



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 242 OF 2025

Ritesh S/o Devendra Wankhade,
Aged 47 Years, Occ. Private Service,
R/o Kuria Camp, Ulhasnagar-4A,
Dist. Thane.

PETITIONER

Versus

Archana w/o Ritesh Wankhade,
Aged 41 Years, Occ. Household,
R/o Suresh Sawale, Behind Swami
Vivekanand School, Dist. Akola.

RESPONDENT

Mr. M.V. Rai, Advocate for the Petitioner.
Mr. T. Rahul, Advocate for the Respondent.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 21st AUGUST, 2025.

ORAL JUDGMENT :-

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by the consent of learned Counsel appearing for the respective parties.

3. By this Writ Petition, the Petitioner has challenged the order passed by the Judicial Magistrate First Class, Akot granting maintenance to the Respondent/wife at the rate of Rs.3,000/- from the date of application and rent of Rs. 1,500/- which was subsequently enhanced by the Additional Sessions Judge in Criminal Appeal No.10/2023 by order dated 19.12.2024.

4. The brief facts which are necessary for the disposal of the present Petition are as follows:-

4(i). The marriage between the Petitioner and the Respondent was performed on 21.05.2000 after marriage she resumed cohabitation at the house of the present Petitioner. Initially for some period she was treated well and thereafter she allegedly subjected with cruelty at the matrimonial house during her cohabitation. It is alleged that the present Petitioner used to demand an amount of Rs. 5 Lakhs from her and there has to be physical and mental cruelty upon her at the behest of the present Petitioner. The present Petitioner was also taking suspicion on her character and used to beat her. He has also demanded divorce from her and signature of the present

Respondent on divorce papers and drove her from the matrimonial house. She was requested to take shelter at her sister's house, and therefore, she constrained to file an application bearing Cri.M.A. No. 67/2017 for grant of maintenance.

4(ii). The said application was strongly opposed by the present Petitioner on the ground that it was the Respondent who has left the house, and therefore, she is not entitled for any maintenance. It was contended by the Respondent that the present Petitioner is running his business as a builder and developer, he is having agricultural property and getting handsome income, whereas she is unable to maintain herself, and therefore, the maintenance at the rate of Rs. 15,000/- be granted to her. The Petitioner denied all these contentions and also stated that the present Respondent received a property from her parents and she has sufficient means to maintain herself, and therefore, she is not entitled for any maintenance.

4(iii). The learned Magistrate has granted maintenance at the rate of Rs. 3,000/- from the date of application. Being the maintenance amount was inadequate one, she preferred an

Appeal before the Sessions Court. The Sessions Court has considered the entire record and enhanced the maintenance at the rate of Rs.20,000/- per month from the date of the institution of the Cri.M.A. No. 67/2017 and rent at the rate of Rs. 5,000/- per month to the applicant.

4(iv). Being aggrieved and dissatisfied with the same the present Writ Petition is filed by the present Petitioner on the ground that without considering the income of the present Petitioner the amount of maintenance was granted which is excessive and exorbitant one, and therefore, the order passed by the Additional Sessions Judge is erroneous and liable to be quashed and set aside.

5. Mr. Rai, learned Counsel for the Petitioner, who reiterated the contentions and taken me through the entire evidence and submitted that not only the Respondent but her brother has also admitted that it was the Respondent who left the matrimonial house at her own. She received the properties from her parents, and therefore, she is having sufficient means to maintain herself, whereas the property which is in the possession of the present Petitioner is a joint property and no

evidence is on record to show that he is receiving income from the said property, and therefore, the order of maintenance enhanced by the Additional Sessions Judge is exorbitant and harsh one and liable to be set aside. He further submitted that, the present Petitioner is maintaining both the children and incurring the expenses towards the education of the said children, and therefore, the Petition deserves to be allowed by reducing the amount of maintenance.

6. Mr. Rahul, learned Counsel for the Respondent, strongly opposed the said contentions on the ground that the present Petitioner is an income tax payer. The income which is received is admitted by him during cross-examination. It reveals from the cross-examination that, the Petitioner is having sufficient means to grant maintenance. The learned Sessions Court has considered the same. The ill-treatment at the hands of the present Petitioner is also established by the Respondent, and therefore, no interference is called for.

