

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 CRIMINAL WRIT PETITION NO.976 OF 2022

KAZI MUSHAHEDODDIN S/O. KAZI AJIJODDIN
VERSUS
SUMERA FATEMA W/O. KAZI MUSHAHEDODDIN
AND OTHERS

Advocate for Petitioner : Mr B.A. Darak
Advocate for Respondent No. 3/State : Mr S.P. Deshmukh

CORAM : SHRIKANT D. KULKARNI , J.

DATE : 4th AUGUST, 2022

PER COURT :

1. The petitioner/husband is challenging the order passed below Exh.34 in Criminal Misc. Application No. 180/2014 dated 26th December, 2018 confirmed in Criminal Appeal No.8/2019 dated 26th November, 2021 by the Additional Sessions Judge, Beed.
2. Heard Mr B.A. Darak, learned counsel for the petitioner and Mr S.P. Deshmukh, learned APP for the State/respondent No.3.
3. Mr Darak, learned counsel for the petitioner invited my attention to the impugned order passed by the learned Magistrate as well as the impugned Judgment delivered by the Additional Seasons Judge in Criminal Revision Application. He submitted that respondent No.1 is serving as Assistant Teacher and drawing handsome salary. Her father is running institutions and she is backed up by her parents. She is able to maintain herself. She does not require any kind of maintenance from the husband/petitioner. He submitted that maintenance of Rs.4,000/- has been awarded under section 125 of Cr.P.C. and Rs.2,000/- under the D.V. Act

proceedings. He submitted that the petitioner is also serving as Assistant Teacher. He is required to look after his old aged parents. While fixing the interim maintenance amount, both the Courts below have not taken into consideration all these aspects. He submitted that the petitioner is overburdened due to such order of maintenance. Under these circumstances and looking to the income of respondent No.1/wife, the impugned order of maintenance may be quashed and set aside.

4. Mr S.P. Deshmukh, learned APP for the State supported the impugned order of maintenance which is confirmed at the hands of the learned Additional Sessions Judge, Beed. He submitted that amount of maintenance fixed by the Courts below is very much reasonable. No interference is called for.

5. I have gone through the impugned orders passed by the Courts below. Even the argument of Mr Darak, learned counsel for the petitioner is accepted in toto that respondent No.1/wife is serving as Assistant Teacher and drawing salary, her right of maintenance cannot be denied. The answer to that effect finds place in recent decision of the Hon'ble Supreme Court in case of ***Rajnish Vs. Neha and Anr. Criminal Appeal No. 730/2020 (arising out of SLP (Cri.) No.9503/2018.*** The Hon'ble Supreme Court has made position clear. The Hon'ble Supreme Court has taken into consideration preamble of the Constitution of India coupled with Article 39 of the Constitution which provides social and moral obligation on the husband to maintain his wife and children irrespective of the fact that wife is earning something. As such, I am unable to accept the submissions made by learned counsel Mr Darak to that effect.

6. Having regard to the legal position made clear by the Hon'ble Supreme Court in case of **Rajnesh** (supra), if the impugned order passed by the Courts below is taken into consideration, I do not find any perversity in the findings much less legal defect.

7. The amount of maintenance fixed by the Courts below cannot be said to be unreasonable having regard to the status of both the sides and the price index and prices of the essential commodities. Even though maintenance is awarded in two different proceedings, if total sum of maintenance is taken into consideration, it comes to Rs. 6,000/- per month which cannot be said to be burdensome to a person, who is serving as Assistant Teacher.

8. Having regard to the above reasons and discussion, I do not find any merit in the petition. The petition needs to be dismissed without issuing any notice to the opposite side.

ORDER

- (i) The Criminal Writ Petition stands dismissed.
- (ii) It is stated that the proceedings under Domestic Violence Act is pending since the year 2014. As such, the learned Magistrate is requested to expedite the proceedings under the Domestic Violence Act and dispose of the same within a period of four months from the receipt of writ of this Court.
- (iii) The Registry to inform to the learned Magistrate accordingly to comply the order.

[SHRIKANT D. KULKARNI, J.]