

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

CRIMINAL WRIT PETITION NO. 165 OF 2003

- 1) Smt. Jayashree w/o. Kundan Diwane,
Age 33 years, Occu. Nil.,
R/o. 980, Misal Lane, Ahmednagar.
- 2) Kum. Tejashree d/o. Kundan Diwane,
Age 13 years, Occu. Education,
- 3) Aditya s/o. Kundan Diwane,
Age 9 years, Occu. Education,

Petitioner Nos. 2 & 3 are minor through
their Mother i.e. petitioner No. 1 as
guardian Both R/o. 980, Misal Lane,
Ahmednagar.

**....Petitioners.
(Ori. Applicants.)**

Versus

- 1) Kundan s/o. Shantaram Diwane,
Age 38 years, Occu. Electric Contractor,
R/o. 403, Pipeline, HUDCO,
Ahmednagar.

- 2) The State of Maharashtra

....Respondents.

Mr. N.S. Kadarale h/f. Mr. Milind M. Patil (Beedkar), Advocate for
petitioners.

Mr. U.H. Bhogle, APP for State/respondent No. 2.

CORAM : T.V. NALAWADE, J.
DATED : 17th June, 2015.

JUDGMENT :

- 1) The proceeding is filed to challenge the judgment

and order of Criminal Revision Application No. 184/2001 which was pending in the Court of Sessions Judge, Ahmednagar. The learned Sessions Judge has allowed the revision of the present petitioners, the wife and issues of respondent No. 1 and the maintenance granted by the learned J.M.F.C. in a proceeding filed under section 125 of Cr.P.C. is increased, but increased amount is made payable from the date of decision of the revision i.e. from 11.10.2002. The petitioners/original applicants have grievance that the increased maintenance is made payable from the date of decision, when there was no fault of the applicants. Heard the learned counsel for the petitioners. Other side was duly served, but other side has not turned up.

2) The original proceeding was filed under section 125 of Cr.P.C. and the aforesaid revision was filed against the decision given by the J.M.F.C. The learned counsel for petitioners placed reliance on the observations made by this Court in the case reported as **2013 (3) Mh.L.J. (Cri.) 429 [Ravindra s/o. Bhimrao Patil Vs. Alka w/o. Ravindra Patil]**. The relevant portion about the point involved is at paragraph No. 14 which is as under :-

"14. On the point of date from which the maintenance needs to be paid, the learned

counsel for husband relied on the wording of provisions of section 125 of Criminal Procedure Code. On this point, the learned counsel for wife relied on the interpretation of provision of section 125 made by the Apex Court, which is used by this Court in *Criminal Writ Petition No. 1008 of 2009 (Bombay High Court, Aurangabad Bench)*. The case of the Apex Court reported as 2008 (4) *Mh.L.J. (Cri.) (S.C.) 555 = 2008 (4) Bom. Cri. Cases 728, Shail Kumari Devi and others Vs. Krishan Bhagwan Pathak alias Kishum B. Pathak* is referred by this Court. It is observed that the maintenance under section 125 of Cr.P.C. can be awarded from the date of application and for doing so, no special reasons are required to be recorded by the Court. It is observed that if there was no fault on the part of wife for delay caused in deciding the matter, she cannot be denied maintenance from the date of application. In the cases reported as 2008 *Crimes 3729 [Sau Rupali and Anr. Vs. Moreshwar]* and 1989 *Mh.L.J. 1031 Bombay High Court [Sharda Gunwantrao Kadu Vs. Gunwantrao Funjabrao Kadu]* also similar observations are made. In view of this interpretation of the provision of section 125 of Cr.P.C., this Court holds that the judgment and order of Sessions Court awarding maintenance from the date of decision given by the J.M.F.C. needs to be corrected."

- 3) In the present proceeding, no fault of the original

claimants/petitioners was found and it cannot be said that the decision of proceeding under section 125 of Cr.P.C. was protracted by the applicants or the decision of the revision was protracted. In view of the aforesaid observations made by this Court in the reported case, this Court holds that interference is warranted to make the decision of revision enforceable with effect from the date of filing of proceeding under section 125 of Cr.P.C. i.e. from 7.10.1996.

4) In the result, the petition is allowed. The decision given by the Sessions Judge, Ahmednagar of granting maintenance at the rate of Rs. 1,000/- per month to each of the present applicants is made enforceable from 7.10.1996 i.e. from the date of filing of the proceeding under section 125 of Cr.P.C.

Rule is made absolute in these terms.

[T.V. NALAWADE, J.]

ssc/