

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Revision Application No. 48 of 2015

Umakant s/o. Annasaheb Saindane/
Thakur.

.. Petitioner.

Versus

Sangita w/o. Umakant Saindane/
Thakur.

.. Respondent.

Shri. Bipinchandra Keshavrao Patil, Advocate, for
petitioner.

Smt. Preeti R. Wankhede, Advocate, appointed for the
respondent.

CORAM: T.V. NALAWADE, J.

DATE : 1st JULY 2015

ORDER:

1) The revision is filed to challenge the judgment and order of the Family Court Aurangabad delivered in Criminal Misc. Application No.51/2011. The Family Court has enhanced the maintenance in favour of respondent - Sangita. Both the sides are heard.

2) The marriage of the petitioner with respondent took place in the year 1991. It appears that due to some disputes they started living separate from 1993. They

have one daughter out of this relationship. In the past proceeding for maintenance was filed by the wife under section 125 of the Code of Criminal Procedure and the maintenance at the rate of Rs.400/- per month was granted to the wife and it was granted at the rate of Rs.300/- per month to the daughter. In the year 2006 in other proceeding compromise *purshis* was filed and the husband agreed to pay monthly maintenance of Rs.1500/- to the wife and similar amount to the daughter. Such order came to be made in Criminal M.A. No.91/2006 which was pending in the Family Court Aurangabad.

3) The maintenance at the rate of Rs.1500/- per month was fixed on 4-11-2006. The husband then filed proceeding for decree of divorce and he got divorce. Respondent then filed proceeding under section 127 of the Code of Criminal Procedure for enhanced maintenance and she claimed maintenance at the rate of Rs.20,000/- per moth for herself and for the daughter. The present petitioner contested the said proceeding by contending that he has no capacity to pay the maintenance at the rate claimed against him. He denied his income as contended

by the present respondent. She had contended that present petitioner was earning Rs.35,000/- per month as salary and he was earning Rs.32,000/- per month from rent. Both sides gave evidence. On 18-7-2013 the proceeding was decided and the Family Court granted maintenance at the rate of Rs.7500/- per month each in favour of the present respondent and her daughter. This decision was challenged by filing Criminal Revision Application No.44/2014 in this Court. This Court allowed the revision and set aside the order made by the Family Court. The matter in respect of the wife was remanded back for reconsideration and the proceeding in respect of the daughter was dismissed. This decision was not challenged further. In any case, the proceeding of Criminal Application No.51/2011 was filed only by the wife and even in the title clause name of the daughter was not mentioned when she was major and she had not signed the proceeding.

4) After remand, the Family Court decided the matter on 21-1-2005 and has granted maintenance at the rate of Rs.10,000/- per month to the present respondent.

5) The aforesaid circumstances show that maintenance which was fixed in the 2006 is now enhanced to make it to Rs.10,000/- per month. The present petitioner will have to pay maintenance to the respondent wife only and this fact needs to be kept in mind while ascertaining the capacity of the petitioner to pay maintenance. Enhanced maintenance is made payable from the date of filing of the proceeding. Salary slip is produced on the record and it shows that gross salary of the petitioner for the month of May 2013 was Rs.43,838/-. If the standard deductions like payment of income tax and the profession tax are considered then the income of the present petitioner was around Rs.40,000/- per month.

6) Learned counsel for the petitioner submitted that the petitioner has taken huge loan for construction of house, he is required to pay installments towards L.I.C. premiums and some amount is deducted towards provident fund and these amounts need to be deducted from the gross salary to ascertain the actual income of the petitioner. This submission is not at all acceptable. Net

income can be considered after deducting two amounts like income tax and profession tax and they are the standard deductions for ascertaining the income of the petitioner.

7) Considering the status of the parties and the fact that prices of the essential commodities have increased many times since 2006, this Court holds that the divorced wife is entitled to get maintenance at the enhanced rate. Further the petitioner will be required to pay maintenance only to the present respondent now. In view of the aforesaid position this Court holds that the amount of Rs.10,000/- is less than one-third of the actual income of the petitioner. This Court sees no reason to interfere in the order made by the Family Court. No evidence is given by the petitioner on liabilities and he will be required to spend only for himself.

8) In the result, the petition stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

rs1