



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

CRIMINAL WRIT PETITION NO.426 OF 2008

Sushilabai w/o Purushottam Joshi,
Age : 55 Years, Occu. Household,
R/o. C/o. Govindrao Damodharrao
Wanzarkhedkar, R/o Ravivarpeth,
Ambajogai, District Beed. ... **Petitioner.**

Versus

Purushottam s/o Shriniwas Joshi,
Age : 57 Years, Occu. Service,
R/o Dhunkawad, Tq. Kaij,
District Beed. At present Beed. ... **Respondent.**

...
Advocate for Petitioner : Mr. B. S. Kudale.
Advocate for Respondent : Mr. S. P. Sonpawale.
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CORAM : S. G. MEHARE, J.
DATE : 07.08.2024

ORAL JUDGMENT :-

1. Heard the respective learned counsels.
2. Two applications for maintenance of the petitioner were rejected. However, in a third application for maintenance, learned Judicial Magistrate First Class granted the maintenance, directing the respondent/husband to pay monthly maintenance of Rs.1500/- per month. However, the learned Additional Sessions Judge, by its order dated

31.12.2007, passed in Criminal Revision Application No.19 of 2004 (Old No.10 of 2001) quashed and set aside the order of the learned Magistrate. Against the said orders, the petitioner/wife is before this Court.

3. The learned counsel for the petitioner submits that while determining the sufficiency of income of the respondent, the learned Sessions Judge did not quantify the petitioner's income from 10 acres of land. The respondent had 10 acres of land. It was the evidence itself that he had sufficient income sources. The learned Judicial Magistrate First Class has correctly appreciated the evidence and considered that the petitioner was unable to maintain herself and had no source of income. He argued that the order of the learned Additional Sessions Judge was erroneous and against the provisions of law. The petitioner had a fresh cause of action for the third time to file the application. All these aspects have not been properly appreciated. Therefore, the impugned order is liable to be set aside.

4. Per contra, the learned counsel for the respondent/husband submits that there was no pleading that the 10 acres of land inherited by the applicant was in possession of the

tenant, and they are not paying her rent. The present respondent brought the fact of having 10 acres of land with the petitioner/wife in her cross-examination. If the petitioner got the share after the death of parents, the petitioner did not amend the application either at the time of trial or revision. The petitioner had suppressed the facts of having a land of 10 acres inherited by her, and she was silent about having no income from that land. Therefore, in the absence of any material, the learned Additional Sessions Judge has correctly observed that the applicant had suppressed several material facts from the Court in the third maintenance application, and her evidence is difficult to believe.

5. Section 125 of the Cr.P.C. provides for the order of maintenance to wife, children or parents. The burden is on the applicant or the person claiming the maintenance that the respondent, having sufficient means, neglected or refused to maintain her or such person. The second condition is that the person claiming the maintenance should be unable to maintain himself or herself. Section 125 is clear that the burden is on the claimant to prove that she or he is unable to maintain himself or herself and that the respondent, having sufficient means, has neglected or refused to maintain her or him. If the

claimant has sufficient income to maintain himself or herself, he or she may be disentitled to an order of maintenance under Section 125 of the Cr.P.C.

6. There was absolutely no pleading in the application of the petitioner that she had 10 acres of land, nor did she plead that though she had 10 acres of land, she is not getting sufficient income and, hence, unable to maintain herself. The application was completely silent on these material facts. She categorically admitted in the cross-examination before the Trial Court that she owned 10 acres of land and she is the sole legal heir of her parents. If the parents died after filing the application, she had an opportunity to amend the application, but she went on pursuing the application as it was.

7. Learned counsel for the petitioner appears incorrect in arguing that the learned Additional Sessions Judge did not quantify the income. The rule of evidence is that the Court cannot comment on any fact in the absence of its evidence. The material before the Court was that the petitioner had 10 acres of land. Unless the petitioner pleads and proves that she has no income from the land, the Court was not supposed to quantify the income. The petitioner did not discharge her burden to

prove her inability to maintain herself and insufficient income from her land.

8. Considering the material on record, the Sessions Court has correctly observed that undisputedly the applicant/petitioner was the only legal heir of her father, after the death of her mother. In view of this admitted position, it is difficult to hold that she is unable to maintain herself. She has no doubt, deposed, that she is unable to maintain herself, but she had suppressed several material facts from the Court in her third maintenance application. Hence, her evidence in this regard is difficult to believe. The Court is not supposed to quantify the income only from the property of the other side. The Court is only to see the ability of maintaining herself. If the specific evidence about income from the land was disclosed earlier, then the Court may guess the income and quantify it. But there was absolutely no evidence before the Court. Therefore, the learned Additional Sessions Judge is correct in recording the finding that she did not prove that she was unable to maintain herself. Since the petitioner had a sufficient source of income, the maintenance to her was correctly refused. The impugned order of the Additional Sessions Judge is free from infirmity

and illegality. Therefore, the writ petition is devoid of merits and stands dismissed.

9. Rule stands discharged.

10. R and P be returned to the learned Trial Court.

11. No order as to costs.

(S. G. MEHARE, J.)

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vmk/-