

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

CRIMINAL WRIT PETITION NO.145 OF 2023

**JIVAN LIMBRAJ PATIL
VS
PREMALA JIVANRAO PATIL (SURWASE)**

Ms. Ashwini Lomte, Advocate h/f Mr. Mr. S. J. Salunke,
Advocate for the petitioner

Smt. M. S. Mhase, Lex Aquila, Advocate for respondent No.1

CORAM : KISHORE C. SANT, J.

RESERVED ON : 26th APRIL, 2023

PRONOUNCED ON : 07th JUNE, 2023

P. C.

1. Challenge in this petition is to an order passed by the learned Additional Sessions Judge, Nilanga, Dist. Latur in Criminal Appeal No.1/2022 dated 11-03-2022 whereby the judgment and order dated 28-11-2018 passed by the Nayadhikari Gram Nyayalaya, Shirur Anantpal In Misc. Cri. Application No.137/2016 is confirmed. Petitioner-husband is directed to pay to wife an amount of Rs.5000/- per month under Section 125 of the Cr. P. C.

2. Facts, in short, are as under:-

a] The parties are married to each other on 17-05-1981 at Shirur. A daughter is born in 1989 who is also now married on 14-07-2013. However, later on it is alleged that the husband started ill-treating the wife under influence of his brother. They even tried to murder the daughter of the applicant. Husband is now neglecting & refusing to maintain wife etc. Wife has no income source and she is unable to maintain herself. Thus, maintenance is claimed.

b] It is the case of the husband that there is no ill-treatment or harassment at the hands of the husband. The application is false. It is the wife who on her own left the company of the husband. Husband does not have any sufficient income. Though he owns landed property but the same is not irrigated land. For his survival he is doing labour work. It is the wife who on her own is residing with her father at Shirur. The

husband many times tried to bring her back. But she never paid any heed to such attempts.

c] After recording the evidence the learned Nyayadhikari, Gram Nyayalaya recorded finding that wife was constrained to reside with her father because of ill-treatment at the hands of the husband. It is held that there is sufficient justification for the wife to reside at her father's place. The learned trial court considered 7/12 extract filed by the wife showing that husband is having land Gut Nos. 140 and 264. Thus, it is held that the husband is having total 90-R land from both the gut numbers. Though the land is not irrigated but it is noted that the husband is having tractor and car and thus it can be held that his earning is at least Rs.1,20,000/- per annum and granted amount of Rs.5000/- per month towards maintenance. The petitioner husband challenged the said judgment and order by filing criminal revision application No.17/2018. The learned Sessions Judge treated the revision as appeal in view of Section 33 of the Gram Nyayalay Act, 2008. Appeal thus came to be registered as

Criminal Appeal No.1/2022. The learned Sessions Judge concurred with the findings recorded by the learned Nyayadhikari, Gram Nyayalaya. He also considered that the learned trial judge has rightly held that earning of the husband is around Rs.1,20,000/- and also held that granting 50% of the amount towards maintenance cannot be said to be in excess and confirmed the order.

3. Learned advocate for the petitioner vehemently argued that the respondent wife could not prove the income of the husband. Under such circumstances no amount could have been granted. Even considering that the respondent husband is having 90-R land still there is nothing to show that said land is irrigated land and the husband is getting income of Rs.1,20,000/- per annum. She further submits that even if it is considered that the husband is earning of Rs. 1,20,000/- granting 50% of the amount of earning of the husband is excessive. She submits that now the husband is of 66 years of age and is not in a position to do agriculture work and

considering that the amount needs to be reduced.

4. Learned advocate for the petitioner relies upon the judgment reported in 1970 (3) Supreme Court Cases 129 in the case of Dr. Kulbhushan Kumar Vs Smt. Raj Kumari and another wherein the Hon'ble Apex Court has held that the amount of maintenance should be reasonable. Considering the income of the husband in that case 25% amount of income was considered to be reasonable amount towards maintenance. The learned advocate further relied upon the judgment in the case of Kalyan Dey Chowdhury Vs Rita Dey Chowdhury Nee Nandy in Civil Appeal No. 5369/2017 wherein the Hon'ble Apex Court has held that maintenance is always dependent on the factual situation of the case. In that case salary of the husband was Rs.95,000/- per month the High Court had enhanced the amount of maintenance. The Hon'ble Apex Court however considered the matter and reduced the amount of maintenance from Rs.23,000/- to Rs.20,000/- per month as maintenance to the respondent-wife and son and partly allowed the appeal of the

applicant. Next judgment is in the case of Jasbir Kaur Sehgal (smt) Vs District Judge, Dehradun and others reported in (1997) 7 Supreme Court Cases 7. It was a case under the Hindu Marriage Act. The maintenance was claimed pending litigation under Section 24. The Hon'ble Apex Court held that maintenance should be sufficient to provide reasonable comfort to the wife and ability to prosecute the case. However same could not be excessive and exorbitant. The Hon'ble Apex Court by considering facts of the case also held that even the husband has to spend for his own needs and reasonable expenses for maintenance. Considering this, in that case the amount of Rs.5000/- per month was directed to be paid to the wife. In that case the income of the husband was Rs. 2,40,000/- per annum. Thus amount of 25% of the income was directed to be paid.

5. Learned advocate for the respondent vehemently opposed the petition. She submits that considering the present day expenses and standard of living of the parties the learned Nyayadhikari has rightly granted amount of Rs.5000/- per

month. She submits that both the courts below have rightly considered all the aspects involved in the matter and prays for dismissal of the petition.

6. Thus, considering all the facts of this case and the submissions this court finds that amount of maintenance @ 30% of the income of the husband would be just and proper. In this case both the courts have held the income of the husband to be Rs.1,20,000/- per year which comes to Rs.10,000/- per month. Considering that the court have granted 50% amount of income of the husband certainly amount to be in excess as the husband also requires the amount for his own livelihood. Considering the age of the husband is 66 years, he is not expected to cultivate the land with full energy. Thus by considering that the amount of maintenance should be around 30% of the income of the husband. This court finds that considering the present day expenses it has come on record that husband has tractor and car of his own. Thus, his earning needs to be considered as more than Rs.1,20,000/- per annum. This court thinks it fit in the

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interest of justice that amount needs to be reduced to Rs. 3,000/- per month i.e. 30% of the income of the husband. Hence, the following order:

ORDER

- a] The writ petition is partly allowed.
- b] Amount of maintenance is reduced from Rs. 5000/- to Rs. 3,000/- per month from the date of this order.

[KISHORE C. SANT, J.]

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