

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

**CRIMINAL APPLICATION NO. 2210 OF 2016  
IN/WITH  
CRIMINAL REVISION APPLICATION (ST) NO. 103 OF 2016**

Ashish s/o Narayan Nilawar,  
Age: 42 years, Occ: Nil,  
R/o. Nath Nagar, Parbhani.

...Applicant

versus

1. Padmaja w/o Ashish Nilawar,  
Age: 38 years, Occ: Nil,  
R/o. At present  
C/o. Ramesh s/o Shriram Wattamwar,  
R-1, Disha Sankul, Garkheda,  
Aurangabad.

2. Ishan s/o Aashish Nilawar,  
Age: 12 years, minor Occ: Education,  
U/g of Respondent No. 1  
R/o. At present  
C/o. Ramesh s/o Shriram Wattamwar,  
R-1, Disha Sankul, Garkheda,  
Aurangabad.

3. The State of Maharashtra.

...Respondents

.....  
Mrs. Dipali S. Ansingkar (Jape), Advocate for applicant  
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**CORAM : N.W. SAMBRE, J.**

**DATE : 3rd MAY, 2016**

**ORAL ORDER :**

Learned Judge, Family Court, Aurangabad in Petition No. E-262 of 2009 preferred under Section 125 of the Code of Criminal Procedure, has passed an order awarding monthly maintenance of Rs.5000/- to wife Padmaja i.e. respondent No.1 and

Rs. 2500/- to son Ishan.

2. Subsequent thereto, another application under Section 127 of the Code of Criminal Procedure being Criminal Misc. Application No. 35 of 2014, came to be moved for modification of the order dated 16/03/2013 awarding maintenance as stated herein above. The said application came to be allowed by the Family Court, Aurangabad by an order dated 21/12/2015 enhancing the maintenance to the child Ishan from Rs.2500/- per month to Rs.9650/- per month. As such, present revision application.

3. There is delay of about 12 days in preferring the present revision application.

4. For the reasons stated in the application for condonation of delay, delay stands condoned and the matter is heard on merit.

5. It is required to be noted that the order passed under Section 125 of the Code of Criminal Procedure awarding monthly maintenance of Rs.5000/- and Rs. 2500/- to the wife and son respectively before this Court was questioned but has attained finality. A submission is made that the applicant-husband is regularly paying the said maintenance amount, though same was confirmed in

earlier round of litigation before this Court.

6. Learned Counsel for the applicant would urge that the order of enhancement of maintenance in exercise of powers under Section 127 of the Code of Criminal Procedure is not sustainable, particularly on the aspect of quantum. She would submit that the applicant-husband has limited source of earning, as the land to the extent of 2 acres located at village Borwand (Kh) Taluka and District Parbhani, where he has installed Stone Crusher is leased out to one Sudhakar Ganeshrao Patirol on monthly rent of Rs.15,000/- for period from 10/05/2012 to 10/04/2017. Learned Counsel would urge that as the lease money is Rs.15,000/- per month, which is only source of income to the applicant, it will be difficult for the applicant to honour the order of the Family Court, Aurangabad enhancing the maintenance. She would then submit that the enhancement as is sought is based on the ground that tuition fees and the expenses towards sports, hobby persuaded by son were far away from truth and imaginary. According to her, the order needs to be set aside.

7. With the assistance of learned Counsel, I have perused the observations made by learned Family Court. Learned Family Court in the matter has noted that respondent No.1 wife has specifically come out with the case as regards source of income of

the applicant. What is stated is that apart from the operation of Stone Crusher in question, there are other source, such as, operation of fair price shop. It is also claimed that there are other source of income also to the present applicant.

8. It is to be noted that learned Family Court was appraise of the fact that monthly income of the applicant is Rs.80,000/-. Learned Family Court has observed about the same in paragraph-4 of the order impugned. Though present respondent is getting monthly maintenance under Domestic Violence Act, however, what is required to be taken note of the fact is, enhancement is not granted in favour of the wife but in favour of the child, who is pursuing his studies and also certain hobbies. The enhancement as is ordered, in my opinion, is based on the sufficient material qua source of income of the applicant.

9. In view thereof, no interference in the revisional jurisdiction is called for. As such, criminal revision application fails and stands dismissed.

**[ N.W. SAMBRE, J. ]**