



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

929 CRIMINAL WRIT PETITION NO. 270 OF 2025

Kiran W/o. Gangadhar Hole
Age-28 years, Occu-Nil,
R/o. Ramnagar, Malode Board
Tq. & Dist. Parbhani

...PETITIONER

VERSUS

Gangadhar Wishwanath Hole,
Age-41 years, Occu-Service,
R/o. Ramnagar, Malode,
Tq. & Dist. Parbhani

...RESPONDENT

Mr. S. A. Deshpande, Advocate for the petitioner
Mr. S. S. Shinde, Advocate for the respondent

CORAM : ABHAY J. MANTRI, J.

DATE : 12th NOVEMBER, 2025

ORAL JUDGMENT :

1. Heard. **Rule.** The rule is made returnable forthwith, and the petition is heard finally with the consent of the learned advocates for the parties.
2. I have gone through the impugned judgment and orders and perused the record.
3. By this petition, the petitioner is challenging the impugned judgment and order dated 06-01-2025 passed by the learned Additional Sessions Judge-3, Parbhani in Criminal Revision

Application No. 24/2023 whereby quashed and set aside the judgment and order dated 15-02-2023, passed by the learned Judicial Magistrate, First Class, Purna [hereinafter referred to as '*the Magistrate*'] in Criminal M. A. No. 98/2019 and remanded the matter to the learned Magistrate to decide afresh after giving an opportunity to the respondent-husband.

4. The learned advocate for the petitioner submitted that the respondent has not challenged the judgment and order of the learned Magistrate, nor does he have any grievance about the same. However, the petitioner, being dissatisfied with the judgment and order passed by the learned Magistrate, has preferred the revision for enhancement of the maintenance amount. Therefore, he submitted that the passing of the order by the learned Additional Sessions Judge is perverse and illegal, as the respondent has not sought relief. Thus, the question of remand of the matter does not arise.

5. He further argued that the respondent is getting a salary of Rs. 55,217/- per month. However, the learned Magistrate has granted maintenance of Rs. 6000/- only, which is less than 12% of the salary. Therefore, he urged that the impugned order be quashed and the amount be enhanced as prayed for by her in the revision.

6. On the other hand, the learned advocate for the respondent submitted that the learned Additional Session Judge in

para. No. 8 of the judgment and order has categorically observed that no opportunity was granted to the respondent, and therefore, the matter was remanded and thus, no interference is required. He further submitted that though the respondent is getting a salary of Rs. 64,607/-, there are dues, and the authorities are recovering Rs. 36,112/- from his salary, and the respondent is getting only Rs. 28,495/- in his hand, and therefore, the petitioner is not entitled to claim enhancement.

7. He further propounded that the petitioner has also filed the proceeding for dissolution of marriage and for grant of maintenance, and pursuant to her application, she is getting maintenance of Rs. 5000/- per month in the said proceeding. Therefore, he submitted that the petitioner is receiving a total of Rs. 11,000/- and that there is no need to enhance the maintenance. Hence, he prayed for dismissal of the petition.

8. It is pertinent to note that the respondent does not dispute his relationship with the petitioner. He further does not dispute that his gross salary is Rs. 64,607/- as on today, or the findings recorded in para 10 of the order passed by the learned Magistrate that the respondent is receiving a salary of Rs. 55,217/-.

9. It is worth noting that the respondent does not challenge the order passed by the learned Magistrate, and not challenging the

said order, which leads to drawing an adverse inference that he has no grievance with the findings recorded by the learned Magistrate about the granting of maintenance. Had it been the fact, he would have been aggrieved by the said order; indeed, he would have challenged the said order. But, not challenging the said order itself is sufficient to draw an adverse inference.

10. Perused the judgment and order. In para 8, the learned Additional Sessions Judge has observed that the learned Magistrate has not passed the order of no-cross-examination, nor has the advocate of the respondent cross-examined the petitioner. Therefore, the learned Judge has remanded the matter to grant an opportunity to the respondent to cross-examine the petitioner. When, admittedly, the respondent has not challenged the said judgment and order nor sought relief for a remand of the matter, the question does not arise to remand the said matter to the learned Magistrate for giving an opportunity. Moreover, it was not the contention of the respondent that the learned Magistrate gave no opportunity to cross-examine the petitioner. Therefore, the question also does not arise to remand the matter for giving the respondent an opportunity.

11. On the contrary, on perusal of the order passed by the learned Magistrate, it appears that in para 9 the learned Magistrate has accordingly observed that despite giving an appearance by the

respondent, he did not file his say and therefore, an order was passed below Exh.1 that the application be proceeded without his reply. Said order itself indicates that the respondent was not willing to contest the petition or willfully avoided to conduct the matter despite giving his appearance in the court and therefore, in my view, the learned Additional Sessions Judge has erred in setting aside the order and remanded the matter to the learned Magistrate in absence of any relief sought by the respondent and therefore, the said order is liable to be set side and also the said order cannot be sustained in the eyes of law.

12. The next point for consideration is how much quantum the petitioner is entitled to. On perusal of the order of the learned Magistrate, it appears that in para 16, the learned Magistrate has categorically observed that *the respondent is getting a salary of Rs . 55,217/-*. The learned advocate for the respondent does not dispute the same. Similarly, today, the learned advocate for the respondent has produced the respondent's salary slip across the bar before the court. The same is taken on record and marked as 'X' for identification purposes. On perusal of the same, it is revealed that *the respondent is receiving a gross salary of Rs. 64,607/-*. After statutory deductions, the respondent would receive a salary of more than Rs. 55,000/-. It also appears that the learned Magistrate has granted

maintenance of Rs. 6,000/- to her, and in the divorce petition, the petitioner is getting Rs. 5,000/- as interim maintenance, which means the petitioner is receiving Rs. 11,000/- per month in maintenance.

13. However, considering the evidence on record that the respondent is getting a gross salary of Rs. 64,607/- and also having considered the recoveries appearing in the salary certificate, in my view, it would be appropriate to enhance the maintenance amount to Rs. 7,000/- from Rs. 6,000/-. Hence, the petitioner is entitled to a total maintenance amount of Rs. 12,000/- per month, including Rs. 5000/- granted in the divorce proceeding. (less than 20% of the gross salary) to that extent, the order passed by the learned Magistrate is liable to be modified.

14. As a result, the judgment and order dated 06-01-2025 passed by the learned Additional Sessions Judge, Parbhani is hereby quashed and set aside and the order dated 15-02-2023 passed by the learned Magistrate is modified to the extent that respondent is liable to pay maintenance of Rs.7,000/- instead of Rs.6,000/- from the date of application to the petitioner per month.

15. Needless to clarify that, the respondent is directed to deposit the arrears of maintenance amount before the learned Magistrate within twelve weeks from the date of receipt of this order, failing which, the learned Magistrate is to take necessary steps to comply with this order.

[ABHAY J. MANTRI, J.]