



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3590 OF 2022

Sau. Afsana Sarfarajahmed Patel

...Petitioner

Versus

Shri. Sarfarajahmed Mainoddin Patel & Anr.

...Respondents

Mr. M. S. Mulla, for the Petitioner.

Mr. Khateeb Vakil i/b. Khateeb A. Sallem, for Respondent No.1.

Mrs. M. R. Tidke, APP, for the State/Respondent No.2.

CORAM : MADHAV J. JAMDAR, J.

DATED : 9th OCTOBER 2023

P.C. :

1. Heard Mr. Mulla, learned counsel appearing for the Petitioner, Mr. Khateeb Vakil, learned counsel appearing for Respondent No.1 and Mrs. M. R. Tidke, learned APP, appearing for the State/Respondent No.2.
2. The challenge in this Writ Petition is to the legality and validity of the order dated 6th March 2017 passed by the learned Additional Sessions Judge, Solapur in Criminal Appeal No.14 of 2016 and prayer is also sought that the Petitioner be granted maintenance of Rs.20,000/- per month as the Respondent No.1 is admittedly earning Rs.58,320/- per month.

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3. In this case, learned Judicial Magistrate, First Class, Court No.9, Solapur by order dated 26th June 2015 passed in application filed below Exhibit-10 in Criminal Miscellaneous Application No.798 of 2014 directed the Respondent No.1 to pay maintenance of Rs.5,000/- per month to the Petitioner. It is significant to note that the Petitioner sought maintenance of Rs.10,000/- per month and the said application was filed on 4th October 2014 i.e. about 9 years ago. The learned JMFC passed an order directing payment of Rs.5,000/- per month as it is observed that the Respondent No.1 is receiving a salary of around Rs.24,651/- per month. The said order dated 26th June 2015 of the learned JMFC was challenged by the Respondent No.1 by filing Criminal Appeal No.14 of 2016 before the learned Additional Sessions Judge, Solapur. The learned Additional Sessions Judge, Solapur by order dated 6th March 2017 reduced the said amount from Rs.5,000/-per month to Rs.3,000/- per month, as it was submitted before the learned Additional Sessions Judge that Respondent No.1's gross salary is Rs.27,895/- per month and after deduction, he is receiving net salary of Rs.10,051/- per month. The said order of the learned Additional Sessions Judge is dated 6th March 2017. The present Writ Petition is initially filed only challenging said

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order of the learned Additional Sessions Judge. However, as in 2014, maintenance of Rs.10,000/- per month was sought and in view of inflation and as also salary of the Petitioner has increased to Rs.58,320/- per month by amendment, maintenance of Rs.20,000/- per month is sought in the present Writ Petition.

4. The Respondent No.1 by filing affidavit-in-reply has produced his latest salary certificate for the month of August-2023. The said salary certificate shows that total emolument of the Respondent No.1 is Rs.58,881/- and total deductions are only Rs.561/- and net pay is Rs.58,320/-. Thus, it is clear that the basis on which learned Additional Sessions Judge has reduced the maintenance amount, are no longer in existence. In any case, the Petitioner's monthly salary has increased from Rs.27,895/- to Rs.58,881/-. Even if it is assumed that there are certain other deductions, yet there is an approximately 95% increase in the salary.

5. Apart from the above aspect, it is significant to note that the application seeking maintenance was filed by the Petitioner in 2014 when the monthly salary of the Respondent No.1 was Rs.24,651/- and at that time the Petitioner has made claim of Rs.10,000/- per month in the application dated 4th October 2014 and in the present

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Writ Petition by amendment, has sought maintenance of Rs.20,000/- per month. In any case, it is an admitted position that gross monthly salary of Rs.27,895/- is now substantially increased to Rs.58,881/- and the deductions are only Rs.561/- and net pay is Rs.58,320/-. Even if, a few additional deductions are assumed, still net salary is substantial. In view of the inflation, it is necessary to increase the maintenance amount.

