

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

CRIMINAL WRIT PETITION NO. 1699 OF 2018

Javed Ishak Shaikh

...Petitioner

Versus

Nanjeen Javed Shaikh & Ors.

...Respondents

WITH

CRIMINAL WRIT PETITION NO. 3635 OF 2018

Nanjeen Salimkhan Pathan @
Nanjeen Javed Shaikh

...Petitioner

Versus

Javed Ishak Shaikh & Ors.

...Respondents

Mr. S.R. Karpe i/b. Mr. V.V. Mohite for Petitioner in WP No. 1699/2018.
Mr. Sumant R. Deshpande for Petitioner In WP No. 3635/2018 and
Respondent No. 1 in WP No. 1699/2018.
Mrs. G.P. Mulkear, APP for Respondent – State.

CORAM : S.S. SHINDE, J.

DATE : 30th SEPTEMBER 2019

PER COURT:

1. Both these writ petitions takes an exception to the order dated 9th March 2018 passed by Additional Sessions Judge, Pune in Criminal Appeal No. 420 of 2017. Therefore, both these petitions are heard together and disposed of by common order.

2. Learned counsel appearing for the Petitioner in Writ Petition No. 1699/2018 submits that, the Petitioner has left the job/employment in the year 2017, and therefore, the directions given by the Sessions Court to pay Rs. 20,000/- per month to the wife and son is without ascertaining the factual position. It is submitted that, learned Magistrate directed the Petitioner to pay Rs. 10,000/- towards maintenance and without having any valid reason, the Sessions Court has enhanced the same amount and directed the Petitioner to pay Rs. 20,000/- to Respondent-wife, therefore, learned counsel appearing for the Petitioner relying upon the pleadings and grounds taken in the petition submits that, petition deserves to be allowed.

3. Learned counsel appearing for contesting Respondent and Petitioner in Writ Petition No. 3635/2018 invites attention of this Court to the findings recorded by the Trial Court and in particular paragraph 8 thereof and submits that, Respondent-wife placed on record documents showing salary of the Petitioner as Rs. 36,000/- at the relevant time. He also invites attention of this Court to the appeal memo filed by the Petitioner i.e. in Writ Petition No. 1699/2018 and submits that, in Paragraph 20 of the said appeal memo it is admitted that, at the relevant time the Petitioner was in the employment of I-Notix, BNY, Mellon Company, Level-3, Tower No. 8, Magarpatta City, Pune- 411 013 and has salary of Rs. 40,000/-. Therefore, learned counsel appearing for the contesting Respondent and Petitioner in

Writ Petition No. 3635/2018 submits that, the Petitioner was very much in service while passing the orders by Magistrate and so also by Additional Sessions Judge.

4. Learned counsel invites attention of this Court to the pleadings and grounds taken in Writ Petition No. 3635/2018 and submits that, the direction may be given to the Petitioner in Writ Petition No. 1699/2018 to pay Rs. 25,000/- per month towards maintenance.

5. Heard learned counsel appearing for the parties at length. With their able assistance perused pleadings and grounds taken in the petition and the impugned judgment and order passed by the Court below. The arguments advanced by the parties is on the factual score and during the course of their arguments nothing is argued on law. As submitted by the learned counsel appearing for Respondent-Wife in Para 8, the Trial Court has made reference to the documents submitted by the by Respondent-Wife and thereafter directed the Petitioner to pay Rs. 10,000/- per month towards maintenance. It appears that, the Sessions Court in Para 8 and 9 has made discussion on facts and thereafter directed the Petitioner in Writ Petition no. 1699/2018 to pay Rs. 20,000/- per month towards maintenance to Respondent-Wife. The contention of learned counsel appearing for the Petitioner that he left the job in the year 2017 will have to be appreciated by

the Trial Court during the course of final hearing of the proceedings initiated by Respondent-Wife. Considering the case in its entirety and keeping in view the observations made by the Trial Court and discussion in Para 8 of the judgment of the Trial Court for the purpose of deciding the present petition, the income of the Petitioner at the relevant time appears to have been rightly considered as Rs. 36,000/- and said fact is admitted by the Petitioner in appeal memo in Paragraph 20 thereof. Therefore, there is no reason to cause an interference in the impugned judgment and order passed by the Magistrate so also Sessions Court.

6. The prayer of the Petitioner in Criminal Writ Petition No.3635/2018 to direct the Petitioner for paying Rs. 25,000/- is also without any factual basis. The contention of the Petitioner in Writ Petition No. 1699/2018 that he left the job in the year 2017 will have to be appreciated by the Trial Court during the course of final hearing of pending proceedings. In the light of discussion made herein above, no case is made out for causing interference in the impugned orders. Hence, both the writ petitions stand rejected.

7. Observations made herein above are *prima facie* in nature and confined to the adjudication of the present writ petitions and the Trial Court shall not get influenced by the said observations at the time of hearing

Miscellaneous Application No. 96/20017. The Trial Court is directed to decide Miscellaneous Application No. 96/20017 as expeditiously as possible, however, within three months from today, subject to co-operation of the parties to the said proceedings.

[S.S. SHINDE, J.]