

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 CRIMINAL WRIT PETITION NO.1408 OF 2018

Ramesh Manikrao Bhogil,
Age 48 yrs., Occ. Service,
R/o Dandegaon, Tq. Bhoom,
Dist. Bhoom.

... Petitioner

... **Versus** ...

- 1 Sunita w/o Ramesh Bhogil,
Age 40 yrs., Occ. Household,
R/o Dandegaon, Tq. Bhoom,
Dist. Osmanabad.
At present C/o Changdeo Galande,
Samarth Nagar, Bhoom,
Tq. Bhoom, Dist. Osmanabad.
- 2 The State of Maharashtra
(Deleted vide order dated 11.10.2018.)
- 3 Janabai w/o Manikrao Bhogil,
Age 73 yrs., Occ. Household,
R/o Dandegaon, Tq. Bhoom,
Dist. Osmanabad.
- 4 Ashok Manikrao Bhogil,
Age 53 yrs., Occ. Agri.,
R/o Dandegaon, Tq. Bhoom,
Dist. Osmanabad.
- 5 Sangita w/o Ashok Bhogil,
Age 50 yrs., Occ. Household,
R/o Dandegaon, Tq. Bhoom,
Dist. Osmanabad.
- 6 Kalinda w/o Rajkumar Khaire,
Age 63 yrs., Occ. Household,
R/o Ida, Tq. Bhoom,

Dist. Osmanabad.

- 7 Ratan w/o Shrirang Misal,
Age 60 yrs., Occ. Household,
R/o Misalwadi (Savdarwadi),
Tq. Paranda, Dist. Osmanabad.

**(Respondent Nos.3 to 7 are deleted
vide order dated 14.01.2019.)**

... **Respondents**

...

Mr. S.B. Choudhari, Advocate for the petitioner

Mr. N.S. Tekale, Advocate for respondent No.1

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 06th JANUARY, 2021

JUDGMENT :

1 Present writ petition has been filed invoking Constitutional powers of this Court under Articles 226 and 227 of the Constitution of India to challenge the order dated 08.08.2018 passed in Criminal Appeal Nos.20/2014 and 21/2014 by learned Additional Sessions Judge, Bhoom, Dist. Osmanabad, wherein order dated 09.10.2012 passed by learned Judicial Magistrate First Class, Bhoom (Court No.2) in Criminal Miscellaneous Application No.125/2010 was challenged.

2 Heard learned Advocate Mr. S.B. Choudhari for the petitioner

and learned Advocate Mr. N.S. Tekale for the respondent No.1.

3 The short point, that is, involved in this case is that the present writ petitioner, who is the husband of respondent No.1, has challenged the quantum of maintenance. It is not in dispute that their marriage was solemnized on 31.03.2000. After the dispute between them it appears that the respondent No.1 had filed Criminal Miscellaneous Application No.125/2010 under Section 12 of the Domestic Violence Act for various reliefs. The said application came to be partly allowed on 09.10.2012 and maintenance was granted @ Rs.8,000/- per month. From the said Judgment by learned Judicial Magistrate First Class, Bhoom, it can be seen that when he considered the matter, at that time, the present writ petitioner had admitted that his salary is Rs.25,000/- per month. The agricultural income of the present writ petitioner was also considered and taking into consideration the said income, maintenance was fixed @ Rs.8,000/- per month. It appears that both i.e. husband and wife challenged the said order in those appeals before learned Additional Sessions Judge, Bhoom. The wife was asking for enhancement in the maintenance. The learned Additional Sessions Judge by order dated 08.08.2018 dismissed the appeal filed by the husband and partly allowed the appeal filed by the wife. The maintenance was enhanced to Rs.15,000/- per month, from the date of filing of Criminal Miscellaneous

Application No.125/2010. While fixing this quantum the learned Additional Sessions Judge, Bhoom considered that evidence, which was not before the learned Judicial Magistrate First Class, Bhoom but it was in respect of subsequent period, that is, the salary of October, 2013 was taken into consideration, which was Rs.38,340/- without deduction and the salary of November, 2017 was Rs.56,590/- without deduction and with deduction it was Rs.27,546/- and Rs.48,000/- respectively in the year 2013 and 2017.

4 It has been submitted on behalf of the writ petitioner that while enhancing the maintenance amount it has been granted from the date of filing of Criminal Miscellaneous Application No.125/2010 i.e. 05.10.2010 and it is granted @ Rs.15,000/- per month, when at that time, as per the admission of the husband he was getting Rs.25,000/- per month salary. The dependency of the husband should have been considered, so also, the fact that more amount would go to the wife than the husband.

5 Per contra, the learned Advocate representing the respondent No.1-wife supported the reasons given by the learned Additional Sessions Judge and submitted that the subsequent developments have been properly considered.

6 There is some substance in the say of the writ petitioner. Maintenance amount has to be fixed on the basis of the evidence, that is

adduced before a particular Court. No doubt, the Court is bound to take subsequent developments, but then while fixing the maintenance on the basis of subsequent developments, care should be taken to enhance it from the date of subsequent developments. The admission has been extracted before the learned Judicial Magistrate First Class, Bhoom in the evidence of husband, by the wife that he is earning Rs.25,000/- per month. Perusal of the Judgment by the learned Judicial Magistrate First Class, Bhoom would show that though he has considered additional source of income of the applicant by way of agricultural, he has not quantified it, and therefore, if the enhancement by the learned Additional Sessions Judge is to be considered from the date of application before the learned Judicial Magistrate First Class, then the amount granted @ Rs.15,000/- per month would be very much excessive, which comes to 60% of his income.

7 Definitely, the subsequent developments are required to be considered. The husband is a Teacher in Government granted school, and therefore, his salary would definitely increased and accordingly it is increased. As aforesaid, the position of salary in the year 2013 and 2017 has been taken note of by the learned Additional Sessions Judge, and therefore, on the basis of even the salary, which was in October, 2013, the amount that was enhanced can be said to be justified and it ought to have been granted

from October, 2013. Therefore, the interest of justice in respect of both husband and wife requires that the said amount of maintenance should be granted to the wife from October, 2013 and not for the previous period from the date of filing of application. Accordingly, the Constitutional powers of this Court deserve to be invoked.

8 For the aforesaid reason, following order is passed.

ORDER

1 The writ petition stands partly allowed.

2 The order passed in Criminal Appeal Nos.20/2014 and 21/2014 (Common Judgment by the learned Additional Sessions Judge, Bhoom) on 08.08.2018 is hereby set aside and modified to the extent of period of granting maintenance. The impugned order of granting the said maintenance “from the date of filing of the said Criminal Miscellaneous Application No.125/2010” is hereby set aside and it is modified and replaced with words, “from October, 2013”.

3 The amount of maintenance deposited uptill now by the petitioner be adjusted accordingly.

(Smt. Vibha Kankanwadi, J.)