7. The learned Counsel for the Petitioner, places reliance on the decision of ***Rajnish vs. Neha & Anr. Reported in (2020) 13 S.C.R. 1093.***

8. After hearing both the sides and on perusal of both the impugned judgments as well as the evidence which is adduced on record. The evidence adduced by the Respondent shows that after marriage she resumed the cohabitation at the house of the present Petitioner, however, she was treated with cruelty, and therefore, she constrained to leave the matrimonial house. She further deposed that, she was ill-treated for the demand of Rs. 5 Lakhs and she was driven out of the house by suspecting on her character. She was cross-examined at length and during her cross-examination it is specifically brought on record that she has received the properties from her parents, but the cross-examination shows that the said properties are already sold by her and the purchaser has issued a cheque towards the consideration amount but the said cheque was dishonoured and the litigations regarding the dishonour of cheque are pending before the Court. Thus, her cross-examination shows that though she received the property and she has sold the property but in fact she has not received any money from the selling of the property as the proceedings regarding the dishonour of cheque which were issued against the consideration amount are pending before the Judicial Magistrate First Class Court No.1,

Akola.

9. The present Petitioner has also adduced his evidence before the Trial Court. During his evidence it came on record that after marriage the Respondent resumed the cohabitation and from the wedlock they are having two children which are alongwith him. He further deposed that, the present Respondent used to threaten him and she has also attempted to commit suicide and at her own accord she left the matrimonial house and went to reside at her sister's house. As far as the income part is concerned, he was cross-examined at length and during cross-examination he admitted that at Mouza Manera, Tq. Ambarnath, District Thane, he is holding 17 R land. He is also holding the land at Taroda, Taluqa and District Akola. Thus, as far as the income part is concerned, it came on record that the present Petitioner is having landed property not only at his native place at Taroda, Taluqa and District Akola but at Mouza Manera, Tq. Ambarnath, District Thane also. He further admits during his cross-examination that, he has entered into an agreement with one lady to execute a sale deed but any how the sale deed was not executed, and therefore, he has not received

any amount.

10. Thus, the evidence of the present Petitioner shows that he is the owner of the land at Thane as well as at Akola. Though it is submitted by the learned Counsel for the Petitioner that it is a barren land but admittedly no evidence is adduced on record to show that it is a barren land. On the contrary, the evidence of the Respondent shows that it is not a barren land and besides the agricultural land the present Petitioner has obtained the license for the wine shop which is an admitted position as the present Petitioner has admitted during his cross-examination that he has obtained the license for wine shop.

11. The evidence of the Respondent also shows that the present Petitioner is getting income from the said agricultural land as well as from doing the business of builder. Admittedly, she has not adduced the documentary evidence but during her cross-examination it was not shattered as far as the income of the present Petitioner is concerned. She admitted that, she has not produced any document on record to show that the present Petitioner is having a wine shop in his name but as far as the agricultural land is concerned, the present Petitioner has already

admitted that he is holding the agricultural land, and therefore, there is no sufficient material to show that he is having means of income from the agricultural land.

12. The income tax return acknowledgment also shows that his total yearly income is Rs.6,99,580/- on which he has paid the tax. The said income tax return was of the year 2024-25, 2023-24 and 2021-22. If the recent income tax returns are considered his total income for the year 2024-25 appears to be Rs. 6,99,580/-. Thus, the contention of the Petitioner that he is not getting income from the said agricultural land is falsified by the said income tax returns.

13. On perusal of the judgment of the learned Sessions Court it reveals that he has considered all these aspects and specifically considered that the present Petitioner has categorically admitted in his cross-examination that he owns land admeasuring 17 Gunthas at Village Manera, Tq. Ambarnath. Similarly, he owns 2 HR Agricultural land at Village Taroda. He further admitted that he had executed an agreement of sale with one Manubai Patil. The price consideration of the property therein was of Rs. 60 Lakhs. He further admitted that,

he had entered into an agreement of sale in respect of property with Anil Rajwani, whereby the property was agreed to be purchased for Rs.92,50,000/-.

14. Thus, the learned Sessions Court has observed that his cross-examination itself shows that he is paying income tax on these said properties as well as in the affidavit he had laid his properties worth of Rs.3,64,00,000/- and on that basis he has come to the conclusion that he has sufficient means to grant the maintenance to the present Respondent and enhanced the amount of maintenance. The document i.e. the income tax returns of the year 2024-25 also shows that the income of that year is Rs.6,99,580/-. Therefore, the contention of the learned Counsel for the Petitioner that he is not getting so much of income to grant maintenance at the rate of Rs. 20,000/-, is not sustainable.

15. I have perused the evidence on record as well as the impugned judgments which shows that the Petitioner is having sufficient means to grant maintenance, and therefore, the maintenance was granted to the present Respondent at the rate of Rs.20,000/- per month and Rs. 5,000/- towards rent.

