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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL REVISION APPLICATION NO. 407 OF 2014
WITH
CRIMINAL APPLICATION NO. 347 OF 2014**

Mr.Mohammed Kayum Hanif Sheikh .. Petitioner

Vs.

1. Mrs.Saheda Kayum Sheikh
2. State of Maharashtra .. Respondents

Mr.Shrishail Sakhare, Advocate for the Petitioner.

**CORAM : R.G.KETKAR, J.
DATE : 07th JANUARY, 2015**

P.C. :

. Heard Mr.Shrishail Sakhare, learned Counsel for the petitioner at length.

2. By this petition, the husband has challenged the judgment and order dated 27/06/2014 passed by the learned Principal Judge, Family Court, Mumbai in Petition No. E-27 of 2009. By that order, the Family Court partly allowed the petition filed by the respondent-wife and directed the petitioner herein to pay to the respondent an amount of Rs.5,000/- per month under section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') from the date of the order. It was also made clear that the said amount is inclusive of any other amount

ordered by any other Court.

3. In support of this petition, Mr.Sakhare submitted that the petitioner is carrying on a tailor business. He is maintaining four daughters and is also looking after his mother. The respondent is able to maintain herself as she is giving tuitions and earning therefrom. Four daughters are studying in college and considering the liability of the petitioner, the amount of maintenance awarded by the Family Court is excessive. He also invited my attention to the order dated 03/10/2009 passed by the learned Metropolitan Magistrate, 22nd Court, Andheri in C.C.No. 241/DN of 2008. By that order, the learned Magistrate directed the petitioner herein to pay Rs. 1,000/- per month to the respondent towards rent for her accommodation and also to pay Rs.2,500/- per month towards her monthly maintenance from the date of the application. He submitted that the petitioner challenged that order in the Sessions Court. By order dated 29/04/2010, the learned Sessions Judge reduced the amount of maintenance from Rs.2,500/- per month to Rs.1,500/- per month. He submitted that petitioner is regularly paying the maintenance as awarded by the Sessions Court. Finally, he relied upon the decision of the Apex Court in the case of *Shail Kumari Devi Vs. Krishan Bhagwan Pathak, (2008) 9 Supreme Court Cases 632* to contend that under section 125 of Cr.P.C., the Family Court cannot award maintenance exceeding Rs.500/-.

4. I have considered the submissions advanced by Mr.Sakhare. I have also perused the material on record. The relevant portion of section 125(1) reads as under :

“125. Order for maintenance of wives, children and parents – (1) If any person having sufficient means neglects or refuses to maintain-
(a) his wife, unable to maintain herself, or
(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
(d) his father or mother, unable to maintain himself or herself,
a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.”

5. The words “not exceeding Rs.500/- in the whole” appearing in clause (d) were omitted by Act 50 of 2001 with effect from 24/09/2001. Thus, the ceiling for payment of maintenance at monthly rate of Rs.500/- was removed with effect from 24/09/2001. In view thereof, I do not find any merit in the submissions of the Mr.Sakhare that the Family Court cannot award maintenance exceeding Rs.500/- per month. The decision in the case of Shail Kumari Devi (*supra*) also does not support the submission of Mr.Sakhare.

6. As far as the other submissions are concerned, the Family Court after considering the income of the petitioner, which is more

than Rs.35,000/- per month held that the respondent is entitled to maintenance of Rs.5,000/- per month inclusive of maintenance awarded by any other Court. As noted earlier, the Sessions Court has awarded maintenance of Rs.1,500/- per month and thus, the Family Court has awarded the maintenance of Rs.3,500/- per month. The Family Court has also considered the fact that the petitioner is maintaining four daughters and mother.

7. In view thereof, I do not find that the Family Court omitted to consider any relevant circumstance while awarding the maintenance. For all these reasons, no case is made out for invoking the revisional powers under section 401 of the Cr.P.C. Hence, the petition fails and the same is dismissed.

8. In view of dismissal of petition, the Criminal Application No.347 of 2014 does not survive and same is disposed of accordingly.

(R.G.KETKAR, J.)