

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 402 OF 2006

Devendra Laxman Khedkar,
Age : 15 years, Occupation : Education,
Minor, Through Guardian,
Sou.Sunita alias Bebi Laxman Khedkar,
Age : 45 years, Occupation : Labourer,
R/o Ghumri, Taluka Karjat,
District Ahmednagar.

...PETITIONER

-VERSUS-

Laxman Dhondiba Khedkar,
Age : 55 years, Occupation : Service,
R/o Mirajgaon, Taluka Karjat,
District Ahmednagar.

...RESPONDENT

...
Advocate for Petitioner : Shri N V Gaware a/w Shri S.R.Zambre.
Advocate for Respondent : Shri N C Garud.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 17th June, 2016

Oral Judgment:

1 This petition is filed by the Petitioner, who was a minor at the relevant time and who has appeared through his mother who is the natural guardian. The Petitioner is aggrieved by the order of the learned Additional Sessions Judge dated 19.08.2005 whereby, the quantum of maintenance allowance as was granted by the learned Magistrate has been

reduced from Rs.1200/- to Rs.1000/- per month and with the added embargo that maintenance allowance shall not be paid after the Petitioner attains the age of majority which is 18 years of age.

2 The Petitioner was the Applicant along with his mother before the learned Magistrate when the application for seeking maintenance under Section 125 of the Code of Criminal Procedure was filed. The maintenance as was granted by the learned Magistrate was Rs.1200/- per month only to the Petitioner. The claim for maintenance by the mother of the Petitioner was rejected.

3 The Respondent herein preferred Criminal Revision Application No.72/2003 challenging the judgment of the learned Magistrate dated 17.09.2002. It is informed that the mother of the Petitioner had also preferred Criminal Revision Application No.250/2002, which was dismissed in default. It is further informed that she was before this Court and succeeded in getting the order of dismissal in default set aside. It is also given to understand that the said revision of the mother has been dismissed thereafter. According to Shri Garud, the claim of the mother has been rejected because she was not a legally wedded wife of the Respondent herein.

4 I have considered the strenuous submissions of Shri Gaware, learned Advocate appearing on behalf of the Petitioner and Shri Garud, learned Advocate appearing on behalf of the Respondent.

5 Considering the reasons assigned by the learned Additional Sessions Judge to the extent of causing an interference with the quantum of maintenance, reducing it from Rs.1200/- to Rs.1000/- per month, I am not causing any interference.

6 The only issue that needs consideration is as to what was the reason for which the Revisional Court directed that maintenance be paid to the Petitioner only till he attains the age of majority which is 18 years.

7 In the light of the submissions of the learned Advocates, I have gone through the reasons assigned by the Revisional Court in the impugned judgment. The reasons and conclusions set out in the judgment are to the extent of reduction in the quantum of maintenance. In paragraph 14 of the impugned judgment, the Revisional Court concludes that *“In the background, the interference is called for only on the point of quantum of maintenance.”* It is also noteworthy that the issues were cast by the Revisional Court and on the grant of maintenance i.e. issue No.1, the conclusion of the Revisional Court is that interference is being made

only to the extent of quantum of allowance.

8 I find it surprising that without assigning any reason, the learned Sessions Judge while reducing the quantum of maintenance has directed that the Petitioner shall be paid maintenance till he attains the age of majority.

9 Shri Garud strenuously submits that the law mandates that no child should be paid maintenance allowance beyond 18 years of age and the case of the Petitioner is covered by Section 125(1)(b) of the Code of Criminal Procedure.

10 Section 125 of the Code of Criminal Procedure 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:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation:- For the purposes of this Chapter.

(a) "Minor" means a person who, under the provisions of the Indian Majority Act, 1975 (9 of 1875) is deemed not to have attained his majority;

(b) "Wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

- (2) *Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or*

interim maintenance and expenses of proceeding, as the case may be.

- (3) *If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment is sooner made:*

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation:- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

- (4) *No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.*
- (5) *On proof that any wife in whose favour an order has been made under this section is living in adultery, or*

that without sufficient reason she refuses to, live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.”

11 Except the oral submissions put forth by Shri Garud, he is unable to cite any provision or any judicial pronouncement which would indicate that no child after attaining the age of 18 years would be entitled for any maintenance allowance, notwithstanding whether, he is starving or taking education and is unable to sustain himself.

12 In the light of the above, this Criminal Writ Petition is partly allowed. Clause 3 of the operative part of the impugned judgment dated 19.08.2005 is modified and the Petitioner (Devendra Laxman Khedkar) shall be entitled for maintenance allowance at the rate of Rs.1000/- per month.

13 Rule is made partly absolute in the above terms.