

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.5763 OF 2019

Nagendra Baburo Gurav

...Petitioner

Vs.

Smt.Anjani Nagendra Gurav & Anr.

... Respondents

Mr.Tejas P. Hartalkar for the Petitioner.

None for the Respondents.

CORAM : C.V. BHADANG, J.

DATE : 1 AUGUST 2022

P.C.

. By this Petition the Petitioner is challenging the judgment and order dated 25 September 2019 passed by the learned Additional Sessions Judge at Islampur, Dist-Sangli, thereby modifying the order passed by the learned Magistrate granting maintenance to the Respondent-Wife. The learned Magistrate in Criminal M.A.No.363 of 2014 by an order dated 6 August 2018 had granted maintenance @ of Rs.7,000/- per month from the date of the order. The Petitioner filed Revision Application No.25 of 2018 challenging the grant of the maintenance. The Respondent-Wife filed Criminal Revision Application No.26 of 2018 for modification of the order as she was aggrieved by the fact that the maintenance was allowed from the date of the order and not from the date of the Application.

2. The learned Sessions Judge by the impugned judgment and order dated 25 September 2019 had dismissed the Criminal Revision Application No.25 of 2018 filed by the Applicant. The Criminal Revision Application No.26 of 2018 came to be partly allowed granting maintenance from the date of the Application/Petition.

Feeling aggrieved the Petitioner is before this Court.

3. I have heard the learned counsel for the Petitioner. Perused record.

4. It is submitted by the learned counsel for the Petitioner that the Petitioner is aged more than 60 years and has since remarried and has a daughter from second marriage who is taking education. It is submitted that the Petitioner who was serving in Bank of Maharashtra has since retired. It is submitted that the Petitioner had obtained a Housing Loan of Rs.53,00,000/- and a certificate dated 18 July 2018 is produced to show that the outstanding balance in the loan account as on that date was Rs.33,44,648/-. He therefore, submitted that the Petitioner is not in position to pay the maintenance that too from the date of the Application.

5. I have considered the submissions made. It is necessary to note that the Criminal Revision Application No.25

of 2018 filed by the Applicant challenging the grant of the maintenance of Rs.7,000/- per month has been dismissed. Even otherwise looking to the cost of living, no exception can be taken to the grant of maintenance at the rate of Rs.7,000/- per month, which cannot be said to be on a higher side by any standard.

6. Coming to the aspect of the modification of the order of the Magistrate by allowing the maintenance from the date of the Application, here also I do not find any reason to interfere with the impugned order. Although, submissions have been advanced on the basis of the fact that the Petitioner has remarried and has a daughter from the second marriage and she is taking education, and the EMI's paid towards the Housing Loan, the learned counsel for the Petitioner submitted that those documents were not produced before the Magistrate. In my considered view, they cannot be considered for the first time before this Court. That apart even going by the certificate dated 18 July 2018 the outstanding loan amount was Rs.33,44,648/-. There is nothing on record to show as to what is present outstanding. There is also no material to show as to the quantum of pension drawn by the Petitioner or other retirement dues which he must have received at the time of the retirement. In the absence of any such material, it is not possible to accept the submissions.

7. It is necessary to note that the normally rule is to grant maintenance from the date of the Application. Thus, in my considered view, the learned Sessions Judge has rightly modified the order by granting maintenance from the date of the application. No case for interference is made out.

The Criminal Writ Petition is dismissed.

C.V. BHADANG, J.