



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

WRIT PETITION NO. 4933 OF 2024

Subrao Bhimrao Kolekar

VERSUS

Janabai Subrao Kolekar

Mr. N. B. Jadhav, Advocate for Petitioner

CORAM : R. M. JOSHI, J.

DATE : 16th April, 2025

PER COURT :-

1. None appears for the respondent. In spite of service of notice, none has appeared to oppose the petition. Hence, the same is decided in the absence of the respondent.

2. This petition takes exception to the order dated 24.06.2019 passed by the Family Court, Osmanabad in Petition No. 3/2018 (Old R.C.S. No. 244/2017) filed by respondent against petitioner for seeking maintenance. This petition came to be allowed by directing the petitioner-husband to pay maintenance of Rs. 3,000/- per month to respondent-wife.

3. There is no dispute about the fact that the petitioner and respondent are legally wedded husband and wife. Respondent filed R.C.S. No. 74/2008 and Civil Application No. 260/2010 seeking maintenance from petitioner. Order of maintenance was granted in R.C.S. No. 74/2008 directing

the petitioner to pay Rs. 1,500/- per month to respondent-wife. Similarly, a direction was issued for a payment of Rs. 700/- per month towards the house rent in Misc. Civil Appeal No. 260/2010.

4. Petitioner was convicted for the offence of murder in Sessions Case No. 94/1993 and was sentenced to suffer life imprisonment. He was taken in custody and was in jail from 21.11.2017 to 23.11.2022. He preferred Criminal Appeal bearing No. 75/2000 before the Division Bench of this Court. By order dated 18.08.2017, reduced the sentence of the petitioner for 5 years instead of life imprisonment. Petitioner was released from Jail on 23.11.2022.

5. Respondent filed proceeding before the Family Court for seeking maintenance from the petitioner. The said petition proceeded without written statement of the petition. While petitioner was on parol leave, he filed application before the Family Court informing the said Court about the fact that he was in jail. The Family Court set aside order of proceeding without written statement. Thereafter, petitioner was again lodged in the jail till he was finally released on 23.11.2022. The Family Court allowed the petition filed by respondent by observing that the petitioner herein has failed to lead any evidence and support all his contentions.

6. Learned counsel for petitioner submits that since petitioner was in jail, during relevant period, he was denied opportunity of hearing before the

Family Court. It is his statement that since the petitioner was in jail and as he was not produced from the jail, he could not avail opportunity of leading evidence to support his submission. It is thus his contention that order impugned be set aside by relegating matter back for decision afresh after giving an opportunity of hearing and leading evidence to the petitioner.

7. Learned counsel for petitioner, on instructions from petitioner, who is present in this Court makes statement that petitioner would deposit Rs. 2,000/- per month as directed by this Court by order dated 10.05.2024 till the disposal of the proceedings before the Family Court bearing No. 3/2018. Since, none has appeared for respondent, the side of the respondent could not be known to this Court.

8. This Court has carefully gone through the available record. From the order passed by Division Bench of this Court in Criminal Appeal No. 75/2000, it is clear that the petitioner was convicted for the offence of murder and was sentenced to suffer life imprisonment. There is certificate issued by Superintendent of Central Jail indicating that the petitioner was in jail from 21.11.2017 to 23.11.2022. The petition was filed by the respondent before the Family Court in 2018. The said petition is allowed by passing order dated 24.06.2019. It is thus clear that during this entire period the liberty of the petitioner was curtailed as he was lodged in jail and hence he was not free to

attend proceedings before Family Court.

9. Record further indicates that when the petitioner was released on 21 days parole leave, he approached to the Family Court by making an application for setting aside no written statement order. This indicates that petitioner was keen on contesting the said proceeding. It is however after the expiry of the parole leave he could not have appeared before the Family Court.

10. The afore stated facts clearly indicate that there is denial of opportunity of hearing to the petitioner in the said proceeding. As a result of which the order impugned dated 24.06.2019 cannot sustain. Hence, set aside. Proceedings bearing No. 3/2018 is relegated back to the Family Court for decision afresh.

11. Statement made by the learned counsel for petitioner, on instructions for depositing Rs. 2,000/- per month before the Family Court, Osmanabad is accepted as undertaking to this Court. This statement takes care of interest of wife to a large extent.

12. In view of the above, petition stands allowed in the afore stated terms.

(R. M. JOSHI, J.)

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