

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.262 OF 2013

Smt. Amina Kudchadkar,
alias Amina Nevrekar, major,
resident of Navelkar Ornate Estate,
Bainguinim, Old – Goa.

...Petitioner

Versus

Dr. Amit Dilip Kudchadkar, major,
Occ. Medical Practitioner (Doctor),
resident of House No.209, St.
Joaquim Road, Margao – Goa.

...Respondent

Shri Y.V. Nadkarni with Ms. D. Shirgam, Advocates for the
petitioner.

Ms. A. Agni, Senior Advocate with Ms. E. Stibeiro, Advocate for
the respondent.

CORAM: NUTAN D. SARDESSAI, J.

RESERVED ON : 14th June, 2018.

PRONOUNCE ON : 27th June, 2018.

JUDGMENT:-

1. This petition takes exception to the judgment passed by the learned District Judge dated 14/01/2003 under Article 227 of the Constitution of India pursuant to which the learned District Judge quashed and set aside the order passed in the Matrimonial Petition by virtue of which the learned Civil Judge had ordered the payment of the lumpsum amount of ₹25,00,000/- to the petitioner and instead directed the

respondent herein to pay the permanent maintenance of ₹12,000/- to the petitioner towards the maintenance of her daughter. Shri Y.V. Nadkarni, learned Advocate adverted to the sequence of events starting from the point of marriage of the petitioner with the respondent, the girl child being born to them out of the wedlock, the divorce proceedings being filed by the respondent, the judgment granting divorce and ultimately the impugned judgment pursuant to which the learned District Judge had partly allowed the appeal and directed the respondent to pay the said permanent maintenance to the petitioner's daughter. He had referred to the two events in the lives of the petitioner and the respondent namely their remarriage to different persons and the birth of a boy child to the respondent from his second marriage and the remarriage of the petitioner who was residing with her husband alongwith the minor daughter from the respondent. He made pertinent reference to the averments in the petition, the application for maintenance and the reply filed thereto and submitted that the findings rendered by the learned District Judge were ex facie perverse. The impugned judgment had therefore to be quashed and set aside.

2. Shri Y.V. Nadkarni, learned Advocate for the petitioner placed reliance in **Malathi Ravi ,M.D. V/s. B.V. Ravi, M.D.** [(2014) 7 SCC 640], **Bhuwan Mohan Singh v/s Meena and ors** [2014 AIR SCW 4201], **Amit Rasiklal Shah v/s. Sonal Amit Shah** [2011(1) Mh.L.J. 533] and an unreported judgment in **Gaurav Gupta v/s. Radhika Gupta** [Writ Petition No. 780 of 2012] decided by the learned Single Judge of this Court where it was held that reliance on the income tax returns particularly in Matrimonial Petition was not the gospel. He next adverted to Article 29 of the Family Laws and submitted that the learned District Judge was clearly in error in applying the said provision in respect of the grant of maintenance to the minor girl child of the applicant and the respondent when on a plain reading the same was applicable only to a spouse. This Hon'ble Court on the basis of the material on record could grant a reasonable amount of ₹25,000/- as maintenance in favour of the minor child till her marriage when there was no challenge at the instance of the respondent to the earnings of the respondent at ₹36,000/-.

3. Ms. A. Agni, learned Senior Advocate on behalf of the respondent submitted at the outset that it was the duty of the

petitioner to establish the need of the minor to the maintenance of ₹25,000/- per month and the competence of the respondent to provide such amount as maintenance in her favour. In any event, this Court while deciding the Writ Petition was exercising the supervisory jurisdiction and therefore it was incumbent on the petitioner to show that there was a failure in the exercise of jurisdiction by the learned District Judge. This Court would not interfere in exercise of its supervisory powers under Article 227 of the Constitution of India unless there was a gross failure of justice or patent illegality in the impugned judgment and in that context placed reliance in **Jai Singh and others v/s. Municipal Corporation of Delhi and another** [(2010)9 SCC 385] and in **Shalini Shyam Shetty & Anr. V/s. Rajendra Shankar Patil** [(2010) 8 SCC 329]. On facts, it was her contention that there was a vast difference between the respondent belonging to a reputed family and an affluent family. It was not at all shown from the material on the record that the respondent belonged to an affluent family though there was no dispute that he was belonging to a reputed family. It was the duty of this Court to find out whether the District Court acted beyond its jurisdiction while dealing with the present Writ petition. She too adverted to the application for maintenance,

the reply filed thereto to show the crux of the case of the petitioner and the defence of the respondent and otherwise distinguished the judgments in **Amit Shah** and **Gaurav Gupta** (supra).

