

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

CRIMINAL WRIT PETITION NO.1683 OF 2017

**ANANT S/O. ROHIDAS SURYAWANSHI
VERSUS
ASHA W/O. ANANT SURYAWANSHI AND ANR**

Mr. M. P. Kale, Advocate for the petitioner
Mr. S. S. Jangada, Advocate for respondents

CORAM : R. M. JOSHI, J.

DATE : 10th AUGUST, 2023

P.C. :-

1. Heard.

2. This petition takes exception order dated 23/10/2017 passed by the Addl. Sessions Judge, Parbhani in Criminal Revision No. 83 of 2015 whereby the order dated 29/08/2015 passed by JMFC, Parbhani in Cri. M.A. No. 10/2014 granting maintenance to the respondents is confirmed.

3. Admittedly the petitioner is husband of respondent No.1 and father of minor respondent No.2. Further admittedly the petitioner and respondent No.1 are staying separately. Respondent No.1 filed application under Section 125 of Cr.P.C. being Criminal M.A. No. 10 of 2014 seeking maintenance for herself and minor son. In the said proceeding petitioner appeared and objected to the same on the ground

that the second application for seeking maintenance under Section 125 of Cr.P.C. is not tenable. It is also contended that respondent No.1 is of quarrel-some nature and that the petitioner has not refused to maintain her.

4. Learned counsel for the petitioner has brought to the notice of this Court the proceeding of Criminal M.A. No.22/2010 filed by the respondent Nos. 1 and 2 against petitioner under Section 125 of Cr.P.C. claiming maintenance. In the said proceeding a compromise was arrived at between the parties vide Exhibit 13 and as per the said compromise the petitioner and respondents resumed cohabitation. Learned counsel for the petitioner submits that the second application under Section 125 of Cr.P.C. is not tenable and at the most it was open for the respondents to file an application under Section 127 of Cr.P.C. for alteration in maintenance. He further submits that the maintenance granted by the impugned order is exorbitant. Learned counsel for the respondents supported the impugned orders. He submitted that pursuant to the said orders respondents have not received any amount of maintenance till date.

5. Perusal of the record indicates that the Criminal M.A. No. 22/2010 came to be filed by respondents against petitioner seeking maintenance under Section 125 of Cr.P.C. The said application was

decided on 03/10/2011 whereby the respondent Nos. 1 and 2 were granted maintenance of Rs.1500/- and Rs.1000/- per month respectively. In the said compromise pursis was filed vide Exhibit 13 which shows that the petitioner and respondents started staying together and that it was agreed by the petitioner to transfer the land in the name of minor.

6. There is no dispute about the fact that subsequent to the said compromise deed and resumption of cohabitation by husband and wife, once again dispute arise between the parties and therefore again they started staying separately. By accepting the compromise between the parties, learned JMFC has practically revoked the order of maintenance and the proceeding was terminated. Thus, admittedly the said order was not in force after the compromise arrived at between them.

7. Section 127 of Cr.P.C no doubt provides for the alteration in the allowances. Needless to state that perusal of the said provision clearly indicate that the alteration could be done only in respect of the order which subsists. The order which does not subsist question of alteration or modification thereof would not arise. Thus, the the peculiar facts of this case, this Court finds no substance in the contention of the learned counsel for the petitioner that the second application under Section 125 of Cr.P.C. is not maintainable. There would be no

impediment for the respondents to file such application after they being neglected by the petitioner and not been able to maintain themselves.

8. As far as the contention of the petitioner about the order of maintenance being exorbitant, excessive it is pertinent to note that in year 2011 the maintenance of Rs.1500/- was granted in favour of respondent No.1 whereas respondent No.2 was directed to be paid Rs.1000/-. The impugned order in the present petition is passed in the year 2014. After the laps of the substantial time. Also considering the fact that the needs of the minor for the purpose of school and other expenses must have been increased, the direction of the learned Magistrate to pay maintenance of Rs.2500/- to respondent No.1 and Rs.2000/- to respondent No.2 cannot be termed exorbitant or as excessive. Even otherwise the petitioner has failed to lead any evidence before the Magistrate in order to show his income and his ability to pay maintenance to challenge quantum of maintenance. Having regard to these facts, there is no substance in the petition. Hence Petition is dismissed.

9. Learned counsel for the respondents submits that this Court has allowed the respondents to withdraw sum of Rs.25000/- deposited by the petitioner in this Court. He submits that he be permitted to withdraw the said amount along with the accrued interest. Respondent

No.1 is permitted to withdraw the principal amount with interest accrued thereon after establishing her identity before the Registry.

(R. M. JOSHI, J.)

ssp