

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

Criminal Application (APL) No. 414 of 2020

(Prashant Wamanrao Khandalkar ..vs.. Sau. Priti Prashant Khandalkar)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R. D. Hajare, Advocate for the applicant

CORAM : ROHIT B. DEO, J.

DATED : 22-01-2021

Heard.

2. The applicant is challenging the judgment dated 27-5-2020 in Criminal Revision 32/2016 rendered by the Additional Sessions Judge, Warora whereby the order dated 7-11-2016 rendered by the Judicial Magistrate First Class, Chimur in Misc. Criminal Application 89/2012 is set aside and the revision is partly allowed.

3. Non-applicant – wife approached the learned Magistrate under Section 125 of the Code of Criminal Procedure, 1973 (Code) seeking maintenance for herself and son. The learned Magistrate directed that the son be paid monthly maintenance of Rs. 2,000/-. The wife was denied maintenance on the assumption that she is teacher and her monthly salary “might be” Rs. 30,000/- (Rupees Thirty Thousand).

4. The learned Sessions Judge recorded a finding that the learned Magistrate committed a serious error in indulging in surmises and conjectures. The learned

Sessions Judge noted that Vinod Pidurkar, the Head Master of Vidya Niketan Convent, who is examined by the husband, the applicant herein, produced record from which it is discernible that the monthly salary of the wife was Rs. 4,000/-. The salary sheet of July, August and September, 2015 are referred to by the learned Sessions Judge. Moreover, the learned Sessions Judge noted the subsequent communication dated 20-4-2016 issued by the management to the respondent - wife indicating that her appointment was for fixed tenure from 26-6-2015 to 30-4-2016 and that the same shall come to an end by efflux of time. It is further noted by the learned Sessions Judge that witnesses did not state that the wife is presently employed or that she is made permanent. The learned Sessions Judge was of the view, and the view is unexceptional, that the wife is not disentitled to maintenance only because she earns certain livelihood to keep away starvation.

5. The applicant is an engineer. The learned Sessions Judge has discussed the relevant material on record in paragraph 9 of the judgment impugned, and recorded a finding that the quantum of Rs. 4,000/- per month maintenance to the wife would be reasonable. Paragraph 9 of the judgment impugned reads thus :

“9. Now the source of income of respondent is concerned, undisputedly he is a Junior Engineer and serving in a Company at Pune. His pay slip of March 2014, Exh. 22, shows monthly

income Rs. 24,525/- and yearly income Rs. 3,33,645/- by showing deduction of Rs. 38,612/-. Needless to say that the deduction towards saving is not liable to deduct from the amount of income because that amount is not expenses but the saving. The 7/12 extract at Exh. 34 to 37 shows 19 acre agricultural land in the joint name of father of respondent and others (his uncle, aunt etc.). There is evidence that the father of respondent was Forest Guard, his mother was also employee in forest, now they both are the pensioner. One brother of respondent is well qualified i.e. B.E., M.Tech. who is a Professor in College at Mumbai. The second brother is also Mechanical Engineer, serving at Pune. The aforesaid position indicates that except the present petitioner and her son, nobody dependent upon the respondent herein. In the year 2012 age of their son was hardly 3 years, now he might be 11 years old and required sufficient and more amount towards his maintenance and education purposes. Assumed that the petitioner is doing some work for her livelihood, it is not means husband/respondent lost his liability. Needless to say that it is his moral responsibility to maintain the wife who is dependent upon him.

Taking into consideration the source of income of respondent, minimum requirement of life of the petitioner as well as her growing son, she is entitled at least Rs.4000/- per month towards her maintenance and the respondent is in a position to pay the same easily. In consequence, I answer point Nos. 2 and 3 accordingly.

...”

6. In my considered view, the maintenance awarded is not only reasonable, if at all the same appears to be on a lower side. No fault can be found with the judgment of the learned Sessions Judge. I see no reason to interfere in exercise of inherent powers under the Code. The application is dismissed.

JUDGE

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