

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION No. 453/2021.

Prashant s/o Premraj Telang,
Aged about 35 years,
Occupation – Agriculturist,
Resident of Nandrun, Tq. Daryapur,
District Amravati.

... **PETITIONER.**

VERSUS

1. Anita Prashant Telang,
Aged about 32 years,
Occupation – Household,

2. Harshal Prashant Telang,
Aged about 5 years, Minor,
represented by Guardian
Mother – Respondent No.1

Both residents of in the house of
Pundlik Vitthalrao Talot,
C/o. Vinayak Deorao Ramaghare,
Anikat Kamla Nehru Nagar,
In front of Police Headquarters
Near Luxury Bus Stand,
Akola, Tq. And District Akola.

3. The learned Family Court, Akola,
through its Presiding Officer, Taluq
and District Akola.

... **RESPONDENTS.**

Mr. N.A. Vyawahare, Advocate for the Petitioner.
Mr.M.Bute, Advocate for Respondents.

CORAM : VINAY JOSHI, J.

DATE : JULY 29, 2022.

ORAL JUDGMENT :

Heard. Considering the controversy involved in the matter and by consent of the learned Counsel for the parties, Criminal Writ Petition is taken up for final disposal at the stage of admission by issuing **Rule**, making the same returnable forthwith.

2. Short challenge which falls for consideration in this petition is to the quantum of maintenance awarded by the Family Court. The petitioner/husband has questioned the awarded amount of maintenance on the ground that it is too excessive and harsh. The respondent no.1/wife resisted the petition by contending that the trial Court has rightly awarded the maintenance by considering the financial status of the petitioner/husband.

3. Briefly stated, the estranged couple married in the year

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2014, however, due to matrimonial differences started to live separately. Wife has filed an application for grant of maintenance in terms of Section 125 of the Code of Criminal Procedure, as well as an application for restitution of conjugal rights in terms of Section 9 of the Hindu Marriage Act. The Family Court, Akola heard both the matters together and by the impugned order awarded maintenance @ Rs.8000/- per month to respondent no.1/wife and equal amount to her son i.e. respondent no.2, aged 7 months. The decree for restitution of conjugal rights was also passed. The petitioner/husband has raised limited challenge to the extent of quantum of maintenance amount.

4. Having regard to the limited controversy, the respondent no.1/wife pleaded that the petitioner/husband owns 32 Acres of agricultural land at Nandura, from which he is earning annual income of Rs.25 lakhs. The husband also owns a Tractor and earns Rs.2 lakhs from said vehicle. The husband is doing cotton business from which he is earning income of Rs.5 lakhs per annum. Besides that, the husband has rented income of Rs.10,000/- per month. Similar is her evidence before the trial Court.

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5. Per contra, the husband has categorically denied his alleged sources of income as pleaded by wife. The husband has pleaded that he is doing labour work from which he earns Rs.150/- to Rs.200/- per day. It is also his case that his wife is Post Graduate in Arts and from tuition earns Rs.4000/- to Rs.5000/- per month. His evidence is also like his pleadings as mentioned aforesaid.

6. During cross examination, husband admitted that he owns 13 Acres of agricultural land, whilst he jointly own 3.5 Acres of land at Nandura. He admits the ownship of a Tractor and house property. Moreover, husband admits that wife has no source of income. Considering the rival pleadings and especially having regard to the admissions given by the husband, the Family Court has fixed the amount of maintenance @ Rs.8000/- each i.e. total Rs.16000/- per month.

7. The learned Counsel appearing on behalf of the petitioner /husband would submit that despite proof of income the trial Court seriously erred in awarding maintenance at an excessive rate. It is contended that though the husband owns 13 Acres of land, it was

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jirayat, having less yield. Though husband owns a Tractor, he does not get any income from that. The husband has explained that though he owns two houses, however, he resides in one, and the other is a dilapidated cattle shed. It is argued that the amount of maintenance must be reasonable and realistic one. The wife is well qualified, taking tuition and therefore, the trial Court ought to have considered said aspect while fixing the quantum of maintenance.

