

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

40 CRIMINAL WRIT PETITION NO.1196 OF 2019

**SUNIL S/O. SITARAM BHUMBE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. Manikrao L. Wankhede, Advocate for the petitioner
Mrs. P. V. Diggikar, APP for the respondents/State
Mr. Kiran P. Rathod, Advocate for the respondent
No.2(appointed)

CORAM : KISHORE C. SANT, J.

DATE : 21st APRIL, 2023

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1. Heard both the parties.
2. By way of this petition the petitioner husband is challenging the order of granting of maintenance to respondent wife and son @ Rs.1800/- and Rs.1400/- per month respectively from the date of filing of the application. Wife had filed Misc. Application No.373/2014 seeking maintenance. The learned JMFC, Georai was pleased to partly allowed the application directing to pay maintenance as stated above by the judgment

and order dated 31-08-2017. The husband therefore, filed a revision bearing criminal revision No. 105/2017. The learned Additional Sessions Judge, Beed by the judgment and order dated 14-12-2018 was pleased to reject the revision application. The petitioner is thus before this court.

3. Learned advocate for the petitioner submits that the wife on her own is staying separately. Husband had filed an application under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights. However in spite of that wife is not residing with the husband. He submits that before the court no proof of income is produced by the wife. So also she could not give any evidence about neglect and refusal on the part of husband to maintain the wife. He submits that both the courts have failed to appreciate that in absence of proof of income no maintenance should have been awarded. He further submits that taking a case as it is the amount of maintenance is exorbitant.

4. Learned advocate who is appointed to represent

respondent No.2 submits that in fact amount awarded by the trial court is very meager considering the day-to-day expenses required for children. He submits that before the trial court documents were submitted to show that husband is getting income from the agriculture land. He has also some landed property and house property from which he is getting handsome amount towards rent. In addition to that he is cultivating the 17-18 acres land of temple namely Datta Mandir Devasthan and from there also he is getting good income. Considering that in fact more amount should have been granted.

5. Considering the above, this court finds that the courts have rightly considered that the husband is having some income from his agriculture land. In any case the husband has to maintain the wife and children. Though it is contended by the husband that he is ready to cohabit with the wife however, it hardly can be believed that wife is residing separately for no reason. In the trial court it is sought to be canvassed that the applicant wife is living adulteress life. However, there is nothing

on record to substantiate this allegation. From this allegation itself it is clear that husband is not treating well to his wife and is suspecting her character. In such circumstances, if the wife residing separately is justified and she cannot be blamed for the same.

6. Even if assuming that there is no proof of income but still fact that husband owns the agricultural land is not denied. In any case everybody is expected to maintain wife and children. This court finds that no case is made out to call for interference in the matter. Hence, the criminal writ petition stands dismissed.

7. Mr. Rathod, learned advocate is appointed through legal aid. His fees is quantified of Rs.5,000/-.

[KISHORE C. SANT, J.]