

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.**

Criminal Writ Petition No.254 Of 2002.

- (1) Shamimbanu Mohamad Arif Kureshi.
Age : 33 Years., Occ.: Nil.
- (2) Kumar Imran Mohamad Arif Kureshi.
Age : 15 Years., Occ.: Nil.
- (3) Kumari Sirin Mohamad Arif Kureshi.
Age : 13 Years., Occ.: Nil.
- (4) Kumari Afrin Mohamad Arif Kureshi.
Age : 10 Years., Occ.: Nil.

All R/o.: Madhi, Tal. Pathardi, Dist.
Ahmednagar.

Petitioner Nos.2 to 4 are minor,
through their natural guardian
mother -Petitioner No.1.

:: Petitioners.

Versus

- (1) Mohamad Arif Mohamad
Bashir Kureshi.
Age : 41 Years., Occ.: Commission Agent.
R/o.: Shilekhan, Aurangabad.

- (2) The State of Maharashtra. **:: Respondents.**

Appearance ==>

Mr. Dnyaneshwar J. Patil, Advocate h/for Mr. N.B. Suryawanshi,
Advocate for the Petitioners.

Mr. Nikhil Dube, Advocate h/for Mr. Anand Bhandari, Advocate for
Respondent No.1.

Mr. S.A. Ambad, Additional Public Prosecutor Respondent No.2.

CORAM : V.M. DESHPANDE, J.

DATE : 3rd FEBRUARY, 2015.

ORAL JUDGMENT :-

Heard Mr. Dnyaneshwar Patil, Advocate h/for Mr. N.B. Suryawanshi, Advocate for the Petitioners and Mr. Nikhil Dube, Advocate h/for Mr. Anand Bhandari, Advocate for Respondent No.1.

[2] In the year 1996, the present petitioners filed proceedings in the court of the Judicial Magistrate, F.C., Pathardi, Dist. Ahmednagar under Section 125 of the Code of Criminal Procedure for grant of monthly maintenance allowance from Respondent No.1. Said application was registered as Cri.M.A.No.136/1996. Said application was contested by present Respondent No.1. It is admitted position that during the pendency of said criminal Misc. Application, Respondent No.1 gave talaq to Petitioner No.1 on 2nd December, 1997. The learned Judicial Magistrate, F.C., Pathardi vide his Judgment and Order dated 22nd January, 1999 recorded the findings that the petitioners have proved that Respondent No.1 though having sufficient means has refused and neglected to maintain them. The learned Magistrate found that, Petitioner No.1 being divorcee, has no right to claim monthly maintenance allowance from Respondent No.1, after the date of divorce, in view of provisions of the Muslim Women (Protection of Rights on Divorce) Act 1986. The learned Magistrate, therefore, vide his judgment and order directed Respondent No.1 to pay monthly maintenance allowance @ Rs.100/- to petitioner No.1 from the date of application i.e. from 26th July, 1996 till December, 1997 and also directed that Respondent No.1 shall pay monthly maintenance allowance @ Rs.150/- to each of the children, till they attain the age of majority. Respondent No.1 – husband did not

challenge the said order. Thus, order granting montly maintenance allowance in favour of Petitioner Nos. 2 to 4 by the learned Magistrate attained the finality.

[3] It is the petitioners, who preferred Criminal Revision Applciation, since they were aggrieved by the quantum of monthly maintenance allowance granted in their favour by the larned Magistrate. Said Revision was registered as Criminal Revision Application No. 121/1999. The learned revisional court on 10th April, 2002 dismissed the Criminal Revision Application. Hence, the present Writ Petition is filed for enhancement of monthly maintenance allowance.

[4] The learned counsel for the petitioners fairly submitted before this court that he is not pressing for the monthly maintenance allowance of wife i.e. petitioner No1; since admittedly, there was divorce between petitioner No.1 and Respondent No.1. He further submitted that, he is not claiming any enhancement in the monthly maintenance allowance granted in favour of petitioner No.1, by the learned Magistrate. He, therefore, restricted his claim in so far as amount of monthly maintenance allowance *vis-a-vis* petitioner Nos. 2 to 4.

[5] I have gone through the evidence as well as pleadings and the impugned Judgment and Orders. The leaned counsel for Respondent No.1-husband also fairly stated that he is not shirking his responsibility to pay maintenance to his children. However, he submits that, Respondent No.1 has to maintain his first wife, his age old mother and his children, born from his first wife. However, he submitted that, still he is responsible for the maintenance of petitioner Nos. 2 to 4.

[6] After having gone through the evidence on record, in my considered view, amount of monthly maintenance allowance granted in favour of petitioner Nos. 2 to 4 @ Rs.150/- each is too meager and further it is not in consonance with the income of Respondent No.1. Further petitioner Nos. 2 to 4 are also entitled to have that life style which Respondent No.1 was living at the relevant time. In that view of the matter, it is clear that petitioner Nos. 2 to 4 have made out case for enhancement of monthly maintenance allowance. Hence, I pass the following order :-

ORDER

- (i) Writ Petition is allowed.
- (ii) The Judgment and Order dated 10th April, 2002 passed by the learned 1st Ad-hoc Additional Sessions Judge, Ahmednagar in Criminal Revision Application No.121 Of 1999 dismissing the claim of enhancement of monthly maintenance allowance in respect of petitioner Nos. 2 to 4 is hereby set aside.
- (iii) Respondent No.1 shall pay monthly maintenance allowance @ Rs.300/- [Rs. Three Hundred only] to each of the petitioner Nos. 2 to 4 from 26th July, 1996 till the date, they attains the age of majority.
- (iv) With these observations, Writ Petition is disposed of. No costs.

(V.M. DESHPANDE, J.)