

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

CRIMINAL APPLICATION NO. 2857 OF 2005

1. Sarubai @ Ashwini w/o Suryakant Shinde,
age 27 yrs, Occ. Household,
R/o Hiapalnari, Tq. Mukhed,
at present R/o Sugaon Camp,
Tq. Mukhed, Dist. Aurangabad.
2. Ku. Supriya d/o Suryakant Shinde,
age 8 yrs, Minor u/g of real mother,
Sarubai @ Ashwini w/o Suryakant Shinde,
Applicant No.1, r/o as above.

.....applicants...
(orig applicants.)

VERSUS

Suryakant s/o Ramchandra Shinde,
age 34 yrs, Occ. Service,
as a teacher at Kamleshwar Vidyalaya,
(Girls School), Jalkot Road,
Udgir, Tq. Udgir, Dist. Latur.

....Respondent....

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CORAM : V.K. JADHAV, J.

Dated: October 19, 2016

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ORAL JUDGMENT :-

1. None present for the parties.
2. Being aggrieved by the order passed by the
Judicial Magistrate First Class, Mukhed dated 2.4.2004
in MCA No.13/2003 and the Judgment and order

passed by the Additional Sessions Judge, Kandhar dated 8.8.2005 in Criminal Revision Application No.17/2004, the original applicant alongwith her daughter has preferred this criminal application.

3. Brief facts, giving rise to the present criminal application, are as follows :-

a] The applicants have filed Misc. Criminal Application No.13/2003 for grant of maintenance against the present respondent. It has alleged in the application that, after the marriage respondent started ill-treating the applicant no.1 on account of non-fulfillment of certain unlawful demands. Even he has not maintained the applicants properly. The applicant no.1 constrained to lodge a complaint against the respondent-husband for the offence punishable under Section 498-A of the Indian Penal Code. Further, the respondent also performed a second marriage. The applicant no.1 is therefore residing with her brother alongwith her minor daughter. They have no independent source of income and respondent neglected and refused to maintain them though having sufficient

means. The respondent has salaried income and further he is also earning from the auto business and agricultural properties.

b] The respondent-husband has strongly resisted the said application. He has accepted the relations, however, denied specifically that the applicant no.1 was subjected to cruelty on account of the non-satisfaction of the unlawful demand made by him. He has also denied neglect and refusal to maintain them. He further shown his willingness to maintain applicants. Further, he has also filed a petition under section 9 of Hindu Marriage Act for restitution of Conjugal Rights. It is his contention that, applicant no.1 was insisting him to reside separately from his parents. Since, respondent has denied the same, the applicant no.1 is residing with her brother. It has also contended that she is doing tailoring work and able to maintain herself. It has contended that, by deducting installment of loan, he used to get Rs.1200/- to 1300/- p.m. salary. He is not having any agricultural land and auto business as alleged.

4. Both the parties lead their oral and documentary evidence in support of their rival contentions. The learned Magistrate by order dated 2.4.2004 directed the respondent to pay maintenance of Rs.1000/-p.m. to applicant no.1 and Rs.600/- p.m. to applicant no.2 from the date of application. Being aggrieved by the same, both the applicants filed Criminal Revision Application No.17/2004 and claimed Rs.1,500/- p.m. maintenance for each of them. Respondent-husband has also filed Criminal Revision Application No.16/2004.

5. The learned Additional Sessions Judge, Kandhar by common judgment and order dated 8.8.2005 partly allowed criminal revision application No.17/2004 filed by the applicants and directed the respondent-husband to pay applicant no.1-wife maintenance @ Rs.1,200/- p.m. to applicant no.1 and Rs.1,000/- p.m. to applicant no.2. Being aggrieved by the same, the applicants preferred this criminal application mainly on the ground that, even though, the applicants have claimed maintenance @ Rs.1,500/- p.m. each, the learned Additional Sessions Judge has granted maintenance @

Rs.1,200/- p.m. and Rs.1,000/- p.m. to applicant no.2 respectively.

6. Being aggrieved by the order passed by the Additional Sessions Judge since the applicants only approached to this Court the quantum of the maintenance is only required to be considered. It is an admitted fact that, respondent husband is serving as a teacher in High School and used to get salary of Rs.7,000/- to Rs.8,000/- p.m. As per the contention of the respondent husband, his brother and old parents are depending on him. Further, he had also obtained loan for the marriage of his sister and, therefore, certain amount used to be deducted from his salary towards repayment of the said loan. Salary certificate is filed before the court and the same is marked at exh.22. As per the said salary certificate, respondent husband used to get net salary of Rs.1507/-. However, in the month of February, 2003 as per salary certificate, net salary of respondent was Rs.6087/-. The learned Additional Sessions Judge has, therefore, rightly considered the salary of the respondent as not less than Rs.5,000/-

p.m. against his gross salary of Rs.7485/-. The learned Additional Sessions Judge has therefore ordered to pay maintenance to the applicant no.1 @ Rs.1200/- p.m. instead of Rs.1,000/- and Rs.1,000/- p.m. instead of Rs.600/- p.m. This order came to be passed in the year 2004.

7. Thus, considering the present scenario, the applicants may file an application for alteration of the maintenance amount as provided under section 127 of the Code of Criminal Procedure. I do not find any reason to interfere in the judgment and order passed by the Additional Sessions Judge, Kandhar. Hence, order.

O R D E R

- I. Criminal Application is hereby dismissed.
- II. Rule discharged.

(V.K. JADHAV, J.)

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