

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

44 CRIMINAL WRIT PETITION NO.1206 OF 2022
WITH WP/1207/2022

MAYURESH ANILKUMAR PATIL
VERSUS
VAISHALI W/O. MAYURESH PATIL (AJABE) AND ANOTHER

Mr.H.V. Tungar, Advocate for the petitioner.
Mr.A.J. Patil, Advocate for the respondents.

CORAM : KISHORE C. SANT, J.
DATED : 19.12.2022

PC :-

01. Heard learned Advocate for the parties. Taken up for final disposal at the stage of admission.

02. These petitions are filed by the petitioner-husband – original non-applicant. One petition is challenging rejection of appeal bearing Criminal Appeal No.90 of 2021, whereby the appeal filed by husband challenging grant of maintenance to the wife came to be rejected. Another petition is challenging partly allowing Criminal Appeal No.03 of 2022 filed by wife seeking enhancement in the maintenance, whereby the amount of maintenance is enhanced.

03. The original proceeding is Application PWDVA No.138 of 2016 filed in the Court of Judicial Magistrate, First Class, Court No.3, Chalisgaon. By way of the judgment and order dated 27.11.2021, the learned JMFC had directed the non-applicant to pay an amount of Rs.6000/- per month to applicant No.1 and Rs.4000/- per month to applicant No.2 towards maintenance. The Court had further directed to pay Rs.50,000/- towards compensation and Rs.10,000/- towards expenses. While determining the amount of maintenance, the Trial Court in para 20 had observed that the husband is getting salary of Rs.22,000/-. The Trial Court had also considered that the mother of the husband is having house property of 765 sq. mtr. and the father of husband is having a car. It was further considered that the husband is having his own medical shop.

04. In the appeal, the wife had prayed for enhancement of maintenance and husband had challenged the grant of maintenance. The learned Appellate Court while deciding both the appeals has recorded finding in para 26 that the husband must be getting income of Rs.35,000/- per month, considering his salary of Rs.22,000/- and income from his medical store. The petitioner husband had submitted before this Court that in-fact the medical

shop license he had already surrendered in the year 2019. He has produced on record that he has surrendered the medical shop license in the year 2019. He has filed chart of duty he is doing touring job and he has to visit various places in the region and he is staying at regional headquarter at Nashik. Thus, it is case of the husband that his salary in 2019 was Rs.22,000/- and now his salary is Rs.39,767/- from which compulsory deductions are of Rs. 10,967/- and his net salary amount comes to Rs. 28,800/-. Thus, the payment for the month of January, 2022 is Rs. 28,800/-. Thus, he submits that he does not have any other income except this salary.

05. As against that the wife has filed an affidavit and claimed that the salary of an employee at the level of Dy. Manager in the company like Macleods Pharmaceuticals Limited is around Rs. 12,43,430/- per year i.e. Rs.88,192/- - Rs. 90,506/- per month. On repeatedly asking the respondent as to whether any other proof of income is available with her. It is submitted that this certificate showing salary is obtained from web-site of the company. He could not give any statement of particular salary of the husband. She has also produced on record certain documents showing that vehicle stands in the name of father-in-law, other landed property, which is shown of the family

income, standing in the name of wife of paternal uncle of the husband. This Court finds that said cannot be relied upon while awarding maintenance. At present, the controversy is only as regards quantum of the maintenance amount.

06. This Court is left with no other option but to consider the documents available on record. Even if at this stage compulsory deductions are not counted, still income of the husband is around Rs.40,000/-. Even then the wife and the child would be entitled to receive 25% of the income of the husband, in view of the judgment in the case of Kalyan Day Chowdhury Vs. Rita Dey Chowdhury Nee Nandy, LAWS(SC) 2017 430.

07. The learned Counsel for the respondent relies upon judgment in the case of Rajnish v. Neha, (2021) 2 SCC 324 to submit that it was for the husband to produce on record his income and he is not coming with clean hands and also not producing his real income. However, at the same time even respondents are not in a position to place on record any tangible proof to show that income of the husband is as claimed by the wife.

08. This Court finds that it would be proper to grant 30% of total income of the husband as there is wife and daughter to be maintained. Considering the above, this Court grants maintenance of Rs.9000/- (Rupees Nine Thousand) per month to wife and Rs.4000/- (Rupees Four Thousand) per month to daughter. No interference is required so far as amounts of compensation and other expenses are concerned. It is expected of the petitioner to clear of all the arrears within a period of four weeks from today.

09. The petitions are accordingly disposed off.

[KISHORE C. SANT, J.]