

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 167 OF 2014

Shaikh Afsar s/o. Shaikh Badashah **....Applicant**

Versus

Shaikh Rizwan w/o. Shaikh Afsar and Ors.....**Respondents.**

Mr. A.S. Shejwal, Advocate for applicant.

Mr. G.D. Jain, Advocate for respondents.

CORAM : T.V. NALAWADE, J.

DATED : 24th June, 2015.

ORDER :

1. The revision is filed to challenge the judgment and order of Criminal Mis. Application No. 33/2013 which was pending before the learned Principal Judge of Family Court, Aurangabad. The proceeding was filed under section 127 of Criminal Procedure Code for enhancement of maintenance. The Family Court has enhanced the maintenance. Initially the maintenance was granted at the rate of Rs. 500/- per month to each of the respondents and the Family Court has increased the maintenance to make it Rs. 3000/- per month to the wife, Rs. 1500/- per month each to original applicant Nos. 2 to 4 and Rs. 1000/- per month to original applicant No. 5. The amount of maintenance is made payable from the date of decision of the

Family Court i.e. 7.6.2014. Both the sides are heard.

2. It is the case of wife that the previous proceeding was filed in the year 2008 and previous maintenance was granted on the basis of circumstances which were prevailing at that time and considering the need of the applicants and the capacity of the respondent to pay the maintenance. It is their case that total amount of Rs. 2500/- was granted in the past and that amount is no more sufficient for maintenance of the applicants who are five in numbers. It is their case that the prices of essential commodities have increased many times and the applicant Nos. 2 to 5 require more amount for their education and clothes. It is contention of the original applicants that the respondent earns atleast Rs. 10,000/- by working as a driver and he gets income from agriculture which is more than Rs. 5,00,000/- per annum and he also gets income from the rent around Rs. 3,000/- per month.

3. The respondent of the proceeding filed before the Family Court opposed the application by filing say. He contended that he is supplying household articles, book and other articles required for education and so, there is no need to pay more amount. He contended that he is not making any income and he is not in a position to give more amount of maintenance.

4. In Family Court, the wife examined herself and she gave evidence that the husband owns two and half Acres of agricultural land and he is making income of around Rs. five lakh from this land. She deposed that he was driving the tractor and he was earning more than Rs. 50,000/- per month from all sources. She gave evidence that she is require to spend more as her issues were studying in 5th, 6th 3rd and 1st standard and she is also required to pay more on grocery items. In rebuttal, the husband gave evidence as per the contentions made in the say.

5. The evidence on the record and the admissions given by the parties show that husband is not disputing that he has obtained licence of blasting. It is the case of original applicants that husband is in business of digging wells and for that, he has obtained licence. The husband has tried to say that though the licence stands in his name, it was being used by his brother. Such contention is not acceptable as the explosive substance which can be used under licence can be used only by licence holder. He has admitted in his evidence that he has married second wife. He has admitted that he had entered in to the transaction of selling of some portion of land and he had collected atleast Rs. one lakh by selling some portion of the land.

The evidence shows that he is holding licence to drive truck. Copy of sale deed is produced to show that in the year 2014 he sold 2 R. portion of the land for consideration of Rs. one lakh. The 7/12 extract of the land is there.

6. The aforesaid material shows that the original opponent, petitioner has avoided to disclose his real income. The learned Judge of the Family Court has enhanced monthly maintenance from Rs 2500/- to Rs. 8500/-. The original applicants are expected to spend on rent, education, grocery items, clothes etc. Considering the needs of the original applicants and the fact that they are five persons, it can be said that the amount of Rs. 8500/- is a meager amount. The petitioner married second wife shows that he can afford to have the second wife. He married second wife even when there was order of maintenance against him. In view of these circumstances, it is not possible to interfere in the order made by the Family Court.

7. In the result, the revision stands dismissed.

[T.V. NALAWADE, J.]

ssc/