

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

CRIMINAL WRIT PETITION 85 OF 2007

Chandrabhagabai W/o Bapurao Kedar
Age 47 years, Occ : Household,
R/o Parli (Vaijnath), Taluka Parali
Dist. Beed, at present Saigaon,
Taluka Renapur Dist. Latur .. PETITIONER

Versus

Bapurao S/o Manikrao Kedar
Aged 50 years, Occ-Service
& Agriculturist, R/o Shivaji Nagar
Thermal Road, Parli (Vaijnath)
Taluka Parli District Beed. .. RESPONDENT

Mr.S.S.Chakurkar h/f Mr.V.D.Gunale, Advocate for petitioner.
Mr.S.S.Bora, Adv. for Respondent sole.

CORAM : MANGESH S. PATIL, J.

**RESERVED ON : 18/07/2018.
PRONOUNCED ON : 20/08/2018.**

JUDGMENT :

This is Writ Petition under Article 227 of the Constitution of India preferred by the wife being aggrieved and dissatisfied by the judgment and order passed by the learned Additional Sessions Judge reducing the quantum of maintenance awarded

by the Magistrate under Section 125 of the Code of Criminal Procedure from Rs.1500/- p.m. to Rs.700/- p.m.

2] The learned advocate for the petitioner wife submits that the quantum of maintenance awarded by the Magistrate was on the basis of a well reasoned order. There was no apparent perversity, arbitrariness which could have enabled the learned Additional Sessions Judge to invoke powers under Section 397 of the Code of Criminal Procedure. The learned Additional Sessions Judge failed to consider the ambit and scope of the powers vested in him under that provision and has ventured into scanning of the material and has arrived at his own conclusions while reducing the quantum of maintenance awarded, without demonstrating any perversity or arbitrariness. He failed to remember the limitations on his powers to interfere with the discretion exercised by the Magistrate while fixing the quantum. The impugned order suffers from gross illegality and impropriety and may be set aside restoring the quantum of maintenance fixed by the Magistrate.

3] The learned advocate for the respondent husband submitted that the learned Magistrate had committed an error apparent in fixing the quantum of maintenance. The learned Additional Sessions Judge has rightly demonstrated as to how the respondent was getting a meager salary in three digits whereas the Magistrate had fixed the quantum of maintenance at Rs.1500/- p.m. The learned advocate for the respondent also

referred to the affidavit in reply of the respondent and submitted that the respondent was serving as a Watchman and has since retired from the service and is getting barely Rs.2064/- p.m. as pension. Therefore, even such subsequent and supervening circumstance should be taken note of while deciding the present Writ Petition.

4] The learned advocate for the respondent further submitted that admittedly the second wife of the respondent and his two children from her are dependent on him. The daughter is taking education in an Engineering College at Pune whereas the son is studying in 11 Standard. Therefore, such increased liability of the respondent also should be taken into consideration. Taking overall view of the matter, in a changed scenario, even if the learned Additional Sessions Judge is held to have exercised jurisdiction under Section 397 of the Code of Criminal Procedure without any basis, still the supervening circumstances should be taken note of when the Writ Petition is being decided after eleven years. This Court should not invoke the writ jurisdiction to change the status quo.

5] Since the husband has not been challenging the order awarding maintenance, the scope of the Writ Petition is restricted to examining the decisions of the Courts below qua the quantum of maintenance only.

6] The petitioner in her application had specifically averred

that the respondent was serving as a Watchman and was getting a salary of Rs.9546/- p.m. and had also submitted the salary slip to that effect alongwith the application. She had also averred that he had also constructed a house property comprising of 6 rooms and also had another house property consisting of 4 rooms. She also pointed out that he was having 53 Are land in Gat No.139, 82 Are land in Gat No.125, 1 Hectare 15 Are land in Gat No.134, 1 Hectare 32 Are land in Gat No.142, 24 Are land in Gat No.215 and 1 Hectare 2 Are land in Gat No.224 at village Rajewadi Tq. Chakur. She also had averred that he had also purchased a land admeasuring 2 Hectares 82 Are in Gat No.187 in the name of his son Anand at village Karepur Tq. Renapur. She therefore, averred that from all these sources including the rent, he was earning Rs.10 lakh per annum and had prayed for maintenance of Rs.1500/- p.m.

