

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

CRIMINAL WRIT PETITION NO. 600 OF 2015

- 1) Sau. Chhaya Sunil Mesare,
Aged about 39 years,
Occupation – Housewife,
- 2) Ku. Bali @ Isha Sunil Mesare,
Aged 14 years,
Occupation – Education,
- 3) Swayam Sunil Mesare,
Aged 13 years, Occupation–Education,
the petitioner Nos.2 and 3 minors
through natural guardian mother
petitioner no.1.

All R/o Sahadev Fakiraji Kawanpure,
Lahariya Nagar, Kaulkhed, Akola,
Tq. & District Akola.

.... **PETITIONERS**

VERSUS

Sunil Ukarda Mesare,
Aged 36 years, Occupation – Service,
R/o Congress Nagar, Behind Divisional
S.T. Office, Akola, Tq. and District Akola.

.... **RESPONDENT**

Mr. Anand Thotange, Counsel h/f. Mr. M.G. Sarda, Counsel for the
petitioners,
Mr. D.M. Surjuse, Counsel for the respondent.

CORAM : ROHIT B. DEO, J.
DATED : 2nd MARCH, 2021

ORAL JUDGMENT :

The petitioners are aggrieved by the judgment dated 27-3-2015 rendered by the learned Judge, Family Court, Akola in E. Petition 115/2014, to the extent of the quantum of the enhanced maintenance.

3. Indubitably, petitioner 1 is the wife of the respondent and petitioners 2 and 3 are the children from the wedlock.

4. Petitioner 1 preferred Miscellaneous Criminal Application 837/2002 under Section 125 of the Criminal Procedure Code, 1973 (Code), which was allowed by the Judicial Magistrate First Class, Akola vide judgment dated 15-7-2004. Petitioner 1 was awarded monthly maintenance of Rs.800/- and petitioners 2 and 3 were awarded monthly maintenance of Rs.600/-.

5. The petitioners preferred E. Petition 332/2009 seeking enhancement, which application was partly allowed and while the monthly maintenance of petitioner 1 was not enhanced, the monthly maintenance granted to petitioners 2 and 3 was enhanced from Rs.600/- per month to Rs.1,500/- per month.

6. The petitioners preferred E. Petition 115/2014 seeking further

enhancement of the maintenance, which is partly allowed by the judgment impugned. The monthly maintenance awarded to petitioner 1 is enhanced to Rs.2,000/- and the monthly maintenance awarded to petitioners 2 and 3 is enhanced to Rs.2,500/- each, the enhancement is made effective from the date of the order.

7. Be it noted, that the entitlement to receive the maintenance is not in issue since the respondent did not challenge the finding. It is further irrefutable that petitioners 2 and 3 have attained the age of majority on 03-1-2019 and 16-9-2020 and in view of the provisions of Section 125(1)(c) of the Code, the order of maintenance qua petitioners 2 and 3 shall cease to be operative from the said dates.

8. The petitioners contend that since 2009, the cost of living has seen an exponential rise. It is contended that with the passage of time, the monthly emoluments of the respondent increased substantially. The petitioners contend that the respondent did not oppose the application seeking enhanced maintenance in the sense that he did not file response. The petitioners contend that the salary certificate of the respondent, who is serving as a Teacher with the Zilla Parishad, pertaining to the year 2011, reflects that the gross salary was Rs.23,925/- and the present salary is Rs.38,872/- (as on the date of

filing of the petition). It is further contended that the respondent owns agricultural land admeasuring 3.41 Hectares situated in village Pimpaldoli, Patur, District-Akola which is assigned Gat 36/2 and the annual income generated is approximately Rs.5,00,000/-. The petitioners contend that the respondent receives rental income of Rs.10,000/-. The petitioners further contend that the father of the respondent retired as Ranger and receives substantial pension and that there are no dependents, other than the petitioners. Petitioner 1 has no source of income and petitioners 2 and 3 are students, is the next averment in the petition. In paragraph 10 of the petition an endeavour is made to justify the further enhancement of the maintenance amount.

