : 18th December 2019

P.C.:

1. In exercise of powers under Section 125(1) of the Code of Criminal Procedure, the learned Judicial Magistrate First Class at Pandharpur awarded the maintenance of Rs.700/- per month to each of the respondents-claimants i.e. wife and two children.

2. Being aggrieved, a revision application was preferred under Section 397 of Code of Criminal Procedure, by the respondent, i.e. wife

and children, which application was partly allowed on 10th April, 2017, whereby the maintenance amount was enhanced to Rs.1,000/- per month each to the claimants. As such, this petition.

3. The submissions of the learned counsel for the petitioner-husband are that the contentions as raised in cross-objections are not considered. According to him, once marriage with respondent no.1 was denied, there is no question of paternity and as such the maintenance ought not to have been ordered.

4. The learned Magistrate and the Revisional Court relied on the documents viz. Exhibit 31 – photographs of marriage, Exhibits 13 and 39 – birth certificates and proceeded to award maintenance of Rs.1,000/- each to the respondents.

5. So as to prove that the respondents-children were never born out of alleged wedlock and the petitioner never married to the respondent no.1-wife, the burden shifts on the applicant.

6. Even otherwise, the award of maintenance is based on available evidence on record.

7. No interference is warranted. The petition fails. Dismissed.

(NITIN W. SAMBRE, J.)