

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 249 OF 2017

- 1) Sou. Sandhya Sanjay Mahurkar,
Age 44 years, Occupation Household,
- 2) Shivani Sanjay Mahurkar,
Age 23 years, Occupation Education,
- 3) Shubham Sanjay Mahurkar,
Age 21 years, occupation Education,
- 4) Manish Sanjay Mahurkar,
Age 19 years, Occupation Education,

All R/o. Waman Nagar Nanded
Tq. and Dist. Nanded.

.. Applicants.

VS.

Sanjay Madhav Mahurkar,
Age 45 years, Occupation Service
(Teacher), R/o Central Primary
School, Barad Tq. Mudkhed
Dist. Nanded.

.. Respondent.

Mr. G. G. Suryawanshi, Learned Advocate for applicants.
Smt. A. N. Ansari, Learned Advocate for respondent.

CORAM : SMT. VIBHA KANKANWADI, J.
DATE : 17-01-2018

ORAL JUDGMENT :

1. Heard both sides and taken up for final hearing with their consent.
2. The applicants are original petitioners who had filed the petition for enhancement of maintenance amount under Section 127 of Code of Criminal Procedure. The said application came to be allowed by learned Judge of the Family Court, Nanded on 29-11-2016. However, the applicants are not satisfied with certain clauses and deductions those have been shown, and therefore, they have preferred this revision.
3. What is not in dispute is that the applicant No.1 is the legally wedded wife of the respondent. Their marriage is still subsisting. Applicants No.2 to 4 are their children. Applicant had filed application for maintenance in the Court at Dharmabad in 1999. Amount of Rs.500/- per month was granted as maintenance to applicant No.1 and amount of Rs.250/- per month each was granted to applicants No.2 to 4. Thereafter, they had filed application for enhancement. In the meantime, maintenance granted to applicant No.3 came to be cancelled on the ground that he is not residing with applicant No.1 but he is residing with the respondent. The

enhancement in amount was granted on 05-11-2008. Maintenance at the rate of Rs.1000/- per month was granted to applicant No.1 and Rs.600/- per month each to applicants No.2 and 4. It is also not in dispute that, the respondent is serving as a teacher in Zilla Parishad High School, Jagamwadi Tq. Hadgaon.

4. The applicants filed petition No. E - 239 of 2014 before Family Court at Nanded and after hearing both sides and relying on the evidence, the maintenance has been enhanced. Maintenance at the rate of Rs.5,000/- per month has been granted to applicant No.1, amount of Rs.3,000/- per month is granted to applicants No.2 and 4. However, as regards the maintenance to applicant No.4 is concerned, it is granted till he attended the majority i.e. 07-04-2016. The applicants have contended that, the amount of maintenance awarded by the Family Court has been made inclusive of the maintenance that has been granted to the applicants under the Domestic Violence Act. Further the applicants are aggrieved by the order that the enhancement has been granted from the date of the order. On this counts the said order is challenged here.

5. The application has been resisted on the ground that, whether to grant the enhancement from the date of the application or

from the date of the order is within the discretion of the concerned Court. Reasons have been assigned as to why the enhancement cannot be granted from the date of the application. The applicants had not persuaded the matter diligently at every stage. They consumed considerable time, and therefore, learned Judge was not inclined to grant the enhancement from the date of the application. Further the amount that has been awarded as maintenance is rightly made inclusive of the maintenance because ultimately the respondent is the only person who has to comply both the orders.

6. In order to cut short I would like to say that, both the learned counsels have argued in support of their respective contentions.

7. It is to be noted that, it was not necessary to go in detail much in respect of the evidence because almost all the facts are admitted. The fact that is required to be seen is that the maintenance was granted to the applicants firstly in the year 1999 and that was enhanced in 2008. The petition for enhancement was filed by them on 07-12-2013. Naturally the increase in the salary (which is almost admitted by the respondent), the rise in the price index of the essential commodities and the growing needs of the children had prompted the

applicants to ask for the enhancement.

8. Further it is also not denied in specific words by the respondent that, he is serving as a teacher in Zilla Parishad High School and he is getting salary of Rs.40,000/- per month. Order in respect of maintenance to the applicant No.3 was cancelled long back taking into consideration the fact that he was thereafter residing with the respondent, further now he has become major. Further even applicant No.4 has become major, therefore the major sons cannot be said to be dependence on the respondent. Only wife and the daughter can be said to be the dependents. When the respondent is admittedly getting salary of Rs.40,000/- per month, the maintenance that is required to be awarded should be inconsonance with the status of the husband. It is also not in dispute that, as the information has been revealed from the bar that the applicants have been collectively awarded amount of Rs.4,700/- per month as maintenance under the Domestic Violence Act. Thus it is to be noted that, together with applicants No.1 and 2, as per the enhanced amount they would get Rs.8,000/- per month, but then it has been made inclusive of amount of Rs.4,700/- per month awarded under the Domestic Violence Act, therefore, the enhancement can be said to be almost negligible. As

regards enhancement awarded to the applicant No.4 is concerned, it was granted from 07-12-2013, till he attended majority i.e. 07-04-2016. Therefore, on the date of the Judgment respondent cannot be said to be completely liable to pay maintenance per month to the applicant No.4 and this fact ought to have been considered by the Trial Court while fixing the maintenance to applicants No.1 and 2. When the husband is getting Rs.40,000/- per month then wife and the daughter collectively cannot be asked to mitigate their expenditure less than the thousand rupees per month. Therefore, the learned Trial Court ought not to have made the order of enhancement of maintenance inclusive of the maintenance granted under the Domestic Violence Act. The order to that effect deserves to be set aside.

9. As regards granting of enhancement from the date of the order is concerned, the Trial Court has given proper reason. It would be in the discretion of the concerned Court and here the said discretion has been used judiciously. Under such circumstance, the revision deserves to be partly allowed. Hence, following order.

ORDER

- 1) Revision Application is hereby partly allowed.

- 2) The order passed in petition No.E- 239 of 2014 by Judge Family Court, Nanded on 29-11-2016 to the extent of making the amount of maintenance awarded in that order to be inclusive of the maintenance granted to the applicants under the Domestic Violence Act is hereby set aside.
- 3) The enhancement granted to the applicants No.1 and 2 is excluding the amount of maintenance granted to the applicants under the Domestic Violence Act.
- 4) It is clarified that, rest of the order is hereby confirmed.
- 5) Under the said circumstance parties to bear their own costs.

[SMT. VIBHA KANKANWADI]
JUDGE

vjg/-.