

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

CRIMINAL WRIT PETITION NO. 415 OF 2006

Sayyed Mansoor Husaini s/o Yusuf Husaini,
Age : 26 years, Occupation : Labour,
R/o Chhaliya Chal, Behind of
Dr.Sahaa, V.T.Bakery, Hariyali Village,
Vikroli East, Mumbai-83.

...PETITIONER

-VERSUS-

1 Sayyadabibi Amina w/o Sayyad Mansoor Husaini,
Age : 22 years, Occupation : Household,
R/o Momin Galli, Georai,
Taluka Georai, District Beed.

2 Sayyad Sultan Hasaini s/o Mansoor Husaini,
Mashayak,
Age : 03 years, through Respondent No.1 his
mother as Legal Guardian.
R/o Momin Galli, Georai,
Taluka Georai, District Beed.

...RESPONDENTS

...
Advocate for Petitioner : Shri N.R.Shaikh h/f Shri Javed R Shaikh.
Advocate for Respondents : Shri S C Bora.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 17th June, 2016

Oral Judgment :

1 The Petitioner is aggrieved by the judgment and order
delivered by the learned Sessions Judge dated 28.04.2006 in Criminal

Revision Application No.5/2006 by which the maintenance granted by the learned Magistrate under Section 125 of the Code of Criminal Procedure was enhanced.

2 Shri Shaikh, the learned Advocate for the Petitioner, has strenuously criticized the impugned order. He submits that primarily the jurisdiction of the Revisional Court is limited and unless the impugned order appears to be perverse, erroneous and likely to cause grave injustice, the same cannot be interfered with only because a second view is possible.

3 He submits that the Respondents had moved an application under Section 125 of the Code of Criminal Procedure seeking maintenance from the Petitioner. The oral and documentary evidence was adduced by the Respondents though the Petitioner did not step into the witness box. By the judgment dated 23.12.2005, the Petitioner was directed to pay maintenance allowance at the rate of Rs.400/- per month to Respondent No.1 and Rs.200/- per month to Respondent No.2 from the date of the application. The Respondents preferred Criminal Revision Application under Section 397 of the Code of Criminal Procedure. The learned Sessions Judge enhanced the maintenance allowance from Rs.400/- to Rs.800/- and from Rs.200/- to Rs.600/-, respectively. The said order was made applicable from the date of the application.

4 Shri Shaikh fairly submits that though maintenance allowance granted appears to be paltry today, it was a large amount in 2006 and the Petitioner, who is labourer was, therefore, unable to sustain such burden. He, therefore, submits that interference is called for in the impugned judgment for two reasons. Firstly, that the Revisional jurisdiction being limited ought to be exercised sparingly. Secondly, that a huge amount has been granted as maintenance. He relies upon the judgment of this Court in the matter of *Master Leonard Mark Hillario vs. Seby Hillario*, 2007 Cri.L.J. 3627, to support his contention.

5 Shri Bora, the learned Advocate for the Respondents, submits that despite sufficient oral and documentary evidence having been brought on record, the learned Magistrate had granted a paltry amount which would not sustain the Respondents. He submits that the Respondents in order to keep their mind, body and soul together, had no option but to file a revision petition and seek enhancement considering the capability and income of the Petitioner and the Respondent being a destitute. The Revisional Court appreciated the evidence on record and realized that the amount granted was too meager and would not have maintained the Respondents. In order to ensure that the object of Section 125 is achieved that the learned Sessions Judge has passed the impugned

order. Moreover, with the passage of time of practically 10 years, no interference is called for in the impugned judgment.

6 I have considered the submissions of the learned Advocates and have gone through the reports cited.

7 There can be no dispute that revisional jurisdiction of the learned Sessions Judge is akin to the revisional jurisdiction of this Court under Article 227 of the Constitution of India. Unless it is noticed that the impugned order is perverse or erroneous and is likely to cause grave injustice, the said order could not be interfered with.

8 The learned Magistrate has considered the entire evidence adduced before him from paragraph 17 onwards in his judgment. The ill-treatment meted out to the Respondent was also considered. The contention that the father of the Respondent/ wife had given articles worth Rs.1,52,550/- to the Petitioner, was not established and hence, the prayer for returning of the said amount was not accepted.

9 The issue is as regards the quantum of maintenance allowance and interference of the Revisional Court. It was established before the learned Magistrate that the Petitioner works in an embroidery

factory. The Respondents were unemployed and therefore, held to be unable to sustain themselves. Though it was contended that Respondent No.1 sells milk, the same was not established.

10 The learned Magistrate considered the evidence led by the Respondents indicating that the Petitioner was earning Rs.800/- daily and Rs.25,000/- per month from the business of running the embroidery factory. The Petitioner neither controverted the said evidence nor stepped into the witness box to establish that he was not earning Rs.25,000/- per month, but was an employee of the embroidery factory. In the wake of the contentions of the Respondents as regards the income of the Petitioner, the Petitioner should have led evidence to disprove the said contentions and to bring the truth before the Court with regard to his earnings. This aspect has, therefore, been considered by the Revisional Court while enhancing maintenance allowance.

11 Insofar as the scope of interference of the learned Sessions Judge is concerned, it found that the impugned order of the learned Magistrate was perverse on the basis of the evidence recorded. As such, the aspect as to whether, the impugned order would cause grave injustice to the Respondents, was rightly appreciated by the Revisional Court.

12 In my view, a paltry amount of Rs.400/- per month to the wife and Rs.200/- per month to the child would hardly had sustained the Respondents. By any sense even today, the amount of Rs.800/- and Rs.600/-, respectively cannot be said to be sufficient to maintain the Respondents.

13 Considering the above and the passage of 10 years from the date of the passing of the impugned order, in my view, ends of justice would be met by not interfering in the impugned judgment. As such, this Criminal Writ Petition being devoid of merit is dismissed. Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)