

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

CRIMINAL WRIT PETITION NO. 364 OF 2020

Kishor s/o Motilal Chandan,
Aged about 55 years, Occ. - Retire,
R/o Sambhaji Nagar, Buldhana, Tahsil
and District Buldhana.

.... **PETITIONER**

VERSUS

- 1) Sau. Meena w/o Kishor Chandan,
Aged 44 years, Occ. - Household,
- 2) Ku. Shubhangi Kishor Chandan,
Aged 24 years, Occ. - Student,
Both R/o Sambhaji Nagar, Buldhana,
Tahsil and District Buldhana.

.... **RESPONDENTS**

Mr. B.J. Lonare, Counsel for the petitioner,
Mr. P.M. Shambharkar, Counsel (appointed) for respondent 1.

CORAM : ROHIT B. DEO, J.
DATED : 20th JANUARY, 2021

ORAL JUDGMENT :

Rule. Heard finally with consent of the parties at the stage of admission.

2. The petitioner-husband is aggrieved by the order dated 06-12-2019 rendered by the learned Judge, Family Court, Buldhana

under Section 127 of the Criminal Procedure Code (Code), whereby the maintenance awarded to the wife and the daughter-respondents 1 and 2 herein, is enhanced from Rs.2,500/- each to Rs.7,500/- each.

3. The maintenance was awarded vide order dated 08-8-2013. Concededly, the petitioner-husband did not challenge the said order and, therefore, the entitlement to receive maintenance has assumed finality.

4. In so far as the enhancement directed vide order dated 06-12-2019 is concerned, this Court can take judicial notice of the spiralling living expenses and the minimum amount which may be needed by the respondent-wife and daughter for a dignified and meaningful life.

5. From this perspective, it cannot be said that the amount awarded by the learned Judge of the Family Court is unreasonable. Be it noted, that a finding is recorded that the monthly salary of the petitioner-husband, at the relevant time, was Rs.38,000/-.

6. The learned Counsel Mr. B.J. Lonare would, however, submit that a case for remand is made out since no evidence was adduced on

behalf of the petitioner-husband. Mr. B.J. Lonare made an attempt to explain the absence of the learned Counsel and the failure of the husband to lead evidence. However, the learned Judge of the Family Court has observed that despite granting sufficient opportunities, the husband did not cross-examine the wife and did not adduce evidence. The learned Judge proceeded further in the absence of cross-examination and evidence of the husband and fixed the matter for final hearing. At that stage, the husband preferred application Exhibit 39 seeking permission to cross-examine the wife and to adduce evidence. This application Exhibit 39 came to be allowed by the learned Judge, Family Court. However, on several dates thereafter, the husband remained absent and did not avail the opportunity of cross-examining the wife and adducing evidence.

7. In view of the facts culled out by the learned Judge of the Family Court, *inter alia* in paragraph 10 of the order impugned, the submission of Mr. B.J. Lonare that the petitioner deserves an opportunity to adduce evidence, cannot be accepted. The petitioner was indeed granted such an opportunity by the learned Judge of the Family Court, which he did not avail. Proceedings, particularly involving the expectations and aspirations of aggrieved woman cannot be open ended. I do not see any error in the approach or view of the learned Judge, Family Court

muchless an error warring interference in the writ jurisdiction.

8. The petition is dismissed.

9. At this stage, Mr. B.J. Lonare would submit that the petitioner has since then retired and, therefore, the petitioner may be permitted to seek modification. Seeking modification, is a statutory right, and no liberty need be reserved. Needless to record, if an application for modification is moved, the same shall be decided on its own merits, uninfluenced by the observations in this judgment.

10. The fees of the learned appointed counsel be quantified and paid in accordance with the rules.

JUDGE

adgokar