

ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****WRIT PETITION NO. 4560 OF 2018**

Wasim Aalamshaha Sanade

.....Petitioner

V/s.

Kismat Wasim Sanade and others

.....Respondents

Ms. Chaitrali A. Deshmukh for the Petitioner

CORAM : NITIN W. SAMBRE, J.**DATE : JANUARY 14, 2020.****P.C.**

Heard.

2] On 09/08/2002, maintenance of Rs. 250/- and 150/- was awarded in favour of respondent nos. 1 & 2 respectively, which was enhanced to Rs. 700/- & Rs. 550/- in exercise of powers under Section 127 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) vide order dated 30/01/2014. The Magistrate further exercised powers under Section 127 of the Cr.P.C. and vide order

dated 09/10/2017 enhanced the same to be Rs. 5000/- and Rs. 3000/- respectively in favour of respondent. As such, this petition.

3] The submissions are, whether the petitioner in law is liable to pay maintenance considering the denial of relationship of husband and wife is an issue pending consideration in an Appeal as the Suit to that effect initiated by the petitioner came to dismissed on merit. It is further claimed that the source of income of the petitioner is considered to be a medical shop which was closed down and the licence was cancelled. Hence, it is urged that Court below committed an error in awarding enhanced compensation. It is also claimed that respondent-wife is self-employed which issue is lost sight by the Court below.

4] The fact remains that the petitioner is paying maintenance pursuant to order dated 09/08/2002 and in exercise of powers under Section 127 of Cr.P.C. enhanced maintenance in 2015 and 2017 was ordered.

5] In the wake of long standing liability i.e. since 2002 of payment

of maintenance which was not questioned earlier, the Court should not go into the issue as regards the liability of the petitioner to pay maintenance particularly when the issue is already adjudicated before the competent Civil Court in an Appeal.

6] As regards reduction in the source of income of the petitioner is concerned, the Court below recorded the reason that the petitioner has not furnished the reason for cancellation of the pharmaceutical licence. Apart from income from the operation of the said licence, there are other independent source of income to the petitioner. Considering the educational qualification of the petitioner i.e. D. Pharm, his other source of income, his failure to explain as to the cause for cancellation/surrender of pharmaceutical licence, the Court below is justified in grant of enhancement.

7] Once the petitioner comes out with a case that respondent-wife is gainfully employed, it was the responsibility of the petitioner to establish the said fact either before this Court or before the Court below, which the petitioner has failed to do so.

8] No case for interference or indulgence is made out. Petition fails, stands dismissed.

[NITIN W. SAMBRE, J.]