



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 290 OF 2025

Sou. Asha W/o Prakash Mishra and Another

-- VERSUS --

Prakash S/o Babu Mishra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. S.P. Kshirsagar, Advocate for the Petitioners.

Mr. A.R. Wagh, Advocate for the Respondent.

CORAM : M.M. NERLIKAR, J.

DATE : OCTOBER 06, 2025.

The petitioners challenges the order dated 01/08/2024, whereby the petition filed by the petitioner-wife under Section 127 of the Code of Criminal Procedure, 1973, seeking enhancement of maintenance, was dismissed for want of prosecution.

2. The learned counsel for the petitioners submits that though the petitioners were attending the dates promptly, he was unable to secure the salary slip of the respondent. He further submits that on 01/08/2024, the petitioners filed an application seeking adjournment and directions against the respondent to place on record the salary slip. However, that application was rejected on the same day, and thereafter, the impugned order was passed.

The counsel further submits that there is no doubt that the application is of the year 2018, however, the petitioners were not able to obtain the salary slip despite filing an application under the Right to Information Act, 2005. He further submits that it is a petition under Section 127 of Cr.P.C., which is a beneficial provision, and therefore, the Court ought not to have dismissed it for non-prosecution and should have shown leniency in such matter. Lastly, he prays that the present petition be allowed.

3. On the other hand, learned counsel for the respondent has vehemently opposed the petition, submitting that the petitioners have shown sheer negligence in prosecuting the matter. He further submits that by an order dated 15/07/2023, the petition was dismissed and later was restored on the request of the petitioners. He further submits that the order is self-speaking, and therefore, requested not to interfere in the impugned order.

4. I have heard learned counsel for both the parties and perused the record.

5. It is not in dispute that the present proceedings arises out of a matrimonial dispute. The petitioners have filed an application under Section 127 of the Cr.P.C. for enhancement of maintenance. It

is also not in dispute that the petition was earlier dismissed on 15/07/2023, and was subsequently restored by an application, i.e., Misc. Criminal Application No.72/2023.

6. A perusal of the impugned order reveals that several applications were filed by the petitioner seeking adjournments and directions to the respondent to produce his salary slip. These applications were repeatedly rejected. Despite this, the petitioners have failed to file the affidavit of examination-in-chief, which ultimately led to the dismissal of the petition.

7. No doubt at earlier point of time also, the petition was dismissed for want of prosecution. Considering the above facts and circumstances, as an indulgence it would be appropriate to grant one more opportunity to the petitioners in the interest of justice to prosecute the matter and it would be appropriate to quash and set aside the order dated 01/08/2024. Hence, the following order:-

O R D E R

(i) The Criminal Writ Petition is hereby **allowed**.

(ii) The order dated 01/08/2024 is hereby quashed and set aside.

(iii) The petitioners shall file the affidavit of examination-in-chief on or before 12/11/2025.

(iv) The original proceedings before the learned Principal Judge, Family Court, Nagpur, are hereby restored.

(v) In case, the petitioners again fail to file the affidavit of examination-in-chief, the Family Court is at liberty to pass appropriate orders.

[M.M. NERLIKAR, J]

PIYUSH MAHAJAN