

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

Criminal Writ Petition No.742 Of 2012.

Maroti hariba Gotawale.

Age : 50 Years., Occ.: Service.

R/o.: Tirupati Vidyalaya,

At Post Pangaon, Tal. Renapur,

Dist. Latur.

:: Petitioner.

Versus

Kusum w/o Maroti Gotawale

Age : 35 Years., Occ.: Service.

R/o.: Waigaon, Tal. Ahmedpur,

Dist. Latur.

:: Respondent.

Appearance =>

Ms. Rashmi Kulkarni, Advocate h/for Mr. Yugant Marlapalle, Advocate for the Petitioner / husband.

Mr. B.R. Loya, Advocate for the Respondent / wife.

CORAM : V.M. DESHPANDE, J.

DATE : 9th MARCH, 2015.

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally, with consent of both the parties.

[2] Criminal Misc. Application No.150 Of 2008 filed under Section 127 of the Code of Criminal Procedure, on behalf of the petitioner / husband was rejected by the learned Judicial Magistrate, F.C., Ahmedpur on 18th November, 2010, which order was confirmed by the learned revisional court is the subject of challenge in the present Writ Petition.

[i] Relations between the petitioner and respondent as husband and wife are still in existence. Their marriage took place in the year 1988 and in the year 1990, male child was born from the said wedlock.

[ii] In the year 1997 respondent – wife alongwith her son were required to approach the Judicial Magistrate, F.C., seeking enforcement of their right of maintenance from the petitioner. Accordingly, application under Section 125 of the Code of Criminal Procedure (Cri.M.A.No.40/1997) was filed. Said application was allowed by the learned Magistrate on 3rd July, 1998 and the learned Magistrate granted maintenance allowance @ Rs.300/- per month to the Respondent – wife and Rs.250/- per month to the son. Said order was challenged however, the said order attained the finality.

[iii] In the year 2000, application under Section 127 of the Code of Criminal Procedure was filed on behalf of the wife and son for enhancement of the maintenance allowance, which was registered as Criminal M.A.No.179 Of 2000.

[iv] The learned Magistrate after considering the rival contentions granted enhanced maintenance allowance @ Rs.400/- and Rs.350/- to the respondent -wife and son, respectively.

[v] Being aggrieved by the said order, Criminal Revision Application No.40/2002 was filed wherein, monthly maintenance allowance @ 1500/- per month each was granted to the respondent - wife and son, respectively. Ultimately, said order granting enhancement in the maintenance allowance in favour of the respondent and her son reached to this court and this court in Writ Petition No.477/2003 scaled down the amount of maintenance of

Rs.1500/- to Rs.1200/- per month and Rs.800/- per month to the Respondent – wife and her son, respectively.

[vi] Order of only scaling down maintenance allowance of present Respondent from Rs.1500/- to Rs.1200/- per month passed by this court in Writ Petition No.473/2003 was challenged before the Hon'ble Apex Court and the Hon'ble Apex Court has dismissed the Special Leave Petition filed on behalf of the petitioner – husband. Order of this court was dated 2nd June, 2008.

[vii] In this backdrop, on 30th December, 2008 application under Section 127 of the Code of Criminal Procedure was filed by the petitioner – husband before the learned Magistrate for cancellation of the maintenance allowance granted in favour of the wife and son. Reasoning put forth by the husband before learned Magistrate was that wife is employed as Anganwadi Sevika, at village Waigaon, Tal. Udgir, therefore, she is able to maintain herself and so far as son is concerned, according to the petitioner – husband, as son has attained the age of majority, therefore, he has lost his right to get maintenance allowance from his father. Said application was registered as Criminal M.A.No. 150 Of 2008.

[viii] The learned Magistrate on 18th November, 2010 partly allowed the application filed on behalf of the present petitioner, thereby, cancelled the maintenance allowance granted in favour of the son on the ground that son has attained the age of majority however, rejected the application for cancellation of maintenance allowance in favour of the wife.

[ix] Though maintenance granted in favour of the son was cancelled by the learned Magistrate, said order was not challenged by filing Criminal Revision Application either by present respondent or son, who has attained the age of majority. Thus, so far as son is concerned order dated 18th November, 2010 has attained the finality.

[x] Thereafter, petitioner- husband preferred Criminal Revision Application No.35 Of 2011 (Old Criminal Revision Application No.3/2011) before the learned Additional Sessions Judge, Ahmedpur challenging the order rejecting application for cancellation of maintenance allowance granted in favour of the wife. The revisional court has confirmed the findings recorded by the learned Magistrate by dismissing Criminal Revision Application on 5th June, 2012.

[3] I have heard learned counsel for the petitioner in extenso. Her submission is that since the wife is in gainful employment, she is able to maintain herself, therefore, both the courts below have committed mistake in granting maintenance to her.

[4] Worth to note is that from the year 2000 itself the respondent-wife is discharging the duty as Anganwadi Sevika. Thus it is crystal clear that when this court decided Writ Petition No.477 Of 2003, at that time also, the respondent – wife was in employment and said order of this court is already affirmed by the Hon'ble Apex Court. Further the aspect that the Respondent is working as Anganwadi Sevika is rightly considered by the learned Magistrate in paragraph No.14 of the order.

[5] It is clear that the job of Anganwadi Sevika is temporary in nature. Further merely because the wife is getting some peanut in order to survive

herself that does not dis-entitle her to claim maintenance from her husband, considering the salary and standard of the husband. All these aspects were considered by the learned courts below in proper perspective, warranting no interference. Hence, Writ Petition is dismissed. Rule is discharged.

(V.M. DESHPANDE, J.)