

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

960 CRIMINAL WRIT PETITION NO.1251 OF 2022

**SIDHARTH PANDURANG MULE
VERSUS
SANGMITRA (DIVORCED) W/O. SIDHARTH MULE AND
OTHERS**

...
Advocate for Petitioners : Mr. Shaikh Wajeed Ahmed
Advocate for Respondent 1 : Mr. M.G. Kochar
(appointed Through Legal Aid)

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CORAM : S. G. CHAPALGAONKAR, J.
Dated : September 05, 2023

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PER COURT :-

1. By this petition, the petitioner-husband impugns the order passed by the Sessions Court, Parbhani in Criminal Revision Application no.155 of 2017 dated 25.5.2022, thereby confirming the judgment and order passed by the J.M.F.C. Parbhani in Criminal M.A. no.563 of 2015 dated 23.11.2017 granting maintenance to respondents u/s 125 of the Criminal Procedure Code.

2. Learned advocate appearing for the petitioner would submit that both the Courts below have failed to appreciate that although gross salary of the petitioner was Rs.18,708/-, he was getting take home salary of Rs.12,697/-.

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He would submit that dependency of his parents and brother on income of petitioner is also ignored by both the Courts below. According to him, learned Magistrate failed to record the reasons for granting maintenance from the date of the application instead of from the date of the order. He would submit that wife is an educated lady, she failed to cohabit with the petitioner. She left home on her own volition and claiming the maintenance. He would submit that both the Courts below have failed to exercise the jurisdiction in judicious manner and passed the impugned orders directing petitioner to pay excessive maintenance to respondents under section 125 of the Criminal Procedure Code. He would further submit that under separate application filed under DV Act, the respondent wife and children are getting additional maintenance. As such, the excessive maintenance is awarded.

3. Mr. Kochar, learned advocate appearing for the respondents would submit that the Courts below have recorded findings of fact based on the evidence adduced before the Trial Court. He would submit that the petitioner is Government Servant at Zilla Parishad. The respondent is residing separately alongwith two minor children on account of the ill-treatment
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at the hands of petitioner. The Courts below have recorded the findings that the petitioner has failed to maintain the respondents, although he has sufficient means. Mr. Kochar would further point out that presently the petitioner is earning salary of Rs.41,469/-.

4. Having considered the submissions advanced, it is apparent that the learned Magistrate has granted the total maintenance of Rs.4,500/- to the respondents i.e. wife and two childrens of the petitioner, who is presently serving as Class-3 employee with the Zilla Parishad. It is not in dispute that he was getting monthly salary of Rs.18,000/- at the time of recording of his evidence before the Magistrate. Even judicial note of the fact can be taken that in view of application of pay commission recommendations, salary of the applicant must have been raised to the level as pointed out by Mr. Kochar, learned advocate appearing for the respondents.

5. So far as the contention of the petitioner that dependency of his parents and brother is not taken into account by the Magistrate, it can be gathered from the evidence on record that the petitioner has failed to adduce

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evidence in this regard. On the other hand, it is a matter of record that the father of petitioner holds movable and immovable property including a flat at Pune. There is nothing to show that brother of the petitioner was dependent on him. In that view of the matter, contention of the petitioner in this regard cannot be accepted. Second contention of the petitioner is that independently the maintenance under the provisions of the 'DV Act' is granted. The learned Sessions Judge has observed in paragraph no.15 of the judgment that the Magistrate, after considering the salary of the petitioner and taking into account maintenance claimed under both the Acts has fixed the maintenance amount. The observations made by the Sessions Court appears to be appropriate considering the fact that application under section 125 of the Cr.P.C. as well as 'DV Act' is decided on same day. Even taking together maintenance granted in both the cases, total maintenance comes to Rs.8,500/- which appears to be just and proper considering the income of the petitioner.

6. The third contention raised by the petitioner that learned Magistrate granted maintenance from the date of the application and no reasons are recorded for that purpose. It is
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not in dispute that the respondents are residing separately since prior to the date of application and they have no means to maintain themselves. Aforesaid facts are discussed in the order passed by the Magistrate. Therefore, no fault can be found in the order of the Magistrate thereby directing the payment of the maintenance from the date of the application.

7. Considering the reasons adopted by the learned Magistrate, which has been confirmed by the Sessions Court, no fault can be found in the orders. No case is made out to cause interference under the writ jurisdiction of this Court. Writ Petitions are dismissed.

8. Since, Mr. Kochar, learned Advocate for respondent is appointed through the High Court Legal Service Sub-Committee, Aurangabad. His remuneration be released as per the Rules.

(S. G. CHAPALGAONKAR, J.)

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