



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

909 CRIMINAL WRIT PETITION NO. 1152 OF 2025

1. Prashant Suresh Naik
Age: 40 years, Occ. : Labour,
R/o. Vasantlata Building,
Flat No.101, Vrundavan Nagar,
Lane No.1, Katraj Kondhwa Road,
Pune — 411046.

2. Suresh Pandharinath Naik
Age: 78 years, Occ.: Retired,
R/o. Vasantlata Building,
Flat No.101, Vrundavan Nagar,
Lane No.1, Katraj Kondhwa Road,
Pune — 411046.

3. Jayshree Suresh Naik
Age: 65 years, Occ.: Household,
R/o. Vasantlata Building,
Flat No.101, Vrundavan Nagar,
Lane No.1, Katraj Kondhwa Road,
Pune — 411046. '

4. Jayant Suresh Naik
Age: 45 years, Occ.: Business,
R/o. Vasantlata Building,
Flat No.101, Vrundavan Nagar,
Lane No.1, Katraj Kondhwa Road,
Pune — 411046.

5. Rasika Shrinayan Naik
Age: 42 years, Occ.: Household,
R/o. Vasatn Vihar, 4th floor, Near Khushbu
Hospital, near lighthouse, Sitaram Thakare
Road, Bibiwadi, Pune.

6. Shrinayan Naik
Age: 47 years, Occ.: Business,
R/o. Vasatn Vihar, 4th floor, Near Khushbu
Hospital, near lighthouse, Sitaram Thakare
Road, Bibiwadi, Pune.

...PETITIONERS
[Ori. Res. IN PWDVA]

VERSUS

Sonali W/o. Prashant Naik,
Age: 34 years, Occ.: - Service
Presently residing at
C/o. Vijaysing Ramlal Kundalwal,
N-11, A-121/K 29/1, RESPONDENT
Navjeevan Colony, HUDCO, Aurangabad. [Ori. Applicant in PWDVA]

Mr. M. B. Ubale, Advocate for the petitioners
Mr. Satish Gaikwad, Advocate for the respondent

CORAM : ABHAY J. MANTRI, J.

DATE : 28th NOVEMBER, 2025

ORAL JUDGMENT :

1. Heard. **Rule.** Rule is made returnable forthwith and heard finally, with the consent of the learned advocates for both parties.

2. The petitioners, being aggrieved by the order dated 11-07-2025 passed by the learned Additional Sessions Judge, Aurangabad, in PWDVA Appeal No.146/2024, whereby the learned Additional Sessions Judge has directed the petitioner No.1 to pay Rs. 1,72,000/- to the respondent towards the school fees of their son, has preferred this petition.

3. The learned advocate for the petitioner vehemently contended that the respondent is in private service and getting a salary of Rs. 16,683/- per month. The petitioner-husband has no

source of income. He is doing labour work, and therefore, as per observations in Rajnish Vs Sneha Manu/SC/0833/2020 [as per para 69 of the said judgment], the working wife, i.e., the respondent, has also borne 50% educational expenses of the son. However, the learned appellate court has not considered the same and erred in directing the petitioners to pay their son's educational fees.

4. To buttress his submission, he has relied on the judgment in Rajnish (supra) and Premdeep Nishikant Matlane Vs Bhavana Premdeep Matlane reported in 2020(3)Mh. L. J. (Cri) 101 and submitted that in view of the mandate laid down in the said judgments, the respondent is not entitled to seek educational fees for their son. Accordingly, he urged that the impugned order be set aside.

5. *Per contra*, the learned advocate for the respondent strenuously opposed the petition and submitted that the impugned judgment and order passed by the learned Additional Sessions Judge is just and proper and therefore, no interference is required in writ jurisdiction.

6. It is pertinent to note that the petitioner No.1 does not dispute that Devansh is his son. Similarly, he does not dispute that the respondent is his wife. It further appears that, by order dated 03-02-2025, the learned JMFC revoked his earlier order and reduced the maintenance amount from 1500/- to 750/- per month.

7. Having considered the fact that the prices of the essential commodities have been escalated, and therefore, it is very difficult to maintain the children on a meagre maintenance of Rs. 750/- per month. The said order itself prima facie appears unjust and improper. The learned Magistrate has not applied his mind while awarding the maintenance to the son. In fact, it is the duty of the father to maintain his son, even if the mother is earning. Father cannot say that he is unable to maintain his son. But it is his duty to maintain him, and therefore, the maintenance amount granted by the learned Magistrate appears to be too meagre and is liable to be enhanced, though it was not challenged.