6. It is the contention of Mr. Khateeb Vakil, learned counsel appearing for Respondent No.1 that the Petitioner is working as a Beedi Worker and he relied on the salary certificate dated 17th January 2001 issued in her favour and on pages 89 to 90 of the Writ Petition, which is a record kept by Sable Waghire & Co. Pvt. Ltd, Solapur. The said record shows that, the Petitioner was getting salary of about Rs.2,000/- in 2017-2018 and that she is a permanent Beedi Worker. Thus, it is clear that even taking into consideration, the said income as Beedi Worker earned by the Petitioner, the same is grossly inadequate for a decent life. The Respondent is an Assistant Teacher in a Zilla Parishad School and therefore, Petitioner is also entitled for adequate maintenance to maintain the standard of life at par with her husband. It is significant to note that the Respondent No.1 is a

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teacher earning a net pay of Rs.58,320/- per month and therefore, the Petitioner is entitled for the same standard of living.

7. Mr Khateeb Vakil, learned counsel appearing for Respondent No.1 has relied on certain documents to show that the Petitioner was appointed by the District Legal Services Authority, Solapur as a paralegal volunteer and that she owns a two-wheeler motor vehicle to contend that she is having an independent income. However, learned counsel appearing for the Petitioner states that she was working as a paralegal volunteer only for a limited period of around 2 years and that she was just receiving an honorarium and not any salary. As far as the contention that the Petitioner owns the vehicle, the said vehicle was purchased in or about the year 2009 when the matrimonial relations between the Petitioner and Respondent No.1 were normal. Therefore, that is also not relevant as the vehicle might have been purchased by the Respondent No.1 for the Petitioner.

8. Mr Khateeb Vakil, learned counsel appearing for Respondent No.1 also relied on Gharkul certificate dated 28th December 2019 to contend that the Petitioner is having her own house. The said certificate shows that the Petitioner has been allotted a small house as a Beedi Worker. Thus, factual position on record clearly shows that

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the Petitioner is a Beedi Worker and she is receiving an income of around Rs.2,000/- per month.

9. Admittedly, the Respondent No.1 is a teacher and is working in the Zilla Parishad, Primary School at Tal. Kudal Dist. Sindhudurg. The learned counsel appearing for the Petitioner has also stated that even the amount granted by the learned Additional Sessions Judge of Rs.3,000/- per month is also not being paid to the Petitioner and there are huge arrears of Rs.40,000/-. Mr Khateeb Vakil, learned counsel appearing for Respondent No.1 disputes the said contention.

10. Mr Khateeb Vakil, learned counsel appearing for Respondent No.1 states that huge expenses are required for the Respondent No.1 and the net salary which he receives is not adequate for survival. To substantiate the said contention, he has relied on loan account statement, which is at page 154. However, as the Respondent No.1 is earning Rs.58,320/- per month, an amount of , Rs.10,000/- per month is reasonable maintenance awarded to the Petitioner.

11. The factual position on record shows that the Petitioner is a Beedi Worker and receives an income of about Rs.2,000/- per month. The said work does not fetch a regular salary but the nature of income is that of daily wager. The income from said work is in the

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range of Rs.1,500/- to Rs.2,500/- per month. Admittedly, the Respondent No.1 is an Assistant Teacher in Zilla Parishad School i.e. a Government job and receiving salary of about Rs.58,000/- per month. Thus, the Petitioner is entitled for a maintenance of at least Rs.10,000/- per month which she has claimed in 2014 considering the inflation and the living standard to which she is entitled.

12. Accordingly, the Writ Petition is allowed by setting aside order dated 6th March 2017 passed by the learned Additional Sessions Judge, Solapur in Criminal Appeal No.14 of 2016 and order dated 26th June 2015 passed by the learned JMFC, Solapur below Exhibit-10 in Criminal Miscellaneous Application No.798 of 2014 and the same is allowed by directing that the Respondent No.1 to pay Rs.10,000/- per month to the Petitioner as an amount of interim maintenance with effect from 1st October 2023. The said payment to be made on or before 10th day of each month. Accordingly, the first installment shall be paid on or before 10th November 2023. The said payment shall be deducted by the Respondent No.2-State of Maharashtra from the salary which is being paid to the Respondent No.1 and same be paid in the account of the Petitioner. The Petitioner to communicate her account details to the concerned authorities. The

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learned APP to communicate this order to the concerned authorities for compliance.

13. The Respondent No.1 is directed to clear the arrears of maintenance, if any within a period of two months from today.

14. Accordingly, the Writ Petition is allowed in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]