9. The respondent filed affidavit-in-response dated 11-1-2021 generally denying the contentions of the petitioners. A specific stand is taken that petitioner 1 is an Anganwadi Sevika and her gross monthly salary is Rs.8,000/-. The respondent contends that the agricultural land to which a reference is made by the petitioners is owned by Mr. Prathmesh Ukarda Mesare. It is then averred that the respondent is required to maintain his aged parents and he himself is suffering from kidney ailment and is required to expend substantial amount for the treatment.

10. Perusal of the 7/12 extract, which is filed on record by the respondent, reveals that he is shown as one of the co-owners of the agricultural land, and therefore, the statement on oath that the agricultural land is recorded in the name of Prathmesh is not entirely correct.

11. This Court vide order dated 12-1-2021 directed the parties to file affidavits consistent with the form as prescribed by the Apex Court in *Rajnesh v. Neha and Another (Criminal Appeal 730/2020)*.

12. The affidavit filed on behalf of the respondent reveals that his gross salary is Rs.71,525/- and the net salary after deductions is Rs.36,555/-. The affidavit states that the respondent has no income other than the salary. The disclosure of assets reveal that according to the respondent, he owns a plot at Alegaon, Tahsil-Patur and that he is not the owner of ancestral property.

13. Petitioner 1 has also filed an affidavit in which she has quantified the monthly expenses as Rs.30,000/- (Rupees Thirty Thousand). The affidavit asserts that the respondent is in arrears of the maintenance awarded, to the tune of Rs.4,06,000/- as on 31-12-2020. It is asserted in the affidavit that petitioner 1 is not employed.

14. The respondent filed counter affidavit dated 25-1-2021. While it is vaguely denied that the respondent is in arrears and a reference is made to certain payments made, the respondent has not given the details of the alleged payments, on the specious ground that it would take time to verify the record of the Family Court.

15. It is reiterated that petitioner 1 is working with Zilla Parishad, Akola. In support of the said assertion, the respondent refers to document 3 filed alongwith affidavit dated 18.1.2021.

16. As noted supra, the entitlement of the petitioners to receive the maintenance is not in issue any longer. The finding that the petitioners are entitled to receive maintenance has assumed finality. The gross salary of the respondent is Rs.71,525/-. It is well settled, that only statutory deductions shall have to be considered for determining the payment capacity of the spouse. The salary certificate which is placed on record by the respondent reveals that substantial amount of Rs.23,000/- is shown as the instalment payable to the society. At the most the contribution to the provident fund, the professional tax and income tax paid can be factored in to assess the payment capacity of the respondent. From the gross salary, even if the house rent and the vehicle allowance of Rs.4,552 and Rs.400/- is kept out of the

consideration, the salary is Rs.66,573/-.

17. The respondent did not controvert the statement of petitioner 1 made before the Family Court, since no response was filed, that she is unemployed. A similar statement is also made before this Court by petitioner 1. Apparently the certificate on which the respondent is relying pertains to the year 2011 and even according to the respondent, he has no information as regards the subsequent years, as is discernible from his affidavit. It is, therefore, not possible to hold that petitioner 1 is employed muchless that she is in a position to maintain herself.

18. Considering the financial status of the respondent and the monthly needs of the petitioners, in my considered view, the enhancement is on the lower side.

19. The monthly maintenance payable to petitioner 1 is enhanced from Rs.800/- to Rs.2000/-. In my considered view, the said quantum needs modification. Similarly, the monthly maintenance granted to petitioners 2 and 3 also needs to be enhanced further considering their monthly expenses and in particular the educational expenses.

20. The judgment impugned is, therefore, modified and it is directed that petitioner 1 shall be entitled to monthly maintenance of Rs.10,000/- effective from the date of the order of the learned Judge, Family Court, Akola i.e.27-3-2015 and petitioners 2 and 3 shall be entitled to monthly maintenance of Rs.5,500/- each effective from the date of the order and payable till the dates of attainment of majority.

21. Rule is made absolute in the afore-stated terms.

JUDGE

adgokar