16. The learned Counsel for the Petitioner, places reliance on the decision of ***Rajnesh vs. Neha*** (supra), the Hon'ble Apex Court has elaborated upon the broad criteria and the factors to be considered for determining the quantum of maintenance. The Hon'ble Apex Court emphasizes that there is no fixed formula for calculating maintenance amount; instead, it should be based on a balanced consideration of various factors. These factors include and are illustrative but are not limited or exhaustive, they are adumbrated as under:

- "i. Status of the parties, social and financial*
- ii. Reasonable needs of the wife and dependent children.*
- iii. Qualifications and employment status of the parties.*
- iv. Independent income or assets owned by the parties.*
- v. Maintain standard of living as in the matrimonial home.*
- vi. Any employment sacrifices made for family responsibilities.*
- vii. Reasonable litigation costs for a non-working wife.*
- viii. Financial capacity of husband, his income, maintenance obligations, and liabilities."*

17. The law with respect to deciding the amount of maintenance is settled by various decisions of the Hon'ble Apex Court in the case of ***Kiran Jyot Maini Vs. Anish Pramod Patel,***

(2024) 7 SCR 942, wherein the Hon'ble Apex Court has considered the facts as follows:

“The status of the parties is a significant factor, encompassing their social standing, lifestyle, and financial background. The reasonable needs of the wife and dependent children must be assessed, including costs for food, clothing, shelter, education, and medical expenses. The applicant's educational and professional qualifications, as well as their employment history, play a crucial role in evaluating their potential for self sufficiency. If the applicant has any independent source of income or owns property, this will also be taken into account to determine if it is sufficient to maintain the same standard of living experienced during the marriage. Additionally, the court considers whether the applicant had to sacrifice employment opportunities for family responsibilities, such as child-rearing or caring for elderly family members, which may have impacted their career prospects.”

18. In another decision in ***Vinny Paramvir Parmar vs. Paramvir Parmar***, (2011) 9 SCR 371, the Hon'ble Apex Court held as that there cannot be a fixed formula or a straitjacket rubric for fixing the amount of permanent alimony and only broad principles can be laid down. The question of maintenance is subjective to each case and depends on various factors and circumstances as presented in individual cases. This Court in the above judgment stated that the courts shall consider the

following broad factors while determining permanent alimony – income and properties of both the parties respectively, conduct of the parties, status, social and financial, of the parties, their respective personal needs, capacity and duty to maintain others dependent on them, husband's own expenses, wife's comfort considering her status and the mode of life she was used to during the subsistence of the marriage, among other supplementary factors.

19. In the light of the above factors narrated by the Hon'ble Apex Court, if the facts of the present case are taken into consideration, admittedly, the learned Sessions Court has granted maintenance to the Respondent at the rate of Rs.20,000/- and in addition to that granted rent at the rate of Rs.5,000/-. Admittedly, she has to pay the rent towards the house accommodation as she is residing separately from the present Petitioner. As far as her income is concerned, the learned Counsel for the Petitioner has pointed out that during cross-examination she admitted that she received some properties but her explanation shows that the said property is already sold and the consideration amount which she received

in a manner of cheque which was dishonoured and the litigation regarding the said dishonour of the cheque is pending before the Court.

20. Thus, at present she is not having income to survive and to lead the life. The evidence on record on the contrary shows that the present Petitioner is having sufficient means to grant maintenance to the present Respondent. The recent statement i.e. the income tax returns acknowledgment shows that for the year 2024-25 his income was more than Rs.6 Lakhs. Moreover, it is well settled that merely because the wife is earning for her livelihood, it is not sufficient to deny her any further maintenance. The Respondent was residing with her husband and was leading with the life as per the status of her husband, and therefore, her comfort considering, the status of the husband and other needs are to be taken into consideration.

21. Nowadays, the prices of the essential commodities are touching to the sky, she has to incur expenses towards the rent of the house and other needs i.e., clothing, food and shelter. At the same time, the Court has to consider the responsibilities i.e. the shoulder part that she has to incur the

expenses towards her health, medical and other needs. After balancing all these factors it would be appropriate to enhance the maintenance and accordingly the learned Additional Sessions Judge has enhanced the maintenance in the interest of justice. In view of that, the Writ Petition being devoid of merits and is liable to be dismissed. Accordingly, I proceed to pass the following order.

ORDER

The Writ Petition is **dismissed**.

22. Rule is discharged.

23. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI PHALKE, J.)

S.D.Bhimte