

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1203 OF 2016

Bhausahab Ramnath Jojar,
Age 37 years, Occupation Agriculture,
R/o. Bhanashivara Tal. Newasa
Dist. Ahmednagar. .. Petitioner

VS.

Sau. Rohini @ Dhanshree Bhausahab
Jojar, Age 27 years, Occupation
Agriculture, R/o Bhanashivara
Tal. Newasa.
Now Residing At.
C/o. Rangnath Bhanudas Admane,
R/o Niapni Nimgaon Tal. Newasa
Dist. Ahmednagar. .. Respondent

Mr. N. P. Ghanwat, Advocate for the petitioner.
Mr. R. B. Temak, Advocate for respondent sole.

CORAM : SMT. VIBHA KANKANWADI, J.

**Date of reserving
the Judgment : 23rd November, 2017.**

**Date of pronouncing
the Judgment : 20th December, 2017.**

ORAL JUDGMENT (Per Smt. Vibha Kankanwadi. J.)

1. By consent, the matter is taken up for final hearing at the admission stage. Heard both the learned Counsels.

2. The Petitioner husband has challenged the enhancement in the quantum of maintenance amount by Additional Sessions Judge, Newasa in Criminal Revision filed against the order of maintenance granted by Judicial Magistrate First Class, Newasa, Dist. Ahmednagar.

3. The facts which are not in dispute that Petitioner got married to respondent on 30-06-2009 at Nipani Nimgaon, Tal. Newasa, Dist. Ahmednagar. They started cohabitation at Bhanashiwara, Tal. Newasa, Dist. Ahmednagar.

4. Respondent- wife had filed application bearing Cri. App. No. 157 of 2013 for maintenance u/s. 125 of Code of Criminal Procedure on the ground that she was harassed by husband and in-laws since a month after the marriage on the ground that illegal demand of money to buy jeep. She was physically and mentally harassed and was ultimately driven out of the house. She had tried to resume cohabitation with husband, but she has not been allowed. A condition has been put that unless she fulfills the demand, she will not be taken back. Therefore, she prayed for maintenance @ Rs.10,000/- p. m.

5. Present Petitioner-husband has resisted the claim of the wife, by denying all the allegations against him and his parents. On the contrary he claimed that the behaviour of the wife was not proper. She used to remain ill frequently. She used to give them threats. According to him, his wife has left the matrimonial home on her own accord, without any reason. She has given him mental harassment. His wife is doing tailoring work and therefore able to maintain herself.

6. Parties have led oral as well as documentary evidence. After considering the same and hearing both sides, the learned J. M. F. C., Newasa has partly allowed the application on 15-09-2015. Maintenance @ Rs.1,000/- p. m. has been granted from the date of application.

7. Original applicant-wife had preferred revision application bearing No. 22 of 2015 before Additional Sessions Judge, Newasa allowed the revision application, after hearing both sides. The maintenance amount was increased from Rs.1,000/- p. m. to Rs.3,000/- p. m. and it was granted from the date of order of the application i.e. 15-09-2015. Petitioner-husband has challenged the said order in this petition.

8. It has been submitted on behalf of petitioner that learned Additional Sessions Judge failed to consider what is the income of the husband. He had not taken into consideration the fact that petitioner is suffering from brain tumor. He was admitted for some days, operated and now he is taking further treatment. He has incurred huge expenditure. He is not having any income now. He therefore, prayed for alteration in the amount. He also submitted that the said enhancement ought not to have been from the date of the order of the Magistrate. He relied on the decision in *Pilli Venkanna v/s. Pilli Nookalamma & Anr (1997 DGLS (Cri) Soft 1351 (A. P))*

9. Per contra, it has been submitted on behalf of respondent-wife that the maintenance amount granted by the Magistrate was too meager. It should be proportionate to the income of the husband. Even a blind husband can not escape the liability to maintain his wife. He placed reliance on *Sudha @ Ranjana R. Patil v/s. Rajkumar Deoganda Patil*

and another (1997 (2) Mh. L. J. 250). The illness of the petitioner has not reduced his income.

10. The crux of the matter in this case is that, the petitioner is only challenging the quantum of maintenance that has been awarded by the Additional Sessions Judge, Newasa Dist. Ahmednagar in the Criminal Revision Application No.22 of 2015. It is pertinent to note that, the petitioner husband had not preferred any criminal revision challenging the entire Judgment and order passed in Criminal Miscellaneous Application No. 157 of 2013 by Judicial Magistrate, First Class, Newasa decided on 15-09-2015. Therefore, as regards the points regarding neglect and refusal to maintain by him, applicant-wife unable to maintain herself, the findings those have been recorded by the learned Magistrate have become final. It was the wife who was aggrieved by the quantum of maintenance had preferred the said criminal revision application before Additional Sessions Judge, Newasa.

11. It is to be noted that, the said criminal revision was filed by the wife on 12-10-2015 and came to be decided on 22-07-2016. The medical papers those have been produced by the husband on record show that, he would admitted in the hospital on 11-07-2016 and was discharged on 15-07-2016. It appears that, thereafter he is under treatment. It has not been clarified by the petitioner whether the said

treatment papers were produced by him before the learned Additional Sessions Judge before the disposal of the criminal revision application. The reasons those have been assigned do not reflect that, these documents were before the learned Additional Sessions Judge. There was no hurdle for the petitioner-husband to produce these documents on record in the said revisions application. Further there are also documents regarding further treatment in the form of MRI of the brain and his further hospitalization at Pune. It appears that, he was operated on 01-08-2016, therefore there is no question of these documents to be perused by the Additional Sessions Judge. Taking into consideration the evidence that was before the learned Magistrate when it was found by the Additional Sessions Judge that the quantum of maintenance that has been awarded is too meager, the said amount has been enhanced. If at all the petitioner want to canvass that there is change in circumstance then he is liberty to approach the Magistrate under Section 127 of Code of Criminal procedure. For that purpose he cannot approach this Court in order to invoke the extraordinary writ jurisdiction of this Court. On that point the writ petition is devoid of merit.

12. As regards the point raised regarding the order by the learned Additional Sessions Judge enhancing the maintenance from the date of the order passed by the learned Magistrate i.e. 15-09-2015 is

concerned, the authority *1997 DGLS (Cri.) Soft 1351* (Supra) is not applicable to the facts in this case. In the said petition the application filed for maintenance under Section 125 of Criminal Procedure Code, the amount was already granted and thereafter the wife had filed a separate application for increase in the said allowance under Section 127 of Criminal Procedure Code. Under that circumstance it has been said that, it should be from the date of the order. Here in this case, the maintenance amount that was granted under Section 125 of Criminal Procedure Code has been enhanced in the criminal revision application.

13. Taking into consideration these facts note of the subsequent evidents cannot be taken directly in the writ jurisdiction under Article 227 of the Constitution of India, hence the writ petition is dismissed. No order as to costs.

[SMT. VIBHA KANKANWADI]
JUDGE

vjg/-.