

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

904 CRIMINAL WRIT PETITION NO.596 OF 2018

SHANKAR S/O. SAKHARAM THANGE
VERSUS
JANKABAI @ PARVATI W/O. SHANKAR THANGE AND
ANOTHER

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Advocate for Petitioner : Mr. Dhage Hemant U
Advocate for Respondent 1 : Mr. Jadhavar Santosh S.
Respondent no.2 deleted.

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CORAM : SHRIKANT D. KULKARNI, J.
Dated : July 28, 2022

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PER COURT :-

1. Heard finally with consent of both sides, at admission stage.

2. The petitioner/husband has challenged the impugned judgment and order passed in Criminal Revision Application no.150 of 2012 by the Additional Sessions Judge, Ahmednagar, whereby the Additional Sessions Judge, Ahmednagar was pleased to enhance the amount of maintenance to Rs.4,000/- per month.

3. Heard Mr. Hemant Dhage, learned counsel for the petitioner and Mr. Santosh S. Jadhavar the learned counsel for respondent.

4. Mr. Dhage, learned counsel for the petitioner made twofold submissions. One - criminal revision application was decided by the Additional Sessions Judge, Ahmednagar in absence of present petitioner and his Advocate. It was an ex-parte decision. He, therefore, strenuously argued that the impugned judgment and order rendered by the Additional Sessions Judge, Ahmednagar thereby allowing enhancement of maintenance allowance is liable to be quashed and set aside. Second submission of Mr. Dhage is about erroneous approach of the Additional Sessions Judge, Ahmednagar in allowing the prayer of respondent no.1. He submitted that, the learned Magistrate after considering the evidence on record and looking to the fact that compromise decree was drawn between the parties; and on that basis was pleased to reject the prayer for enhancement of maintenance allowance. He submitted that according to the compromise decree
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between parties, name of respondent no.1 came to be mutated in the 7/12 extract. She is getting income from that said land. She has given up her right of maintenance in view of the compromise decree. Learned Magistrate has rightly considered all these aspects and rejected the application for enhancement of maintenance. The Additional Sessions Judge, Ahmednagar in revision has reassessed the evidence and reversed the findings recorded by the learned Magistrate. He submitted that respondent no.1 is in possession of agricultural land of 60R which has been given to her by way of compromise decree. As such, she has no right to claim any maintenance when that piece of land was given to her in lieu of maintenance.

5. Mr. Dhage, learned counsel for the petitioner placed his reliance on a judgment in the case of **Shabuktabano Ayyaz Inamdar and anr. Vs. The State of Maharashtra and Another** reported in 2013 ALL MR (Cri) 3893 Aurangabad Bench in support of his prayer for remand. Mr. Dhage also placed on record certain

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documents during the course of argument which consists of income certificate of the petitioner issued by the Tahsildar/Naib Tahsildar, Parner, copies of the 7/12 extract and copy of the consent decree.

6. Mr. Jadhavar, learned counsel for respondent no.1 supported the impugned judgment and order delivered by the Additional Sessions Judge, Ahmednagar in the Criminal Revision Application. He submitted that, even though compromise decree is drawn between the parties and name of respondent no.1 is mutated in the 7/12 extract, respondent no.1/wife is deprived from cultivating the said piece of land. He invited my attention to paragraph no.11 of the impugned judgment and submitted that the petitioner has given candid admission while facing the cross- examination that he is in cultivating possession of that piece of land given to respondent no.1. Main source of income for respondent no.1 is not available to her. The Additional Sessions Judge, Ahmednagar has considered this aspect and, accordingly, enhanced maintenance allowance of

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respondent no.1/wife from Rs.1,250/- to Rs.4,000/- p.m. He submitted that, no interference is called for. He further submitted that, no case is made out to remand the matter for fresh decision at the hands of the Additional Sessions Judge, Ahmednagar when both the parties had already put more than ten years in a litigation for maintenance.

7. I have considered the submissions of learned counsel for both sides.

8. It is undisputed position that respondent no.1 has filed an application for enhancement of maintenance before the Judicial Magistrate First Class at Parner vide Criminal Misc. Application No.65 of 2010. The learned Judicial Magistrate First Class, Parner was pleased to reject the application for enhancement of maintenance vide judgment and order dated 30.4.2012. Feeling aggrieved by the rejection of enhancement in maintenance allowance, respondent no.1 herein has preferred Criminal Revision Application No.150 of 2012 before the Sessions Court at Ahmednagar. Matter was
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assigned to the Additional Sessions Judge, Ahmednagar. The Additional Sessions Judge, Ahmednagar was pleased to allow that Criminal Revision Application and directed the present petitioner to pay maintenance of Rs.4,000/- p.m. to respondent no.1 from the date of presentation of application for enhancement of maintenance and costs of Rs.3,000/- as well. Revision application came to be dismissed in respect of applicant no.2-Vaishali (daughter).

