

(1999) 09 BOM CK 0003
In the Bombay High Court
Case No : Criminal W.P. No. 1067 of 1992

Pandharinath Bhagawant Jadhav

APPELLANT

Vs

Savitrabai Bhagawant Jadhav and another

RESPONDENT

Date of Decision : 21-09-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (1999) 09 BOM CK 0003

Hon'ble Judges : S.S. Parkar, J

Bench : Single Bench

Advocate : Ananya Dutta instructed by Mrs. Suhansini Mutalik, for the Appellant; Usha Kejriwal, Assistant Public Prosecutor for respondent no. 2-State, for the Respondent

Judgement

S.S. Parkar, J.—This writ petition has been filed by the son taking exception to the orders passed by the lower Courts granting maintenance at the rate of Rs. 300/- per month u/s 125 of Criminal Procedure Code to his mother-Respondent No. 1.

2. The Respondent No. 1 made application for maintenance u/s 125 of Criminal Procedure Code being Misc. Application No. 15 of 1990 in the Court of JMFC, Nasik against the petitioner who is her son. That application was granted by the order passed on 23rd July, 1990 directing the petitioner to pay a sum of Rs. 300/- per month towards the maintenance to the mother. That order was challenged in Criminal Revision Application No. 266 of 1990 filed in the Sessions Court, Nashik. The learned 3rd Additional Sessions Judge, Nasik who heard the said revision application dismissed the same by his judgment and order dated 29th May, 1992 confirming the order of maintenance granted in favour of the Respondent No. 1 mother. The said orders are under challenge in this writ petition.

3. The relationship of mother and son between the Respondent No. 1 and the petitioner is not in dispute. The mother is staying with her two other sons. The

petitioner has in his deposition admitted that he was not maintaining his mother. It was the case of the petitioner that she had remarried one Pandey Achari with whom she was staying along with her two sons and was being maintained by her second husband. Second husband admittedly had died. Her second marriage does not take away her right to claim maintenance from her son from the first husband particularly after the death of her second husband. Both the Courts below have considered the evidence led by both the sides and given finding that the Respondent No. 1 mother was unable to maintain herself and, therefore, order of maintenance was granted in her favour. Both the Courts have considered the income of the petitioner and thereafter fixed the amount of maintenance at the rate of Rs. 300/- per month. The petitioner is working with Shapurji Palanji and Co. and as per the salary slip produced by the petitioner at Exhibit 41 his net income was Rs. 1,310/-. On the other hand the respondent-mother had produced through her witness salary slip of the petitioner which is at Exhibit 35 mentioning his salary per month to be Rs. 1,975/-. Though the petitioner is claiming that he had to maintain the family of 10 to 12 persons, it transpired and finding has been given by the trial Court that the petitioner had to maintain that time only two sons, one daughter and his wife. Apart from his salary income, the trial Court had found that the petitioner was getting income from his agricultural land at Maknamalabad which is about 4 acres and that he was also doing the work as carpenter adding to his income.

4. Considering the aforesaid facts, I see no reason to interfere in the concurrent findings of facts recorded by the two Courts below as none of the findings are shown to be perverse or are not borne out by the evidence on record. The only factor which does not seem to have been considered by the two Courts below while fixing the quantum of maintenance is that she was staying with her other two sons who are working as carpenters. In that view of the matter, the amount of maintenance should be reduced to the sum of Rs. 250/- per month instead of Rs. 300/- granted by the lower Courts.

5. In the result the petition is partly allowed and the petitioner is directed to pay maintenance to the Respondent No. 1 at the rate of Rs. 250/- per month instead of Rs. 300/- per month as directed by the lower Courts. Rule is made absolute accordingly.