
(2013) 08 BOM CK 0044

In the Bombay High Court

Case No : Criminal Writ Petition No. 690 of 2010

Dadasaheb Raosaheb Matkar

APPELLANT

Vs

Janabai Dadasaheb Matkar and Others

RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2014) ALLMR(Cri) 249 : (2013) 4 BomCR(Cri) 33

Hon'ble Judges : Abhay M. Thipsay, J

Bench : Single Bench

Advocate : R.B. Bhosale, for the Appellant; S.K. Naikwade Advocate for Respondent Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Abhay M. Thipsay, J.—Heard the learned counsel for the petitioner. The petitioner is the husband of the respondent no. 1 and the father of the respondent nos. 2 and 3, who are minor children of the petitioner and respondent no. 1. The respondent no. 1 had applied for maintenance for herself and for and on behalf of the respondent nos. 2 and 3 herein under the provisions of Section 125 of the Code of Criminal Procedure and learned Magistrate after holding due inquiry directed the petitioner (non applicant before the Magistrate) to pay maintenance @ Rs. 900/- p.m. to the respondent no. 1 herein and @ Rs. 300/- each p.m. to the respondent nos. 2 and 3 herein. Aggrieved by this order, the petitioner approached the Court of Sessions by filing an application for revision, but the learned Additional Sessions Judge, who heard the revision, dismissed the same with costs of Rs. 1,000/-. Being aggrieved thereby, the petitioner has approached this Court invoking its Constitutional Jurisdiction. The learned counsel for the petitioner submitted that only challenge in this Writ Petition is to the quantum of the maintenance as awarded by the learned Magistrate and as confirmed by the Court of Sessions in revision. He submitted that the petitioner's daily income was about Rs. 50/- to Rs. 60/- and that, the petitioner was unable to get work

daily but, inspite of this, the learned Magistrate and the learned Additional Sessions Judge have taken his daily income to be Rs. 100/- per day. According to the learned counsel for the petitioner, this is grossly incorrect and therefore, this Court needs to intervene in this matter by exercising its jurisdiction under Article 227 of the Constitution of Indian.

2. I find no substance in the contentions raised by the petitioner. In the first place, the orders u/s 125 of the Code, do not purport to decide the civil rights of the parties, finally. The legislature in its wisdom has not made such orders appealable. The object of the relevant provisions is to prevent vagrancy and destitution by providing a speedy remedy to neglected wives and children. Therefore, ordinarily, a superior Court would not interfere with the discretion exercised by the Magistrate with respect to the quantum of maintenance. Certainly, in any case, no interference with respect to the quantum of maintenance in exercise of writ jurisdiction is called for, particularly when the amount of maintenance as fixed by the Magistrate appears to be the bare minimum, as would be required for sustenance. It is not the case of the petitioner that he is suffering from any bodily infirmity, sickness or disability and therefore, if the Courts have taken monthly income of an able bodied person as Rs. 3,000/- p.m., they have not committed any error whatsoever. Writ Petition is rejected.