8. The learned Counsel for the husband by placing reliance on the decision of the Supreme Court in case of **Kalyan Dey Chowdhury .vrs. Rita Dey Chowdhury Nee Nandy – AIR 2017 SC 2383**, would submit that the amount of maintenance shall not exceed 25% of the husbands' net income. Perusal of the said judgment nowhere indicates that the Supreme Court has fixed the upper cap of maintenance to the extent of 25%. On the contrary it has been observed that the amount of maintenance must be befitting the status of the parties and capacity of the spouse to pay maintenance. It is further observed that the maintenance is always dependent on the factual situation of the case and would be justified in molding the claim of maintenance on various factors.

Rgd.

Looking to these observations, on the basis of given facts of the case, the amount of maintenance has to be fixed. Moreover, further reliance is placed on the decision of Supreme Court in case of **Rajnish .vrs. Neha and another – (2021) 2 SCC 324**, wherein the Supreme Court has laid down the criteria for determining the quantum of maintenance. It can be culled out from the said decision that the status of the parties, reasonable need of the wife and dependent children, financial capacity of the husband, living standard of the parties and cost of living would be the relevant factors for fixing the quantum of maintenance. In the light of the said settled position, the evidence is to be assessed.

9. At the inception, it requires to be noted that the petitioner /husband is not coming with clean hands before the Court of law. Though wife alleges that the husband owns agricultural land to the extent of 35 Acres along with a Tractor and house property, however, husband has flatly denied the same in his reply filed before the trial Court. On the contrary he has come up with a case that he is a mere labourer earning a paltry sum for his survival.

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Thus, from the conduct of the husband itself postulates that it is not worthy to rely on his words. The reason is obvious that in order to parry the responsibility of maintenance, the husband has concealed his sources while defending the case.

10. Be that as it may, during the course of cross examination, husband has admitted about his ownership of 13 Acres of land, Tractor and house property. In the face of said admission, having no escape the husband has belatedly produced revenue extracts of his agricultural land with a case that the entire land is jirayat, from which there is no yield. True, khata extract disclose that the husband owns 5.61 Hectors of land i.e. near about 13 Acres of agricultural land. Close scrutiny of the revenue extracts discloses that he is taking cash crops like Cotton and various Pulses. Particularly revenue extract of land bearing gut no.314, ad-measuring 87 R discloses that the husband is taking irrigated crops besides seasonal one. All the revenue extracts loudly speaks that the husband is getting multiple cash crops from his agricultural land, and thus, evidently he is having sufficient agricultural income. Obviously when husband is suppressing his income, an adverse

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inference has to be drawn against him. Moreover, admittedly he owns a Tractor, meaning thereby he is atleast a sound agriculturist having potential to maintain a Tractor. Besides that the husband jointly owns, another 3.5 Acre of land. Certainly atleast some income he must be deriving from the said land.

11. Always a general balance must be struck between all relevant factors. The test for determination depends upon the financial status of the husband, vis-a-vis of the wife's position. The husband himself has admitted in the cross examination that wife does not have any source of income. Though wife is a Post Graduate in Arts faculty, it does not work against her unless and until it is shown that she has some source of income. At one side, the husband is having sufficient landed property from which he is regularly taking cash crops. He is having his own house property and a Tractor, which is used for agricultural work as well as it has been generally used to hire purpose. Obviously from these sources, the husband must have been earning near about Rs.40,000/- to Rs.50,000/- per month, which I am compelled to infer since the husband has suppressed his own income. The trial Court has rightly struck

balance in between both the situation by awarding total maintenance of Rs.16,000/-. Pertinent to note that the wife is living separately in a rented premises by shouldering the responsibility of a growing son, who has different needs, including educational expenses. Having regard to the above facts, the maintenance awarded by the trial Court cannot be said to be excessive.

12. In the light of above discussion, no case for interference with the impugned order is made out. While parting with the order, I may observe that there are some interim orders directing the husband to clear the arrears, which is informed to be partially complied. The aspect of arrears would be effectively looked into in execution proceedings. With these observations, Writ Petition is dismissed. Rule discharged. No cost.

JUDGE