8. A moot question raised by the learned advocate for the petitioner is that the respondent-wife is in service and getting a salary of Rs. 16,683/- and therefore, she is also liable to bear the expenses of the son. However, the learned Magistrate, by order dated 03-02-2025, revoked the order of maintenance granted to the wife, and no maintenance was granted to the wife. Even assuming that respondent is receiving the salary, the same is required for her maintenance. In that situation, I also do not find merit in his contention that the wife shall bear 50% of the son's educational expenses.

9. Perused the Rajnish (supra) wherein the court has in para 66 categorically held that an able-bodied husband must be

presumed to be capable of earning sufficient money to maintain his wife and children and cannot contend that he is not in a position to earn sufficiently to maintain his family. The onus is on the husband to establish, with the necessary material, that there are sufficient grounds to show that he is unable to maintain the family and to discharge his legal obligation for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the court. In the present case, the husband is not disclosing his correct income; therefore, pursuant to the mandate laid down in the said judgments, the court may draw an adverse inference regarding his income, as he does not dispute that he is an able-bodied person. Similarly, the husband is not providing the maintenance to his wife as she is earning an amount of Rs. 16,683/- and therefore, in my view, the observations made in para 69 are hardly of any assistance to the petitioners in support of their submission to direct the wife to bear 50% of the educational fees as argued by him.

10. On the contrary, as per observations in para 67 of the said judgment in Rajnish (supra), the husband is liable to pay the educational fees of their son. He cannot deny the legal obligation cast upon him on the ground that he has less income or that his wife earns Rs. 16,683/-. As such, the law laid down in said judgment is

hardly of any assistance.

11. Apart from that, the respondent is present in the court, and the learned advocate for the respondent submitted that from 05-02-2025, she has resigned her services and therefore, the wife has no income source. In such an eventuality, also in my view, it cannot be said that the impugned order is illegal or perverse; on the contrary, the impugned order appears just and proper.

12. The next ground of the learned advocate for the petitioner is that the respondent has suppressed the fact that she is earning an income and therefore, she is not entitled to maintenance.

13. To buttress his submission, he has relied on the judgment of *Premdeep (supra)* and drew my attention to para 18 of the said judgment. It is pertinent to note that the proceedings before the learned Magistrate are still pending, and the parties have an opportunity to prove the same before the learned Magistrate. At this stage, it cannot be said that the respondent has suppressed the fact. It would not be appropriate to determine the said fact based on the submission of the learned advocate for the petitioner only. But the petitioner has to prove by cogent and reliable evidence. Hence, I do not find substance in his contention in that regard.

14. Apart from that, the fact is that due to the dispute between the husband and wife, the son is suffering. It is a settled

position of law that a son should not be suffered due to a conflict between his parents. Therefore, as per law laid down by the Hon'ble Apex Court in various judgments, as well as paras 67 and 69, it is the bounden duty of the father to provide the educational fees of his son. As such, I do not find substance in the contention of the learned advocate for the petitioner in that regard.

15. It is pertinent to note that it is the applicant-husband's obligation to maintain his wife and children. He cannot be permitted to plead that he is unable to maintain them due to financial constraints as long as he is capable of earning. Moreover, a judicial note can be taken that there are rises in essential commodities and therefore, the maintenance amount granted to the respondent appears to be too meagre to satisfy their daily needs.

16. Thus, considering the above discussion, in my view, it appears that the petitioner, with a view to depriving the minor son of his right, has filed this petition, and therefore, the petitioner is liable to pay the cost of this petition to the respondent.

17. As a result, the criminal writ petition being devoid of merits, stands dismissed with costs of Rs. 10,000/-. The rule is discharged.

18. The petitioner-husband is directed to deposit the educational expenses and cost of Rs. 10,000/- before the learned

Magistrate where the proceeding is going on within a period of eight weeks from today, failing which, the petitioner's right to proceed in the matter will be forfeited.

19. Inform the learned Magistrate accordingly.

[ABHAY J. MANTRI, J.]

VishalK/909criwp1152.25.odt