4. Ms. A. Agni, learned Senior Advocate for the respondent did not dispute the general proposition culled out in **Bhuwan** and **Malathi** (supra), and submitted that these judgments did not at all apply in the facts of the present case. On her part she placed further reliance in **Francis Milton Kevin Noronha v/s. Aloma Ana Gomes** [2008 (2) MLJ 805], that in **Kalyan Dey Chowdhury v/s. Rita Dey Chowdhury Nee Nandy** [Civil Appeal No.5369 of 2017] and submitted that the interpretation sought to be given to Article 29 of the Family Laws was incorrect and when the application for maintenance was made by the petitioner on behalf of the minor. No case whatsoever was made out for interference and therefore the petition was liable for dismissal.

5. i would consider their submissions, the judgment relied upon, the relevant Articles 29 and 171 of the Family Laws, peruse the records and proceed to decide the petition appropriately.

6. In **Jai Singh** (supra) the Hon'ble Apex Court considered the nature and scope of the power of the High Court under Article 227 of the Constitution of India being supervisory and observed at para 15 as below.

"15..... Undoubtedly the High Court, under this Article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognized constraints. It cannot be exercised like a 'bull in a china shop', to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be

exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.”

7. **Shalini Shyam Shetty** (supra), on a consideration of various judgments including that in **Surya Dev Rai vs Ram Chander Rai and others** [(2003) 6 SCC 675] culled out the following principles on the exercise of the High Court jurisdiction under Article 227 of the Constitution

a. A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

b. In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

c. High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it,

in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

d. The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* (supra) and the principles in *Waryam Singh* (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

e. According to the ratio in *Waryam Singh* (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

f. In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

g. Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

h. In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

i. High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar v/s. Union of India & others, [(1997) 3 SCC 261] and therefore abridgement by a Constitutional amendment is also very doubtful.

j. It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut

down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

k. The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

l. On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

m. The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

n. This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

o. An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.

8. In view of these judgments which clearly spell out the limited aspect of the jurisdiction of this Court to exercise its supervisory powers, it would therefore have to be seen whether the impugned judgment passed by the learned District Judge was in excess of jurisdiction or that it suffered from the vice of illegality resulting in perversity as to justify interference in this petition.

9. There was no singular dispute of the fact that the petitioner and the respondent were married to each other on 19/02/2003, that a girl child was born on 02/12/2003 to the petitioner, that she had left the matrimonial house alongwith the minor daughter on 16/08/2004, filed the matrimonial

petition for divorce on 07/8/2004 and the application for permanent and provisional maintenance filed in December 2007. There was also no singular dispute of the fact that the Trial Court had passed the judgment dissolving the marriage taking into consideration the fact that the marriage had irretrievably broken between the parties. For that matter also there was no dispute about the fact that an order was passed by the Trial court directing the respondent to pay the petitioner a lumpsum amount of ₹25,00,000/- as permanent maintenance to her and the minor daughter and which was challenged by the respondent in appeal. The factum of remarriage of the respondent and a child being born out of this marriage too was not in dispute. The petitioner too had challenged the order of the learned Trial Court in an appeal filed by her and thereupon the District Judge partly allowed the appeal filed by the respondent directing him to pay the monthly maintenance of ₹12,000/- to the minor daughter and dismissed the appeal of the petitioner giving rise to the present petition. These admitted facts set out the tone and tenor of the proceedings between the parties and confirming that the marriage had irretrievably broken down with the minor child being the only link between them and a case being decided qua the maintenance to her

alone, the petitioner having been employed in the meantime and her claim to maintenance being abandoned in the meantime.

10. Article 29 of the Family Laws reads as follows:

“Either of the spouses is entitled to claim maintenance from the other, if in need of the same.

Sole Paragraph. The quantum of such maintenance shall be fixed having regard to the needs of the spouse who has to receive it and the circumstance of the spouse who has to provide it. However, in no case, shall it exceed one third of the net income of the latter.”

A bare reading of the sole paragraph thereto would indicate that the quantum of maintenance which can be fixed by the Court to the extent of 1/3rd is restricted viz-a-viz the other spouse and the said restriction of 1/3rd of the net income cannot be brought into play viz-a-viz its applicability to the maintenance to be granted in favour of the minor child. To that extent, there is no force in the contention of Ms. A. Agni, learned Senior Advocate that it applied to the case of the minor

child and that the learned District Judge was justified in restricting the maintenance to 1/3rd of the income of the respondent arrived at by him on his understanding of the matter. Besides, in terms of Article 24 of the Family Laws the mother is bound to contribute to the maintenance of their children in proportion to their own income and personal properties and in terms of the sole paragraph, the amount of maintenance due to the children has legal charge over the properties of the spouses.

11. Article 25 for that matter provides that the dissolution of marriage by divorce shall not prejudicially affect the children in respect of any benefits provided to them by the law, by their parents or by the third party. Therefore, on a conjoint reading of Article 24 and 25 with Article 29, the interpretation sought to be given by Ms. A. Agni, learned Senior Advocate for the respondent cannot at all be accepted and the contention of Shri Nadkarni, learned Advocate for the petitioner that it does not apply in respect of the maintenance to a minor child holds fort. Moreover, assuming that the provisions of the Family Law apply to the case of the parties, maintenance in terms of Article 171 of the Family Laws, means all that indispensable for the

subsistence, habitation and clothing and in terms of the sole paragraph maintenance also includes the bringing up and education of the person maintained, if the person is a minor. The learned District Judge found on a reading of Articles 29, 30 and 31 of the Family Laws that permanent maintenance can be granted under Article 29 and not a lumpsum payment as order by the learned Trial Court.

