

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1818 OF 2022

Mr. Raghunath s/o Pandurang Padole,
Age : 54 Years, Occu.: Nil,
R/o. Ghatsiras, Tq. Pathardi,
District : Ahmednagar.

... Petitioner.

VERSUS

1. Pandurang s/o Tukaram Padole,
Age : 80 years, Occu. Nil,
R/o. Ghatsiras, Tq. Pathardi,
District : Ahmednagar.
2. Pandharinath Pandurang Padole,
Age : 58 years, Occu. Agril & Pensioner,
R/o. Ghatsiras, Tq. Pathardi,
District : Ahmednagar.
3. The State of Maharashtra,
(Copy to be served on Public
Prosecutor of High Court of Judicature,
of Bombay Bench at Aurangabad.)

... Respondents.

...

Advocate for Petitioners : Mr. Kasar Rajendra Sudam
APP for Respondent No.3/State : Mr. P. M. Kulkarni
Advocate for Respondent No.1 : Mr. Palve Pradeep K.

...

CORAM : KISHORE C. SANT, J.

DATE : 3rd MAY 2023.

Oral Judgment :

Heard.

1. Rule.
2. Rule made returnable forthwith by consent of the parties.
3. This petition is filed by original respondent/son of present respondent no.1, original applicant in 125 proceeding. Unfortunately, respondent no.1 was required to file a petition under Section 125 seeking maintenance from both the sons i.e. present petitioner and present respondent no.2. The learned Judicial Magistrate First Class, Pathardi, recorded a finding that both the sons are not maintaining Respondent No.1 and directed respondent no.2 to pay Rs.500/- per month and present petitioner was directed to pay Rs.1000/- per month to respondent no.1. The father therefore filed application bearing Criminal Revision Application NO.146/2018 for enhancement. The said Revision was decided ex-parte against both the sons. The learned Sessions Court concurred with the findings of the learned trial Court so

far as refusal and neglect is concerned. Vide order dated 28.09.2022, the learned Sessions Judge observed that looking to the age of the father and present day conditions standard of living etc. enhanced the amount directing respondent no.2 to pay Rs.4000/- per month and present petitioner to pay Rs.3000/- per month to respondent no.1.

4. The case of the petitioner is that the father already has some property in his name. The father himself by way of family arrangement has allotted the lands to the sons by keeping some portions with him and he can maintain himself from the land retained by him. Learned Advocate for the petitioner submits that there was also suit filed by this petitioner bearing RCS No. 215/2015 for partition and injunction and the same is pending. It is because of the suit, father and the other brother in collusion have filed this proceeding just to harass the present petitioner. He further submits that when in the trial Court he had shown readiness to maintain the father, there was no reason for the trial Court to pass order directing to pay maintenance to father. He further submits that in the Revision, there is no cogent reason given for enhancing the maintenance and prays for setting aside the order.

5. Learned Advocate for respondent no.1 submits that both the Courts have rightly held that petitioner and respondent no.2 have refused and neglected to maintain their father. Looking at the age of their father/respondent no.1, it is clear that he is not in a position to earn livelihood for himself and he is totally dependent upon his sons. Looking at the fact that respondent no.1 though is shown to be 80 years in title clause, he is presently of 86 years of age. It is quite natural for him to be dependent on his sons. The petitioner except making a statement that he is ready to maintain his father, has not shown any material to show that in fact he is maintaining his father. This can be seen even from his conduct of not depositing the amount of arrears. He further submits that as on today, the amount of arrears is Rs.2,70,000/-, out of which he has paid only Rs.16,750/-. This certainly shows that his offer is not bonafide and he is not taking care of his father. He prays for rejection of the petition.

6. So far as the finding that the petitioner is not maintaining respondent no.1 is concerned, this Court finds that the concurrent finding of fact need not be interfered in the writ petition. So far as

quantum is concerned, this Court finds that quantum cannot be said to be unreasonable or exorbitant. In view of this, this Court finds that the petition deserves to be rejected. Hence the following order.

ORDER

- (i) The Writ Petition stands rejected.
- (ii) Rule is discharged.

[KISHORE C. SANT, J.]

Najeeb.