

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.368 OF 2022

Petitioner : **Nandlal Wasudeo Badwaik,**
(Ori. N.A.) Aged about 58 years, Occ. Service,
R/o. Tukum, Chandrapur,
Tah. & Dist. Chandrapur.

– Versus –

Respondent : **Sau. Lata Nandlal Badwaik,**
(Ori. Applicant.) Aged 54 years, Occ. Cultivation,
R/o C/o Late Baburao Savji Dange, Bhendala,
Tah. Chamorshi, Dist. Gadchiroli.

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Mr. A.A. Dhawas, Advocate for the Petitioner
Mr. K.B. Dange, Advocate for the Respondent.

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CORAM : **VINAY JOSHI, J.**
DATE : **19th SEPTEMBER, 2022.**

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally by consent of both the learned Counsel appearing for the parties.

02] The petitioner-husband has challenged an order dated 30/03/2019 passed by the learned Magistrate in terms of Section 127 of the Code of Criminal Procedure ('Code' for short) coupled with an order dated 13/01/2022 in Criminal Revision Application No.23/2019 by which the learned Sessions Judge has confirmed the order of the learned Magistrate.

03] Initially, the wife has applied for grant of maintenance vide Miscellaneous Criminal Case No.31/2002 in terms of Section 125 of the Code, which was allowed in the year 2006, whereby maintenance at the rate of Rs.900/- has been granted. Though the matter went up to the Supreme Court, however, the maintenance to the wife at the rate of Rs.900/- was intact. The respondent-wife has filed Miscellaneous Criminal Application No.32/2017 seeking enhancement of maintenance on account of change in circumstances, as the period more than a decade has been passed from the order of maintenance. The learned Magistrate considered the petitioner's salaried income and on that basis, enhanced maintenance to the extent of Rs.12,000/- per month. The said order was confirmed in the revision, that is why the petitioner is before this Court.

04] The learned Counsel appearing for the petitioner has primly submitted that the petitioner got retired from his service on 31/01/2021 and thereby he is getting pension to the tune of Rs.24,969/- only. It is submitted that the trial Court while fixing the maintenance has considered the salaried income of the petitioner of Rs.63,700/- per month. According to the petitioner, though he has brought to the notice of the revisional Court that during pendency of lis, he has been retired and getting pension, the same was not considered. In support of said contention, the petitioner has produced

documents regarding fixation of pension by his employer. Undisputedly, the petitioner was serving as a Cableman with the Western Coalfields Limited as well as there is no dispute that the petitioner has now stood retired and getting pensionary income. The revisional Court ought to have considered this undisputed fact, but it did not.

05] The respondent's learned Counsel has submitted that despite pension, the petitioner has received gratuity amount to the tune of Rs.20,00,000/-, provident fund of near about Rs.44,00,000/- besides leave encashment. Thus, according to him, though the petitioner is pensioner, still he has substantial source from the retiral benefits and thus the maintenance fixed by the learned Magistrate is proper.

06] The order of Magistrate is undoubtedly based on the salaried income of the petitioner, which situation has now been changed. Moreover, at the time of deciding maintenance application by the learned Magistrate, the petitioner was in service meaning thereby he had no retiral benefits. Therefore, in changed scenario fresh look is necessary to decide the petitioner's income post retirement. This Court in the writ jurisdiction cannot enter into the said factual aspect, which exercise needs to be carried out by the learned Magistrate. The party can lead evidence restricted to the income

in the trial Court on which the application would be decided afresh. Though, the original application was of wife on account of change in circumstances, this aspect can also be considered to avoid multiplicity of proceedings. Admittedly, at present the husband is getting pension and received substantial amount on account of the retiral benefits. Thus, in the meantime, it is desirable that he shall pay the reasonable amount to the wife towards interim arrangement.

07] In view of the above, the following order is passed :

- i. The petition is partly allowed.
- ii. The impugned order dated 30/03/2019 passed by the learned Magistrate in Miscellaneous Criminal Application No.32/2017 along with the order of revisional Court is hereby quashed and set aside.
- iii. Miscellaneous Criminal Application No.32/2017 is restored on the file of the learned Magistrate with direction to allow the parties to lead evidence restricted to the income and decide the same afresh in accordance with law.
- iv. During pendency of the said application, the petitioner shall pay monthly maintenance at the rate of Rs.10,000/- till disposal of the

application which shall be to the subject to final outcome.

- v. The petitioner-husband shall disclose to the learned Magistrate about his exact pension and retiral benefits with supporting documents.
- vi. The arrears shall be calculated at the rate of modified rate of maintenance fixed by this Court by way of interim arrangement.
- vii. Both the parties undertake to appear before the learned Magistrate on 15th October, 2022 without issuance of separate notice.
- viii. The petition is disposed of in the above terms. Rule accordingly.

(VINAY JOSHI, J.)

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