

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 43 OF 2017

Sau. Sangita w/o Rameshwar Daspute,
Age 37 years, Occ. Household,
Residing at Jaibhavani Nagar,
Near Jagrut Hanuman Mandir,
Aurangabad.

... **Petitioner**

Vs.

Rameshwar s/o Shrimantrao Daspute,
Age 40 years, Occ. Contractor,
R/o Jaibhanavi nagar,
Behind 13th Scheme, Cidco,
Aurangabad.

... **Respondent**

Mrs. Kazi Sabahat T., Advocate for the Petitioner.
Mr. Bhosale Abhaysinh K., Advocate for the Respondent.

CORAM : MANGESH S. PATIL, J.
DATE : 08.08.2018

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. The learned advocate for the respondent waives service. With the consent of both the sides the matter is heard finally.

2. This is a revision preferred by the wife being aggrieved and dissatisfied by the inadequacy of the increment granted by the Judge of the Family Court under Section 127 of the Cr.P.C. and also being aggrieved by the direction of the learned Judge in making it effective from the date of the order and not from the date of the application.

3. The learned advocate for the applicant vehemently submits that the respondent inspite of having an opportunity to lead evidence has not come out with a fair disclosure about his exact income. He has been dealing in properties. Even a land has been purchased by him in the name of his mother for lakhs of rupees which he could not have if he was not having sufficient income. She would point out that he also has agricultural land but has conveniently omitted from disclosing even his income from the land. The learned Judge has taken note of all the pieces of evidence in the form of revenue record of the agricultural land, his visiting card showing his occupation to be an estate agent, a photograph displayed on a property mentioning that it belongs to his father. The learned Judge also noted that the respondent had not controverted all these facts and even the Judge was alive and rightly drew adverse inference against him about his income but still only a meager amount of Rs.800/- per month has been awarded by way of enhancement increasing the maintenance of Rs.1200/- per month to Rs.2000/- per month.

4. The learned advocate would further point out that without assigning any reason under Sub-Section 2 of Section 125 of the Cr.P.C. the learned Judge has given effect to such increase in the maintenance only from the date of the order when she ought to have awarded it from the date of the application. The observations and the conclusions of the

learned Judge in determining the quantum of the increment and in making it operational from the date of the order is perverse, arbitrary and capricious and this Court should intervene under the revisional jurisdiction.

5. The learned advocate for the respondent submits that after taking into consideration all the facts and circumstances and evidence, the learned Judge has arrived at the figure regarding enhanced maintenance and has rightly made it effective from the date of the order pursuant to the judgment of the Supreme Court in the case of **Suman Narayan Niphade & Anr. V/s. Narayan Sitaram Niphade & Anr; 1995 Supp (4) SCC 243**. There is no apparent perversity or arbitrariness. The discretion exercised by the learned Judge is judicious and this Court cannot intervene under Section 397 read with Section 401 of the Cr.PC.

6. Needles to state that since the respondent-husband has not been impugning the judgment and the order passed by the learned Family Court Judge, the present inquiry needs to be restricted to ascertain if the quantum of increment determined by the learned Judge and the order directing it to be made effective from the date of the order can be said to be either perverse, arbitrary or capricious so as to vest this Court with jurisdiction under Section 397 of the Cr.PC.

7. Taking up the issue of quantum, it is apparent that the first order awarding maintenance to the applicant under Section 125 of the

Cr.P.C. was passed on 26.07.2008 when by virtue of a compromise maintenance was fixed @ Rs.700/- per month. In a proceeding instituted under Section 127 in the year 2010, it was enhanced to Rs. 1200/- w.e.f. 05.01.2012. It is now after two years from the last enhancement the present application has been moved in the year 2012 seeking further enhancement under Section 127. Bearing in mind these aspect, it is quite clear that the applicant has sought enhanced compensation within two years from the earlier increment.

8. Bearing in mind the above aspects if one examines the evidence, all the sources of income which the respondent had continued to be the same. The agricultural land was already there. There is no material to show that he had purchased any additional agricultural land in the intervening period. Even on the earlier occasion his occupation as an estate agent was the same. Besides, though it is stated now that he had purchased property in the name of his mother even that sale-deed has taken place on 19.10.2010 i.e. prior to the date of the earlier proceeding for increasing maintenance under Section 127 which was decided on 05.01.2012, meaning thereby that all these facts and circumstances were even obtaining as it is when the earlier increment was granted on 05.01.2012.

9. If such is the state of affairs, even by drawing adverse inference as has been drawn by the learned Judge of the Family Court

there is no cogent and reliable material to suggest that the income of the respondent has considerably increased during the period of two years next before the filing of the present application, from the date when he was directed to pay the enhanced maintenance by the order dated 05.01.2004.

10. Considering all these aspects, the observations and the conclusions drawn by the Family Court Judge increasing the maintenance from Rs.1200/- per month to Rs.2000/- per month by no stretch of imagination can be said to be either perverse, arbitrary or capricious.

11. Now coming to the point of the effective date for the enhanced maintenance, the order passed by the learned Judge is devoid of any reason as to why its operation was restricted to the date of the order and not made operational from the date of the application. The learned Judge has simply referred to the decision in the case of **Suman Narayan Niphade (supra)**. However it is quite clear that the learned Judge has clearly misunderstood the observations and the conclusions of the Supreme Court. A careful reading of the order would clearly show that it has been specifically laid down that it lies in the discretion of the Magistrate whether to grant the maintenance from the date of the order or from the date of the application, in view of Sub-Section 2 of Section 125 of the Cr.P.C. Meaning thereby that it nowhere lays down any ratio

that in no case Magistrate should award maintenance from the date of the application. Reading of the judgment of the Supreme Court by the learned Judge is clearly faulty.

12. In this regard it is also necessary to note that there is no provision under Section 127 of the Cr.P.C. like the one under Sub-Section 2 of Section 125 of the Cr.P.C. which requires a Magistrate to specify the date for operation of the order of enhanced maintenance. Be that as it may, assuming that the provision of Sub-section 2 of Section 125 of the Cr.P.C. even governs / regulates the powers of the Magistrate under Section 127 of the Cr.P.C., still it is apparent that the discretion has to be exercised judiciously and not arbitrarily. In other words, the Magistrate must demonstrate objectively as to why in any case he is directing the enhanced maintenance to be made payable either from the date of the application or from the date of the order. This is where the learned Judge of the Family Court seems to have committed an error in not appreciating the law laid down by the Supreme Court in the case of **Suman Narayan Niphade (supra)** and by simply referring it, has made the enhanced maintenance operational from the date of the order.

13. Considering the fact that the applicant had sought enhanced maintenance after couple of years, taking note of the fact that the cost of living must have gone up during the intervening period, the propriety demanded that the enhanced maintenance ought to have been awarded

from the date of the application i.e. 20.03.2014 rather than from the date of the order i.e. 12.01.2017, particularly when, there is no evidence that anybody else was dependent on the respondent and his liability had increased in the intervening period. To this extent the observations and the conclusions of the learned Judge of the Family Court is indeed perverse, arbitrary and capricious and needs to be interfered with.

14. The revision application is partly allowed.

15. The revision to the extent of challenge to the quantum of enhanced maintenance granted by the Judge of the Family Court is rejected.

16. However, the impugned judgment and order directing the enhanced maintenance to be paid from the date of the order is quashed and set aside and instead it is directed that it shall be paid from the date of the application i.e. 20.03.2014.

17. The rule is made absolute in above terms.

(MANGESH S. PATIL, J.)