

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

CRIMINAL WRIT PETITION NO.1501 OF 2019

Mahendra S/o. Babanrao Kanade,
Age: 43 years, Occ: presently Nil,
R/o. Vivekanand Colony Near Radhakrushna
Mangal Karyalay Newasa Khurd,
Tq. Newasa, Dist. Ahmednagar.

PETITIONER

VERSUS

- 1] The State of Maharashtra,
- 2] Babanrao S/o Dattatray Kanade,
Age - 72 years, Occu – Agri,
presently residing at Borgaon Tal. Newasa
Dist. Ahmednagar.
- 3] Mandakini W/o Babanrao Kanade,
Age : 67 years, Occ: Nil,
presently residing at Borgaon Tal. Newasa
Dist. Ahmednagar.
- 4] Avinash S/o Babanrao Kanade,
Age : Years, Occ : Agri,
R/o. Borgaon Tal. Newasa
Dist. Ahmednagar.
- 5] Dr. Ravindra S/o. Babanrao Kanade,
Age : 43 years, Occu : Service,
R/o Newasa Khurd Tal. Newasa
Dist. Ahmednagar.

RESPONDENTS

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Advocate for Petitioner : Mr. S.R. Sapkal
AGP for respondent/State : Mr. P.G. Borade
Advocate for Respondent Nos.2 and 3 : Mr. G.P. Darandale

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CORAM : MANGESH S. PATIL, J.

DATE : 23.02.2021

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. The learned APP and the learned advocate for the respondent Nos. 2 and 3 waive service. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioner who is the son of the respondent Nos. 2 and 3 is impugning the concurrent findings of the two courts below whereby he has been directed to pay to them Rs.5000/- in aggregate per month as their maintenance under Section 125 of the Code of Criminal Procedure.

3. The learned advocate for the petitioner would submit that both the courts below have clearly erred in appreciating the evidence. There was a family partition wherein some lands were allotted to the share of the respondent Nos. 2 and 3 for maintaining themselves. Thus they had sufficient means to maintain themselves from and out of the agricultural income but both the courts have failed to take this fact in account.

4. The learned advocate also submits that the two courts below have failed to take into consideration the fact that the petitioner is suffering from kidney disease. He had to spend around Rs.12,00,000/- for undergoing kidney transplantation. He has to spend around Rs.20,000/- per month from his treatment. Ignoring such financial liability of the petitioner the two courts have fixed exorbitant quantum of maintenance.

5. The learned advocate lastly submits that the other two sons of the respondent Nos. 2 and 3 and primarily the respondent No.4 with whom they have now been staying is acting behind the curtains. Though they are staying with him he has instigated them to claim maintenance. The learned advocate therefore would submit that the two courts below have grossly erred in appreciating the facts, circumstances and the evidence and have grossly erred in fixing the quantum of maintenance.

6. The learned advocate for the respondent Nos. 2 and 3 would support both the orders by referring to the affidavit-in-reply.

7. I have carefully gone through the papers and orders of both the courts below. Accepting the stand of the petitioner, all the ancestral

agricultural lands were partitioned amongst everybody including he himself. Though it is his stand that the respondent Nos. 2 and 3 also were allotted some portion of agricultural land, it is their specific contention that because of their old age they have not been able to cultivate it. Needless to state that having an agricultural land is one thing and being capable of cultivating it and earning the livelihood is altogether a different thing. Both the courts below have considered this aspect and have come to a plausible decision of inability of the respondent Nos. 2 and 3 to maintain themselves because of old age.

8. The two courts below have also gone through the record showing that the respondent No.2 has undergone surgery at Seth Nandlal Dhoot Hospital at Aurangabad.

9. Much capital is tried to be made by the petitioner to point out that he has been suffering from kidney disease and has to undergo kidney transplant. With all the sympathies with him, the evidence before the Magistrate was led even in that respect and after considering it the learned Magistrate has fixed the quantum. Therefore, no much weight can be attached to this fact at this stage. Similarly, there is enough evidence to show that the petitioner is an Agricultural Officer employed with a Sugar Factory. Besides, agricultural lands stands in his name as well as in the name of his wife.

10. Taking into consideration the fact that the burden to prove his income is on him, he failed to come out with appropriate disclosure about his exact income from all the sources coupled with his liabilities. In his say filed in the proceeding before the Magistrate, he specifically admitted about being in the employment and earning salary of around Rs.30,000/- to Rs.35,000/- per month, the quantum of maintenance fixed by the Magistrate and confirmed by the learned Additional Sessions Judge in Revision

directing him to pay Rs.3000/- and Rs.2000/- to the respondent Nos. 2 and 3 respectively cannot be said to be either perverse or arbitrary. In the absence of which while exercising the powers under Article 227 of the Constitution of India there is inherent limitation.

11. The two courts below have taken a reasonable view and there is no sufficient and cogent reason to intervene.

12. The Writ Petition is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)