

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

CRIMINAL WRIT PETITION NO.1108 OF 2021

Shri Rambhau Dhondiba Panmand,
Age-59 years, Occu:Agriculture,
R/o-Bhalavani, Taluka-Parner,
District-Ahmednagar.

...PETITIONER

VERSUS

Sau. Subhadra Rambhau Panmand,
Age-51 years, Occu:Nil,
R/o-Bhalavani, Taluka-Parner,
District-Ahmednagar.

...RESPONDENT

...
Mr.Swapnil N. Mule Advocate with Mr. R.V. Gore Advocate for
Petitioner.
Mr.Amol S. Gandhi Advocate for Respondent.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 9th JUNE, 2022

ORDER :

1. Present Writ Petition has been filed under Article 227 of the Constitution of India by the original respondent – husband challenging the order in Criminal Revision No.7 of 2020 passed by the learned Sessions Judge, Ahmednagar dated 17th February

2021 thereby allowing the revision filed by the wife partly and enhancing the maintenance amount to Rs.5000/- per month.

2. The facts giving rise to the Petition are that, the wife had filed Criminal Misc. Application No.3 of 1993 before the learned Judicial Magistrate First Class, Parner, District-Ahmednagar for maintenance under Section 125 of the Code of Criminal Procedure. That Application came to be partly allowed on 28th June 1996. Husband was directed to pay maintenance at the rate of Rs.300/- per month to the wife and Rs.200/- per month to the second applicant i.e. their son. Thereafter by filing Criminal Misc. Application No.68 of 2013 under Section 127 of the Code of Criminal Procedure, the wife claimed enhancement in the said amount of maintenance. That Application came to be partly allowed by the learned Judicial Magistrate First Class, Parner on 18th December 2019. The said maintenance amount at the rate of Rs.300/- per month was increased by Rs.900/- per month, thereby making it at the rate of Rs.1200/- per month. That order was challenged by the wife by way of Revision under Section 397 of the Code of Criminal Procedure, in the said Criminal Revision No.7 of 2020, which came to be partly allowed by the learned Sessions Judge, Ahmednagar on 17th February 2021. It will not

be out of place to mention here that present petitioner – husband has not challenged the order of enhancement in the maintenance amount passed by the learned Judicial Magistrate First Class, Parner.

3. Heard learned Advocate Mr. Mule with learned Advocate Mr. Gore appearing for the petitioner and learned Advocate Mr. Gandhi appearing for the respondent.

4. It has been vehemently submitted on behalf of the petitioner – husband that there was absolutely no evidence before the learned Sessions Judge to increase / enhance the maintenance amount. Whatever the wife has stated has been taken as a gospel truth and it is then stated that there is price escalation of the of essential commodities. It has been wrongly held that the husband would be earning Rs.70,000/- to 80,000/- per month when the 7 X 12 extract of the land / lands by the petitioner were never before the learned Sessions Judge. Further, there was also no evidence to arrive at a conclusion that by doing milk business additional income of Rs.25,000/- per month would be available for the husband. The maintenance that has been enhanced is too excessive.

5. In support of his contentions, the learned Advocate for the petitioner has tried to give a certificate issued by Tahsildar in respect of the income of the petitioner – husband stating it to be Rs.35,000/- per year for the year 2020-2021 and then he has also tried to give 7 X 12 extract of the land bearing No.811, which is admeasuring 4 Hectares 41 R, in which the husband is having only some share along with other persons.

6. At the outset, it can be said that there was an opportunity available to the husband to lead evidence regarding his income but it appears that he has not adduced the same. He is not disputing his occupation as agriculturist. Further, it is to be noted that the wife is also residing in the same village where the husband is residing. Therefore, definitely, the wife is having every knowledge about the occupation of the husband and the land owned by him. In his cross-examination, the husband has admitted that he has sold Gat No.815 to one Raju Tarate, but he has not produced on record any document to show that how much was the value. But then it is stated by the petitioner husband that he is still having Gat Nos.811 and 814 with him. The learned Advocate for the husband has given 7 X 12 extract

of Gat No.811 only for the perusal of this Court. There is water source available by way of well and still it is stated that crop like Jawar has been taken in the land, which appears to be not correct fact. Taking into consideration the water source available, income of the petitioner is definitely high. The learned Sessions Judge has rightly concluded that it was not proper for the Magistrate to expect production of 7 X 12 extract from the wife. It was in fact for the husband to state on oath as to what is his exact income, because wife is not having knowledge about the same. Even if we take his source of income from agricultural land, yet considering the amount that has been granted towards maintenance, taking into consideration the escalation of the price of the essential commodities, no interference is required under writ jurisdiction of this Court and the Writ Petition deserves to be rejected.

7. Accordingly, the Writ Petition stands rejected.

[SMT. VIBHA KANKANWADI , J.]