

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1007 OF 2010

Mrs. Rekha S. Khutale and ors. .. Petitioners
vs.
Sanjay D. Khutale and anr. .. Respondents
None for both the parties.

CORAM : M. S. SONAK, J.
DATE : 26 AUGUST 2016.

P.C. :-

1] Neither the petitioners nor their advocate are present. Similarly, neither respondent No.1 - husband nor his advocate are present.

2] Since the matter relates to payment of maintenance, it will not be appropriate to adjourn the same taking into consideration the observations of the Hon'ble Apex Court in *Bhuwan Mohan Singh Vs. Meena and others - (2015) 6 SCC 353*.

3] The Judicial Magistrate First Class (JMFC) Panvel had directed the respondent-husband to pay maintenance at the rate of Rs.700/- per month the petitioner-wife and two children. In all therefore, the respondent-husband was directed to pay maintenance at the rate of

Rs.2100/- per month. The Sessions Judge at Raigad has, however, allowed the revision application instituted by the respondent-husband and maintained the award of maintenance at the rate of Rs.700/- per month in favour of the petitioner-wife, but reduced the amount to Rs.400/- per month in respect of each of the children.

4] Having perused the material on record as also the impugned judgment and order, in my judgment, there was no warrant to reduce the amount of maintenance awarded in favour of minor children and that too in exercise of revisional jurisdiction. Learned Sessions Judge, in the impugned order, has rightly taken cognizance of the decisions of this Court, which state that the revisional jurisdiction is to be exercised only in exception cases where there is a glaring defect in the procedure or there is a manifest error on the point of law which has consequently resulted in miscarriage of justice. The material on record, indicates that minor children indeed had expenses particularly, in the context of their education. The JMFC, upon consideration of the material on record as also the taking into consideration the income of the respondent-husband, has awarded maintenance at the rate of Rs.700/- per month per child.

There was no warrant to reassess or reevaluate the material on record to substitute a different finding.

5] Accordingly, the impugned order dated 11 November 2009 made by the Additional Sessions Judge is hereby set aside. The order dated 2 January 2008 made by the JMFC, Panvel is restored. Rule is accordingly made absolute in terms of prayer clause (a).

6] The respondent – husband is directed to clear the arrears within a period of three months from today. In case, the arrears are not cleared or maintenance amount is not paid regularly, the petitioners are at liberty to institute execution proceedings before the appropriate Court.

7] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)