

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

**CRIMINAL WRIT PETITION NO. 1146 OF 2017
WITH
CRIMINAL APPLICATION NO. 198 OF 2020**

**KU. SUBHADARSHNI D/O. ASHOKRAO BHOSALE AND ANR.
VERSUS
ASHOK S/O. PANDHARINATH BHOSALE**

Mr. Shaikh Mazhar A. Jahagirdar, Advocate for the applicants.
Mr. S.P. Salgar h/f. Mr. N.V. Gaware, Advocate for the respondent.

**CORAM : ANIL L. PANSARE, J.
DATED : 26.07.2022**

PC :-

01. This petition is heard finally with the consent of the parties.

02. By the present writ petition under Article 227 of the Constitution of India, the petitioners, who are children of the respondent have sought to quash and set aside the judgment and order dated 17.11.2006 passed by the learned District Judge-1 and Additional Sessions Judge, Newasa, in Criminal Revision Application No.2 of 2016. The petitioners have also sought enhancement in the maintenance amount as granted by the learned Sessions Judge.

03. The learned Advocate for the respondent has raised objection on the ground that the petitioners have filed application for enhancement of maintenance under section 127 of the Code of Criminal Procedure, 1973 [for short “the Code”] before the Judicial Magistrate, First Class, Newasa. In response, the learned Advocate for the applicant submits that the said application has been withdrawn.

04. The learned Advocate for the petitioners further submits that he is not pressing for the order seeking enhancement in the maintenance under section 127 of the Code but has challenged the impugned order on the ground that the maintenance allowance as granted is not adequate vis-a-vis the material placed before the Courts below.

05. I have considered the submissions made by both the sides. The petitioners had filed application before the learned Magistrate on one of the grounds that they are not being maintained by their father and mother. The application before the learned Magistrate has been filed by the petitioners, who were then minors through their next friend – grand-mother Smt. Tarabai.

06. The evidence led appears to have reflected a different version. The learned Magistrate has given a finding that the petitioners were residing with their mother. The mother is drawing monthly salary of Rs.25,000/- to Rs.30,000/-. It is the responsibility of both the mother and the father to maintain their children. The learned Magistrate has also given a finding that the respondent is earning Rs.40,000/- to Rs.50,000/- per month and owns agricultural land admeasuring 1 Hectare 47 R. It is also brought on record that the respondent has to pay monthly maintenance of Rs.2,000/- to his first wife Bhagyarekha. The order granting maintenance to the first wife has been challenged by the respondent in a separate writ petition bearing No.929 of 2019. The respondent is also required to take care of his old aged mother.

07. In the aforesaid backdrop, the learned Magistrate thought it proper to grant maintenance allowance of Rs.1,000/- per month to each child. Being aggrieved by the said finding, the present petitioners challenged the said order under section 397 of the Code before the Additional Sessions Judge, Newasa. The learned Additional Sessions Judge held that there is no dispute that the respondent is liable to maintain the petitioners. There is further no dispute that the respondent is serving as a Head Master and is

drawing salary of more than Rs.50,000/-. The learned Additional Sessions Judge then found fault with the quantum of maintenance. According to him the educational expenses, conveyance required and daily needs such as food and clothing would require at least Rs.3,000/- to Rs.4,000/- per month for a student. He then has opined that even if it is considered that the mother of the petitioner is supporting them, the liability of the father to maintain his children cannot be ignored. He has accordingly enhanced the amount of allowance of maintenance to Rs.2,000/- per month to each petitioner.

08. During the course of arguments, when the learned Advocate for the petitioner commenced his argument that the petitioners are poor children, who have been ignored by both the parents, his attention was drawn to the finding given by both the Courts below that the petitioners have support of their mother. A specific query was then made whether the finding rendered by the learned Magistrate is not based on the evidence and material placed before him, the learned Advocate submitted that it appears to be a perverse finding.

09. However, when the pleadings in the petition were scrutinized, the

petitioners have not even challenged the said finding. Not a word has been uttered in the petition that the said finding is perverse or that it has been rendered without there being any evidence. In that view of the matter, the learned Advocate ought not to have made a submission that such finding is perverse.

10. What is then before the Court is that there is no challenge to the findings given by both the Courts below that the petitioners have support of their mother. She is earning Rs.25,000/- to Rs.30,000/- per month. There is further no challenge to the finding given by the Courts below that the respondent is required to pay monthly maintenance of Rs.2,000/- to his first wife Bhagyarekha and that his old aged mother is dependent on him. The learned Magistrate granted maintenance allowance of Rs.1,000/- per month to each child. It has been increased to Rs.2,000/- per month by the learned Additional Sessions Judge.

11. The question still remains is whether, in the given set of facts, the amount of allowance of Rs.2,000/- per child could be said to be a reasonable amount particularly when the learned Sessions Judge has observed that the

educational expenses, daily needs, such as food, clothing etc. would require at least Rs.3,000/- to Rs.4,000/- to each child. Despite such observation, the learned Sessions Judge has enhanced amount only to Rs.2,000/- per month.

12. To my mind, in the given set of facts, if the respondent is earning about Rs.50,000/- per month and if he has to pay Rs.2,000/- per month to his first wife and also to maintain his mother, he can still pay Rs.3,500/- per month per child, out of the balance amount at his disposal. The cost of living at the relevant time would justify said amount. The order of the Sessions Judge, therefore, requires modification to that effect.

13. At this stage, the learned Advocate for the respondent submits that the order granting maintenance be made applicable to the petitioner No.2 – son till he attains the age of majority. The law is well settled on this point. The Bombay High Court in the case of Gitanjali Gajanan Tendulkar Vs. Gajanan Dinkar Tendulkar, 1989 (1) Bom.C.R.334 held that if a son reaches the age of 18, it does not mean that as from that date he has to starve. The Court further held that it is the duty of the father to maintain his major son, who is unable to maintain himself and that father cannot deny his duty on the

sole ground that his son has attained majority and that he is residing with an earning mother. There is no reason to take a different view in the present case as son is still dependent on his parents.

14. In the light of the above, the request as made by the learned Advocate for the respondent cannot be granted. Hence, following order :-

- 15.
- a) The writ petition is allowed.
 - b) The respondent shall pay maintenance allowance of Rs.3,500/- per month (Rupees Three Thousand Five Hundred) to each petitioner from the date of filing of the application i.e. 19.08.2013.
 - c) The petition is disposed of in above terms.
 - d) In view of disposal of the writ petition, the connected Criminal Application seeking directions to deposit maintenance amount, does not survive and stands disposed of.

[ANIL L. PANSARE,J.]