

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL WRIT PETITION NO. 349 OF 2016****VYANKATI S/O. BALASAHEB CHOPADE****VERSUS****SHANTA @ SARIKA W/O. VYANKATI CHOPADE**

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Advocate for Petitioner : Mr. Kale Mahesh P.**Advocate for Respondent : Mr. Dhongade Anilkumar B.**

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CORAM : KISHORE C. SANT, J.**DATE : 22nd FEBRUARY 2023.****ORDER :**

1. Heard the learned Advocates for the respective parties at length.

By consent of the parties, taken up for final disposal.

2. This Writ Petition is arising out of the maintenance proceeding filed by the respondent/wife. The respondent filed Criminal Miscellaneous Application No.284/2014 for maintenance under Section 125 in the Court of learned Judicial Magistrate First Class, Basmath, wherein she prayed for amount of Rs.5000/- per month. The learned Magistrate by judgment and order dated 26.06.2015 was pleased to

direct the petitioner/husband to pay an amount of Rs.3000/- per month to respondent/wife by holding that she is entitled to get the maintenance, as the husband has refused and neglected without sufficient reason to pay the maintenance to the wife. The petitioner therefore filed a Revision Petition No.18/2015 in the Court of learned Sessions Judge, Basmath. The learned Additional Sessions Judge by judgment and order dated 18.02.2016 dismissed the Revision and thereby confirmed the order passed by the learned JMFC.

3. The petitioner in the present petition, has raised the ground mainly that the amount awarded is exorbitant. The petitioner does not have any land. The land which is shown to be belonging to the petitioner, in fact the same is standing in the name of his father and there is no partition. The learned Advocate for the petitioner vehemently argued the matter stating that the petitioner is getting neutral amount by doing business of tailoring work and his hardly earning Rs.7000 per month. It is further argued that both the Courts below have not considered the aspect of income of the husband properly. The wife has not produced any evidence before the Court to

show the earning of her husband. The Courts below have only held on the basis of the statement that there is a land standing in the name of petitioner etc. He submits that it was necessary for the Court to look for actual evidence about the income of the husband and the same is not done. Therefore he prays that both the impugned orders deserve to be quashed and set aside and or at-least the amount of maintenance be reduced.

4. The learned Advocate for the respondent vehemently opposes the petition stating that the petition is misconceived. He submits that the conduct of the petition also needs to be seen. He further submits that as on today, there are arrears of maintenance amount i.e. more than Rs. 7 Lakh, which are not yet paid by the petitioner. In such case, this Court need not show indulgence in the petition, unless he clears the entire arrears. He submits that the Courts below have rightly considered the aspect of income, since the husband is having land in his possession. Though the land stands in the name of his father, still the Court has rightly considered that its' a family property and the husband is getting income.

5. Considering both the judgments and the submissions, this Court finds that the orders passed by both the Courts below, are reasonable. The maintenance amount of Rs.3000/- cannot be said to be unreasonable. It is the case of the petitioner himself that he is doing tailoring work. Though he submits that the land stands in the name of his father, still it is belonged to his family. In view of this, this Court finds that there is no illegality committed by the learned Additional Sessions Judge and he has rightly passed the order. No interference is called for. Hence, the Writ Petition is dismissed and disposed off accordingly.

[KISHORE C. SANT, J.]

Najeeb.