

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

CRIMINAL WRIT PETITION NO. 431 OF 2012

Sayed Shafiullah S/o Sayyed
Zahiroddin Jahagirdar
Age : 41 Yrs., Occ. : Service,
R/o : Yeshwantrao Mahavidyala,
Tuljapur, Dist. : Osmanabad.

..... PETITIONER/
[ORIGINAL RESPONDENT]

V E R S U S

Sayed Anisfatima Sayyed W/o
Shafiullah Jahagirdar
Age : 39 Yrs., Occ. Household,
R/o : C/o Zahirullah Husaini,
Chudhary Nagar, Latur,
Dist. : Latur.

..... RESPONDENT/
[ORIGINAL APPLICANT]

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Mr. Shaikh Mujtaba Gulam Mustafa,
Advocate for the Applicant.
Mr.S.C.Swami, Advocate for the Respondent.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 4th FEBRUARY, 2015

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ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. By consent of the learned counsel for the Petitioner and the Respondent, taken up for final hearing.

2. Heard Mr. Shaikh Mujtaba Gulam Mustafa, the learned counsel for the Petitioner and Mr.S.C.Swami, the learned counsel for the respondent.

3. The petitioner has questioned concurrent findings recorded by the learned Judicial Magistrate First Class, Court No. 4, Latur by his Judgment and Order dated 17/03/2011 in Criminal Misc. Application No. 112/2009, which is confirmed by the learned Sessions Judge on 01/02/2012 in Criminal Revision No. 62/2011.

4. There is no dispute that the petitioner and the respondent are husband and wife. The wife filed proceedings

before the criminal Court u/s 125 of the Code of Criminal Procedure bearing Misc. Application No. 7/2001 and demanded her just right of maintenance from the present petitioner since she was neglected without any sufficient cause. The said proceedings were allowed in favour of the wife in the year 2001 and maintenance was granted in her favour @ ₹ 1,000/- [Rupees One Thousand only] per month.

5. In the year 2009, the wife moved an application u/s 127 of the Code of Criminal Procedure in the Court of the Judicial Magistrate First Class, Latur for enhancement of the maintenance amount. The said application is registered as Criminal Misc. Application No. 112/2009. It was prayed in the said application by the wife that the maintenance granted in her favour shall be enhanced from ₹ 1,000/- [Rupees One Thousand only] per month to ₹ 5,000/- [Rupees Five Thousand only] per month. It was pointed out in the said application that the petitioner/husband is serving at Yeshwantrao Chavhan College, Tuljapur, district Osmanabad as Laboratory Assistant and he is getting monthly salary @ ₹ 14,000/- [Rupees Fourteen Thousand only], besides he has his own agricultural land having price of ₹ 5,00,000/-

[Rupees Five Lacs only]. The said application was contested by the husband by filing detailed Written Statement. He denied the enhancement. The wife entered into witness box and substantiated her pleadings made in the application. The husband also entered into the witness box and was cross examined. The learned Magistrate decided the application for enhancement on 17/03/2011. The learned Magistrate partly allowed the said application and granted maintenance @ ₹ 2,,500/- [Rupees Two Thousand Five Hundred only] per month in stead of ₹ 1,000/- per month, which the wife was getting.

6. The husband was dissatisfied with such finding and, therefore, he preferred Revision before the Sessions Judge. The said Revision was registered as Criminal Revision No. 62/2011 and the Sessions Judge himself decided the said Revision vide Judgment and Order dated 01/02/2012, whereby he dismissed the said Revision.

7. Against these concurrent findings, the present Writ Petition is filed by the husband.

8. Mr. Shaikh Mujtaba Gulam Mustafa, the learned counsel for the petitioner submitted that the approach of both the Courts below is incorrect. Hence, according to him, the only reason given in the impugned order for enhancement of maintenance amount is that the price of daily needs are increased near about 10 times. According to him, there is no concrete evidence to show such increase and, therefore, he submitted that the application was liable to be rejected.

9. At the time of granting maintenance in the year 2001, admittedly, the monthly salary of the husband was ₹ 5,380/- [Rupees Five Thousand Three Hundred Eighty only]. There is no dispute that at the time when the application for enhancement was filed, the husband was getting monthly salary of ₹ 16,000/- [Rupees Sixteen Thousand only]. Thus, there is increase in 3 fold in his salary.

10. The wife is entitled to life style equivalent to the life style of her husband. Further, no wrong is committed by the Courts below by taking judicial notice of increase of price. There is no doubt that the price index is on rise. Therefore,

the claim of the wife for enhancement was just. Looking to the fact that when the amount of ₹ 1,000/- per month as maintenance was granted in favour of the wife, the monthly salary of the husband was ₹ 5,380/- and now he is getting monthly salary of ₹ 16,000/-. Therefore, no exception can be taken in the impugned orders. Further, the learned counsel for the petitioner was unable to point out any mistake apparent on the face of record for interference while exercising the jurisdiction under Article 227 of the Constitution of India.

11. Hence, the present Writ Petition is dismissed.
Rule discharged. No costs.

[V.M.DESHPANDE, J.]

KNP/Crim. W.P. 431.2012 - [J]

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