

Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3588 OF 2022

Aditya Somnath Nathe

Guardian Of Minor

Sanjay Narayan Niphade & Anr.

...Petitioners

Versus

Somnath Ramnath Nathe & Anr.

...Respondents

Mr. Narayan G. Rokade a/w Ajinkya V. Taskar for the Petitioner.

Mr. Akshay H. Bankapur i/b Ergo Juris for the Respondents.

Ms. M. R. Tidke, APP for the Respondent/State.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : FEBRUARY 6, 2024

P. C. :

1. By this Petition, challenge is to the order dated 11th July, 2022 passed by the Sessions Court in Criminal Revision Application No. 47 of 2019 by which the Sessions Judge has reduced the amount of maintenance granted to the Petitioners from Rs. 5,500/- each to Rs. 3,000/-each.

2. The Application was filed by the Petitioners through their maternal grand father under Section 125 of Cr.P.C. before the Court of Judicial Magistrate, First Class, Niphad. The case of the Petitioners was that the Respondent No. 1 and their mother were married in the year 2005.

Subsequently, on 27th June, 2012 the Petitioner's mother committed suicide and FIR came to be lodged against the Petitioner's father and he was in jail and as such, the maternal grand father was looking after both the Petitioners. After the Petitioner's father was released on bail, custody Application came to be filed by him which was rejected, however access was granted of the children. It is their case that no arrangements were made for their education and well being by the Respondent No. 1. It was contended that the Respondent No. 1 is a agriculturist and earning sufficient income from the agricultural land. It was pleaded that apart from the Petitioners, the Respondent No. 1 has no dependents.

3. In the Application the Respondent No. 1 failed to appear despite service of notice and therefore ex-parte order was passed against the Respondent No.1. Subsequently, an Application was made for setting aside the ex-parte order which came to be allowed and reply was filed. It was contended that the Respondent No. 1 is interested in the custody of the children, however considering the pendency of the criminal case, the custody of children was denied and subsequently he has again filed an Application for custody. It was contended that the Application for maintenance has been filed with ulterior motive by the maternal grandfather. It was contended that the parents of the Respondent No. 1 are dependent upon him and that he is hardly getting any income from

the agricultural land. After evidence was led, the Trial Court by judgment dated 24th May, 2019 directed Respondent No. 1 to pay the Petitioners a sum of Rs. 5,500/- each per month as maintenance from the date of the Application. As against this Criminal Revision Application was filed before the Sessions Court. The Sessions Court interfered with the quantum of maintenance and observed that the Trial Court had hypothetically considered the income of labourer at Rs. 200/- to Rs. 400/- per day and had added the agricultural land income of the Respondent No. 1 and as such, reduced the maintenance amount from Rs. 5,500/- per month to Rs. 3,000/- per month.

4. Heard Mr. Rokade, learned counsel for the Petitioners and Mr. Bankapur, learned counsel for the Respondents.

5. Learned counsel for the Petitioner submits that Respondent No. 1 is an agriculturist and the total agricultural land is admeasuring 3 H 6 R on which produce of ground nuts and grapes is cultivated. He would further submit that considering the age of the children and the educational expenses the Trial Court had rightly granted a sum of Rs. 5,500/- each which has been arbitrarily reduced by the Sessions Court.

6. Per contra, learned counsel for the Respondents would submit that there is no material brought on record as regards the income of Respondent No. 1. He submits that the agricultural property is the joint

Hindu family property and there is not much income from the agricultural land. He further submits that his parents are dependent upon him and as such, the Appellate Court has rightly reduced the amount. He submits that before granting maintenance, the custody application is required to be decided.

7. Considered the submissions and perused the record.

8. The submission of Respondent No. 1 is that he is ready to take custody of the children and that the custody Application is first required to be decided. There is no reason why the maintenance application should be kept pending till decision of custody application. It cannot be disputed that when the Respondent No. 1 was in jail it was the grand parents who were looking after the welfare of the minor children and at that point of time, there was no maintenance paid by the Respondent No. 1 to the children. The entire expenses including the educational expenses were being borne by the grand parents. It is only in the year 2016 that an Application has been made under Section 125 of Cr.P.C. seeking monthly maintenance of Rs.8,000/-. In the year 2016, the children were aged about 10 and 8 years and it is to be noted that the educational expenses as well as the day to day expenses of the children cannot be met out of the sum of Rs. 3,000/- as granted. The Sessions Court got swayed by the finding of the Trial Court which considered hypothetically the income of

the laborer as Rs. 200 to Rs. 400 per day. However the Sessions Court did not appreciate that there was no document which was filed on record by the Respondent No. 1 to show his income and as such, on a *prima facie* assessment of the status of the parties, the Trial Court has considered the minimum wages which would have been received by a laborer and had granted the sum of Rs. 5,500/- per month to the Petitioners each as maintenance. Admittedly, there is no material which was produced by either parties to show the income. However the fact remains that the Respondent No. 1 is having agricultural land admeasuring 3 H, 6 R which must be yielding some income. Considering the needs of the children specially the educational needs of the children the sum of Rs. 3,000/- per month each child granted by the Sessions Court is inadequate.

9. In my view the equities are required to be balanced by directing the Respondent No. 1 to pay sum of Rs. 4,000/- per month each child towards the monthly maintenance. The maintenance to be paid till the children attains the age of majority.

10. Writ Petition stands allowed in the above terms.

11. Needless to clarify that the amount which is already paid is required to be adjusted as against the arrears.

(SHARMILA U. DESHMUKH, J.)