

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

CRIMINAL APPLICATION NO. 2872 OF 2005

1. MRS SUNITA GANESH YENGANDUL
age 27 yrs, Occ. Nil, R/o C/o Sayanna
Ganpat Bodkhe, Nilgiri Housing Society,
Room No.100, Panchvatinagar, Near
Shramiknagar, Ahmednagar.
2. Sanika D/o Ganesh Yengandul
age minor, u/g of her mother
petitioner no.1 R/o as above. ..Petitioners..
(orig claimants.)

VERSUS

GANESH SUBHASH YENGUNDAL
age 33 yrs, Occ. Tailoring,
R/o 936, Telikhunt,
Ahmednagar, Dist. Ahmednagar. ..Respondent.
(orig. opponent)

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Advocate for Applicants : Mr Joydeep Chatterji
Advocate for Respondents : Mr S L Bhapkar

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CORAM : V.K. JADHAV, J.

Dated: September 20, 2016

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ORAL JUDGMENT :-

1. Being aggrieved by the judgment and order passed by the 3rd Adhoc Additional Sessions Judge, Ahmednagar, dated 15.9.2005 in criminal revision application no.1/2005, the original applicants in the maintenance proceedings preferred this criminal application.

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

The applicants have filed an application bearing criminal misc. application no. 223/2003 before the Chief Judicial Magistrate, Ahmednagar for enhancement of the maintenance amount. It has contended in the application that marriage between applicant no.1 and opponent took place on 30.5.1995 as per Hindu Rites and Rituals in the year 1996. The applicant no.2 was born to them out of their marital wedlock. The applicant no.1 filed a maintenance application against the opponent bearing Cri. Misc. Application No.458/1998. It was granted on 6.5.2000 and accordingly the then Magistrate granted Rs. 300/- p.m. to applicant no.1 and Rs.200/- p.m. to applicant no.2 as maintenance. According to the applicants, prices of the essential commodities have gone up compared to the year 1998 and furthermore, the expenses of education of the applicant no.2 also required to be incurred by the applicant no.1. It has also contended that opponent is having a tailoring business and he is earning Rs.10,000/- to 12,000/- p.m. and nobody is depending

on him. Accordingly, both the applicants have claimed Rs.1500/- pm. each as enhanced maintenance.

The opponent husband has strongly resisted the application by filing his say at Exh.11 and it has contended that there is no change in his income as compared to the year 1998 and that he is doing a labour work. It has also contended that the applicant no.1 has passed BHMS and working in a Hospital and she is able to maintain herself and also able to maintain applicant no2.

The learned Chief Judicial Magistrate, Ahmednagar by order dated 30.10.2004 in Criminal Misc. Application No. 223/2003 partly allowed the application and thereby directed the opponent husband to pay Rs. 800/- p.m. to applicant no.1 and Rs.700/- p.m. to applicant no.2 towards enhanced maintenance.

Being aggrieved by the same, the opponent husband has preferred criminal Revision Application No.1/2005 and the learned 3rd Adhoc Additional Sessions Judge, Ahmednagar by impugned order dated 15.9.2005 partly allowed the criminal revision Application and thereby modified the order of the

Magistrate and directed the opponent husband thereby to pay Rs.600/- p.m. to applicant no.1 wife and Rs.500/- p.m. to applicant no.2 daughter towards enhanced maintenance. Being aggrieved by the same, the original applicants have filed present criminal application.

3. The learned counsel for the applicants submits that, applicant no.1 wife has deposed before the Court that the opponent husband is owner of one curtain shop and also runs one Ladies Tailoring shop at Lonar Galli. Learned counsel submits that, it is a part of record that the opponent husband had purchased one plot under the registered sale deed for a consideration of Rs.87,000/-. Certified copy of the said deed is produced on record and the same is marked at Exh.28. Furthermore, the telephone bill in the name of opponent husband is also produced on record and same is marked as Exh.30. These two documents sufficiently indicates the sound financial position of the opponent husband. It is difficult to accept that the opponent husband who is doing a labour work is able to purchase

a plot for a consideration of Rs.87,000/- and further install a telephone. Thus, considering the status of the parties and the rise in the prices of the essential commodities compared to the year of 1998, the learned Magistrate has rightly granted maintenance. The learned counsel submits that, however, the learned 3rd Adhoc Additional Sessions Judge, Ahmednagar for no reason reduced the amount of maintenance by modifying the order passed by the Magistrate.

4. Learned counsel for respondent husband submits that, specific proof of income of respondent husband is not placed on record. Therefore, considering the evidence and other circumstances on record, the order passed by the 3rd Adhoc Additional Sessions Judge, Ahmednagar requires no interference. There is no substance in the criminal application. Criminal application is therefore, liable to be dismissed.

5. On careful perusal of the order passed by the Chief Judicial Magistrate as well as the judgment and order passed by the 3rd Adhoc Additional Sessions

Judge, Ahmednagar, it appears that both the courts below are in agreement that the respondent husband is a rich person having sufficient means to pay the enhanced maintenance. It is also not disputed that compared to the year 1998, the prices of the essential commodities have gone up in the year 2003. I do not find any justifiable reason as to why the learned 3rd Adhoc Additional Sessions Judge, Ahmednagar has reduced the enhanced maintenance amount as granted by the Chief Judicial Magistrate. Otherwise also, the learned Chief Judicial Magistrate has enhanced the meager amount in the monthly maintenance of present applicants.

6. In view of the above discussion, I proceed to pass the following order.

ORDER

1. Criminal Application is partly allowed.
- II. The judgment and order passed by the 3rd Adhoc Additional Sessions Judge, Ahmednagar dated 15.9.2005 in Criminal Revision Application

No.1/2005 is hereby quashed and set aside to the extent of quantum of maintenance granted to both the applicants.

III. The judgment and order passed by the Chief Judicial Magistrate, Ahmednagar dated 30.10.2004 in Cri. Misc. Application No. 223/2003 stands confirmed.

IV. Criminal application is accordingly disposed of. Rule is made absolute in above terms.

sd/-

(V.K. JADHAV, J.)

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