

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
943 CRIMINAL WRIT PETITION NO.929 OF 2019**

**ASHOK PANDHARINATH BHOSALE
VERSUS
BHAGYAREKHA ASHOK BHOSALE**

Mr. S. P. Salgar, Advocate h/f Mr. N. V. Gaware, Advocate for the petitioner

Mr. Y. H. Lagad, Advocate h/f Mr. R. R. Karpe, Advocate for the respondent

CORAM : ANIL L. PANSARE, J.

DATE : 27th July, 2022

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1. The petitioner husband is seeking to quash and set aside the order dated 06-07-2018 passed by the learned Additional Sessions Judge, Aurangabad in Criminal Revision No. 48 of 2015, thereby confirming the order dated 19-01-2015 passed by the learned Judicial Magistrate First Class, Pathardi.

2. The respondent is first wife of the petitioner. The entitlement of two children of second wife of the petitioner for enhancement in maintenance has been considered by this court in writ petition No. 1146 of 2017 (Ku. Subhadrashni D/o.

Ashokrao Bhosale and others Vs Ashok Pandharinath Bhosale) and vide order dated 26-07-2022 an amount of maintenance allowance has been enhanced from Rs.2000/- to Rs. 3500/- to each child. The entitlement of maintenance of first wife is in issue in the present petition.

3. The facts leading to filing of present petition are as under:-

a] The respondent first wife and her son had filed an application under Section 125 of the Code of Criminal Procedure seeking maintenance from the petitioner. The application was filed in the year 1994. The then learned Magistrate has granted maintenance to the tune of Rs.400/- to both in the year 2005, it was enhanced to Rs.660/- to the first wife and Rs.560/- to the son. Thereafter, the son having become major, his maintenance was stopped under the order of the then learned Magistrate. The respondent-first wife then sought enhancement in maintenance. The learned Magistrate by order dated 19-01-2015, enhanced

maintenance to Rs.2000/- mainly on the ground that during the period from 2005 to 2015, the salary of the petitioner has been increased and that the petitioner has been relieved of maintaining his son. The said order was challenged before the learned Additional Sessions Judge in CRA No. 48 of 2015 and by the impugned order the CRA has been dismissed upholding the finding of the learned Magistrate that he has taken into account all the attending circumstances to arrive at a reasonable conclusion.

4. Having heard both the sides and having noted the chequered history the position as on date is that the petitioner at the relevant time was working as Assistant Teacher (Now as Head Master) in a private aided school. He was earning Rs.10,000/- in the year 2002. The learned Magistrate has observed that by 2015 the salary must have been increased substantially and having considered that the petitioner is relieved of maintaining his son, has granted Rs. 2000/- only as maintenance allowance.

5. The learned advocate for the petitioner has argued that both the courts below have failed to consider the income of respondent. She is earning around Rs. 14,000/- per month. The income is held to be temporary income by the courts below. He further contends that the finding of the learned courts below that the salary of the petitioner must have been substantially increased is based on surmises and conjuncture. There is no evidence of enhancement in the salary.

6. As against, the learned advocate for the respondent would contend that living standard in the year 2005 to 2015 has been enormously increased. The judicial note of such fact can be taken. On the basis of increase in price of the living standards, rise in the income can be presumed. Further it has been argued that the petitioner is now relieved of maintaining his son. In the circumstances the enhancement is meager. He would further submit that salary of the petitioner, as on date, is about Rs.80,000/-. The learned advocate for the petitioner has

immediately countered the said statement by contending that the statement should not be made without there being any evidence on record.

7. If the challenge is to be considered within the parameters of the Article 227 of the Constitution of India, the question is whether there is manifest error committed by the courts below. It is not the case of the petitioner that both the courts below have travelled beyond jurisdiction while granting the reliefs. There is absolutely nothing on the record to remotely indicate that the courts below have committed patent error apparent on the face of the record.

8. If the petitioner's marriage with respondent No.1 is not in dispute and if the petitioner was maintaining respondent and her son and was paying Rs. 1220/- per month in the year 2005, he could easily pay Rs. 2000/- to his wife in the year 2015, particularly in absence of any material on record that the petitioner is incapacitated by any subsequent event.

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9. There is, thus, no merit in the petition. The petition is liable to be dismissed and stands dismissed accordingly.

[ANIL L. PANSARE, J.]

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