

(1983) 06 BOM CK 0020

In the Bombay High Court

Case No : Criminal Writ Petition No. 690 of 1982

Ashok Yeshwant Mate

APPELLANT

Vs

Amita Ashok Mate (Sou.) and Others

RESPONDENT

Date of Decision : 28-06-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (1983) 2 BomCR 301

Hon'ble Judges : Sharad Manohar, J

Bench : Single Bench

Advocate : P.J. Vaidya, for the Appellant; V.M. Kanade, for the Respondent

Judgement

Sharad manohar, J.—This is a writ petition filed by the husband against the order directing to pay maintenance of Rs. 200/- to his wife, the original applicant, in the proceedings u/s 125 of the Criminal Procedure Code and Rs. 100/- each to the two children. The order to this effect was passed by the learned Judicial Magistrate and the same was confirmed by the Sessions Court in the revision application.

When this writ petition was filed, Rule was issued by the Court only on the question of quantum of maintenance. The question as to whether the petitioner is at all liable to pay maintenance to his wife and children or not is, therefore, no more open for the petitioner to urge.

2. The question relating to the quantum of maintenance payable by the present petitioner has been considered by the learned Additional Sessions Judge in Para 16 of his judgment. He has found that the present petitioner is working in the Security Press at Nasik. A salary-slip relating to the income of the petitioner was produced before him in this proceeding and the said slip showed that he was earning about Rs. 760/- per month. In addition to this, however, the learned Judge also took into account the fact that the petitioner has interest in certain lands and household properties. This is what the learned Judge observed in this

connection

"The extracts of landed and household properties held by family members of Ashok, are produced on record. It is true that these extracts do not stand in the name of Ashok. However, he has some share in the said properties. He conveniently avoided to make a mention of his share in the said properties in his say and also in his statement on oath. It appears that the family members of Ashok have transferred all these properties in the names of other family members in order to refrain Ashok from making any transfer of those properties."

However, it is to be noted that the present petitioner is not in possession of any of the properties. No evidence whatsoever was adduced by the respondent-wife to show that the petitioner in fact got any income either from his brother or his other relatives who were admittedly in possession of those landed properties. To my mind, it will be unfair to assume that the petitioner must have been enjoying enough income from these landed properties. The property did not stand in his name. There is no evidence to show that any income is received by him from persons who are in possession of the property. There is no evidence to show that there is any litigation instituted against them by the petitioner to get income from the share of the property. It was necessary for the respondent-wife to adduce evidence in the first instance to show as to how much was the income that he was entitled to receive from the property and further that he was in fact receiving such income. There is a well recognised difference between the fact of receipt of income and the right to receive the same. Merely proving that a person has got the right to receive the income does not mean that he is the recipient of the same.

3. The learned Judge has also relied upon the salary slip to show that the monthly income of the petitioner was about Rs. 760/-. A grievance was made in this behalf by Mr. Vaidya for the petitioner that this was the income of the particular month for which salary slip was given. He stated that sometimes the employees are required to work over-time and in such cases, in the particular month, the income appears to be inflated. He contended that this could not be said to be the normal monthly income of the employee concerned by way of salary.

Mr. Vaidya may be right on this point. It does appear that there is no evidence to show that the income of Rs. 760/- referred to by the learned Judge was the normal salary or average salary income of the present petitioner. All the same, it must be noted that the petitioner did not give evidence in the lower Court to prove the exact amount of his monthly income from salary. An adverse inference must be drawn against him on that account. An attempt was made to produce some evidence in that behalf by production of latest salary slip. I disallowed Mr. Vaidya to adduce that evidence at this late stage and I am of the opinion that if there is any error against the petitioner by way of computation of higher income from salary, that error is more or less counter-balanced by the fact that if at all he is receiving any income from the landed property the same has not been

satisfactorily proved by the respondent-wife. Taking a comprehensive view of the matter, I am of the opinion that no injustice would be done to the petitioner-husband if his income is computed at the figure of Rs. 760/-.

Taking Rs. 760/- to be the monthly income of the petitioner, to my mind, it will be in the fitness of the things if the wife and the two children together receive Rs. 300/- for their monthly maintenance. I am of the opinion that the attitude of the respondent-wife in this case cannot be said to be quite reasonable. She has made serious allegations against the husband alleging the acts of criminality against him. Probably she is justified in making those allegations. But the point is that inspite of her conviction relating to criminal tendencies of the husband, she wants to keep herself wedded to him for all his life. The petitioner-husband had made a clear statement before me that he was prepared to make sufficient provision for the maintenance of his wife and children if the wife was prepared to separate herself from the husband by a decree of divorce by consent and to start a fresh life, thus allowing him a lead a free life of his own. The respondent-wife seems to have been advised not to accept this suggestion. I for one do not see any reason, logic or rationale, for this conduct of the respondent-wife. She does not want to stay with the husband. I do not blame her for that. She wants maintenance from the husband. I do not blame her even for that. But the petitioner-husband has made a reasonable suggestion that she could get the same thing by allowing him and her to live a life of their own by taking a divorce. This would have resulted in freedom and consequent happiness for both of them. Just with a view that the husband should not be happy in his future life, the respondent-wife wants to continue to be unhappy herself. I don't see any justification for this attitude of the respondent-wife at all. Moreover, the respondent-wife has not shown that she is unable to maintain herself. No effort is made by her to satisfy the Court in this behalf.

4. In this view of the matter, I am of the opinion that a sum of Rs. 100/- should be the maximum sum that should be awarded to the wife by way of monthly maintenance.

However, so far as the children are concerned, I do not think that they should be punished for the acts of criminality on the part of the father and for the acts of unreasonableness on the part of their mother. The amount of Rs. 100/- awarded to each of them is, to my mind, quite justified. To my mind, therefore, the wife should get a sum of Rs. 100/- as monthly maintenance and the children should continue to get Rs. 100/- each for their maintenance. They will be of course entitled to move the Court at appropriate time for enhancement of the said sum if the occasion arises for that purpose.

5. The rule earlier issued is, therefore, made partly absolute. The amount of maintenance directed to be paid by the petitioner-husband to his wife and children is reduced from the total sum of Rs. 400/- to the total sum of Rs. 300/-. The respondent-wife shall be entitled to get maintenance of Rs. 100/- per month from the petitioner. The children shall continue to get maintenance at the rate of

Rs. 100/- each from the petitioner.

There shall be no order as to costs. Subject to the above modification, the order passed by the lower Court is confirmed.