7] In his say, the respondent had admitted that he was in the employment as a Watchman but denied that he was earning salary of Rs.9546/- p.m. He also admitted that he possessed the two house properties and the agriculture lands but contended that the agriculture lands were still joint and were not exclusively owned by him, with his mother and brother. He also denied that he had purchased any land in the name of his son and denied that he was earning Rs.10 lakh p.a. from all these sources. He further contended that he had deposited an amount of Rs.85,000/- as a Fixed Deposit in the name of the applicant-petitioner which she had withdrawn on 31/3/2001. Lastly, he

submitted that he had to pay the loan of a Credit Society and the instalments were being deducted from his salary and he was barely receiving a net salary of Rs.481/- p.m. The agriculture land was also barrel and he was not deriving any income from it. He also denied that he was earning any income from rent.

8] It is in the backdrop of such pleadings that the evidence was led and the Magistrate scanned it to arrive at a conclusion that the respondent was indeed earning a salary of Rs.9546/- p.m.. He was having agriculture lands and was also earning rent. Based on such evidence he had arrived at a conclusion that the total income of the respondent from all the sources was around Rs.10,000/- to 12,000/- p.m. He also found that his brother and mother were not dependent on him but he had a liability to maintain his second wife and three children. If such was the state of affairs in the form of material that was available with the learned Magistrate which he had carefully scanned and had arrived at a reasonably fare figure of maintenance of Rs.1500/- p.m., by no stretch of imagination could it be said that the observations and the conclusions of the learned Magistrate were either perverse, arbitrary or capricious.

9] It is trite that a revisional Court exercising jurisdiction under Section 397 of the Code of Criminal Procedure can invoke the power only if the order passed by the Court below is either perverse, arbitrary or capricious or has resulted in gross miscarriage of justice. The revisional powers can only be

exercised within these parameters. The Revisional Court cannot indulge in scanning of evidence and arrive at an independent conclusions without demonstrating as to how the order passed by the Court below suffers from perversity, arbitrariness or capriciousness. This is where the learned Additional Sessions Judge has gone wrong and has ventured into the arena which was not available to him.

10] The learned Additional Sessions Judge took upon himself the task of scanning the evidence and has arrived at a conclusion that the respondent was barely getting a net salary of less than Rs.500/- p.m. and in doing so, conveniently ignored that the deductions were not statutory deductions but the respondent was repaying the loan from his salaried income which was not admissible for any deductions. The jurisdiction exercised by the learned Additional Sessions Judge in interfering in a well reasoned order passed by the Magistrate is clearly a gross illegality.

11] The impugned order passed by the learned Additional Sessions Judge in reducing the quantum of maintenance fixed by the Magistrate from Rs.1500/- p.m. to Rs.700/- p.m. is even otherwise factually based on incorrect appreciation of the evidence, besides the fact that it was an exercise without there being sufficient circumstances to invoke his revisional jurisdiction. It is liable to be quashed and set aside, restoring the order passed by the Magistrate.

12] As regards the supervening circumstances like retirement of the respondent and his growing needs on account of increased liability to maintain his children from second wife, one can only clarify that those being not available on the dates when the two Courts below were determining the quantum of maintenance, those could not have been taken into consideration by them. Being pure questions of facts even this Court cannot take those in consideration now. It would be better to allow the respondent to seek a suitable remedy under Section 127 of the Code of Criminal Procedure if he chooses.

13] The Writ Petition is allowed. The impugned judgment and order passed by the learned Additional Sessions Judge-I, Udgir Camp at Ahmedpur dated 16/10/2006 in Criminal Revision No.24/2005 is quashed and set aside and the order passed by the learned Judicial Magistrate, First Class, Ahmedpur in Miscellaneous Application No.128/2003 dated 10/6/2005 is restored.

14] The Rule is made absolute in above terms.

(MANGESH S. PATIL,J.)

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