9. Feeling aggrieved by the order of granting enhancement in maintenance allowance, the petitioner has preferred this writ petition and challenged the order on various grounds as revealed during the course of argument.

10. First, I shall deal with the point of remand. On going through the impugned judgment rendered by the Additional Sessions Judge, Ahmednagar in Criminal Revision Application no.150 of 2012, more particularly, paragraph no.5, it is noticed that, present petitioner and his advocate remained absent at the time of hearing of
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the criminal revision application and in their absence, hearing of the criminal revision was concluded and matter was decided.

11. Let me find whether case is made out for remand. It is not a case that petitioner was not properly served with the notice and he had no knowledge about hearing of the criminal revision application fixed before the Additional Sessions Judge, Ahmednagar. The petitioner has engaged his Advocate to look after the revision and as such, it was incumbent on the part of petitioner and his Advocate to remain present when the criminal revision application was specified for hearing. In their absence revision came to be allowed partly. It is difficult to accept that it has caused injustice to the present petitioner.

12. On going through the impugned judgment and order delivered by the the Additional Sessions Judge, Ahmednagar in criminal revision application, it is noticed by me that the learned Additional Sessions Judge, Ahmednagar has considered all aspects even

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though petitioner and his advocate remained absent. The Additional Sessions Judge, Ahmednagar has rightly taken into consideration the evidence on record and rightly dismissed the application for enhancement of maintenance against respondent no.2 which shows application of judicial mind. Certainly, no case is made out to remand the matter and that too when it is a proceeding for enhancement of the maintenance which is going on between the parties since the year 2012, approximately since 10 years.

13. Now going to other aspect whether interference is called for at the hands of this Court in the impugned judgment and order delivered by the Additional Sessions Judge, Ahmednagar in criminal revision application. Much was argued by Mr. Dhage, learned counsel for the petitioner about compromise decree drawn between the parties and allotment of 60R piece of land to the wife/respondent no.1 in lieu of maintenance which is main foundation to attack the order of enhancement of maintenance. It is pointed out by Mr. Jadhavar, learned

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counsel for respondent no.1 that petitioner has admitted while facing the cross-examination that he is in actual in possession of that piece of land. Meaning thereby respondent no.1 / wife is not cultivating the same. That piece of land is stated to be the main source of income of wife/respondent no.1, but that main source is deprived by the petitioner since he is cultivating the same. The 7/12 extract may be supporting but the petitioner himself has admitted during the cross examination that said land is in his possession which has strengthen the case of respondent no.1. As such, the compromise decree arrived between the parties which is an arrangement for the maintenance of respondent no.1, is in fact not reached at its logical end. It is simply on record and not reality.

14. Another point advanced by Mr. Dhage learned counsel for the petitioner about income of respondent no.1. It is pointed out that respondent no.1 is serving in Anganwadi and thereby drawing sufficient income which would take care of her maintenance. On the other hand,

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the petitioner has no sufficient income to pay the separate maintenance to respondent no.1. He is facing financial crises. He has no other source of income except the agricultural land. He does not own 16 Acres of land as observed by the learned Additional Sessions Judge, Ahmednagar.

15. On going through the impugned judgment and order delivered by the Additional Sessions Judge, Ahmednagar, more particularly, paragraph no.12 it throws light. It is evident that respondent no.1 is working as helper in Anganwadi and she is getting Rs.1,250/- p.m. as honorarium and it seems to be a temporary job. Even for the sake of moment, accepted that she is getting Rs.1,250/- p.m. as honorarium, can it be said to be sufficient to maintain for whole month, certainly not. While considering all these aspects, the Additional Sessions Judge, Ahmednagar has also considered the aspect of increase in the prices of essential commodities and accordingly fixed the enhancement of maintenance allowance at Rs.4,000/-,

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which appears to be reasonable and proper having regard to the status of both the parties and their financial position.

16. Mr. Dhage has placed his reliance in case of **Shabuktabano Ayyaz Inamdar and anr. Vs. The State of Maharashtra and another (supra)** on the point of remanding the matter back to the Magistrate. As observed earlier, facts of the case in hand do not make out a case for remanding the matter for fresh decision and that too in a case of maintenance when the parties have already put 10 years in the litigation.

17. Having regard to the above reasons and discussion, I do not find any merit in the petition. No interference is called for in the judgment and order passed by the Additional Sessions Judge, Ahmednagar in the Criminal Revision Application. It needs to be confirmed. Hence, the following order.

O R D E R

- i. Petition stands dismissed.

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- ii. The impugned judgment and order dated 7.10.2017 passed by the Additional Sessions Judge, Ahmednagar in Criminal Revision Application No.150 of 2012 stands confirmed.
- iii. Petition is accordingly disposed off.

(SHRIKANT D. KULKARNI, J.)

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