12. The petitioner herein had sought for permanent and provisional maintenance from the respondent carving a case that she was taking care and expending for the welfare of her minor daughter and that the respondent did not provide for her or for the minor daughter and despite the respondent having a roaring medical practice apart from the goodwill of his grandfather who too was a renowned Doctor and belonging to an affluent family. She had thus claimed ₹50,000/- for herself and the minor child and further amounts apart from a lumpsum permanent maintenance of ₹75,00,000/- for herself and her minor daughter. The respondent had resisted the application for permanent and provisional maintenance on the premise that the petitioner was herself responsible for the state of affairs, that she had not disclosed the standard of living which she had

offered to the minor, that she was personally not entitled to any maintenance as she was having a job and that he practiced as an Assistant to his grandfather and filed Nil Tax Returns for the year ending March,2001. His income for the year ending 31/03/2002 was ₹1,07,016/- and which was ₹2,06,759.77 for the year ending 31/03/2006. There was thus no basis in her case that he was earning ₹3,00,000/- to ₹4,00,000/- per month from his medical practice and other income from his family and as such she was not entitled to the exorbitant amount of maintenance and the lumpsum amount claimed in the application. Shri Y.V. Nadkarni, learned Advocate for the petitioner had adverted to her evidence and that of the respondent. However, as pointed out by Ms. A. Agni, learned Advocate for the respondent she had not produced any material to show what amount was actually required for the upbringing of the minor child and as to entitle her to the maintenance of ₹25,000/- per month. Besides, the petitioner had otherwise admitted that the monthly expenditure for the minor child was ₹14,500/- unlike ₹25,000/- claimed by her which itself is a relevant factor to show her conduct and the falsity in her claim.

13. In **Francis Milton Kevin Noronha** (supra), the learned Single Judge of this Court while dealing with the petition challenging the order of the Senior Civil Judge, Mapusa pursuant to which maintenance of ₹50,000/- was granted to the petitioner's son and the respondent interpreted Article 171 and Article 178 of the Civil Code 1867 and held that it is need based as far as the needs of the receiver are concerned and it is means based as far as the means of the provider are concerned and that the learned Trial Court had not at all taken into consideration the needs of the son before it ventured to award a sum of ₹50,000/-per month and disposed off the petition accordingly.

14. In **Milathi Ravi** (supra), a two Judge Bench of the Apex Court observed while dealing with the appeal that "The duty of this Court is to see that the young son born in the wedlock must get acceptable comfort as well as proper education. It is the duty of the Court also to see that a minor son should not live in discomfort or should be deprived of requisite modern education. We are conscious, the appellant is earning but that does not necessarily mean that the father should be absolved of his liability." Ms. Agni, learned Senior Advocate did not dispute

this observation of the Hon'ble Apex Court but contended that it did not find any application to the facts of the present case at large before this Court.

15. In **Bhuwan** (supra), a two Judge Bench of the Hon'ble Apex Court spelt out the parameters of Section 125 of the Code of Cr. P.C. being conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the Court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is

the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitley created where under she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able bodied. There is no escape route unless there is an order from the Court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds. Here again Ms. Agni, learned Senior Advocate for the respondent did not dispute this observation on a matter of principle but rightly submitted that this principle was not applicable in the facts of the present case where the petitioner had abandoned her claim to the maintenance and was restricting the claim of maintenance qua the minor child alone, hence the respectful departure.

16. Amit Shah (supra), was admittedly in business and had challenged the order of the Family Court , Mumbai granting interim maintenance of ₹20,000/- to his wife and ₹10,000/- each to his sons in the Petition filed by her. He had produced his Income Tax Returns for three years and contended that the

net taxable income was the only numerical figure from the income tax returns which must be seen by the Court based on which the maintenance for the wife and children must be granted which contention did not find favour with the Court particularly when he had various sources of income some of which may not be liable to tax. No doubt it was observed by the learned Single Judge of this Court that it was a settled position of law that the tax returns of a party shown by the party in Court, specially in matrimonial proceedings, cannot be taken for the gospel. However, in the facts of that case it was shown that not only did he have income from his business and profession but other sources and besides there were short term as well as long term capital gains, amounts due on shares of listed companies.

17. In **Amit Shah** (supra), the learned Judge had observed that these returns showed the worth of the petition and did not show that he was a person who earns an amount of ₹ 20000/- per month as alleged by him and further that in case he was earning that income and if that be his only income source, he would not be able to invest in shares of listed companies, insurance, PPF account, government bonds, flat, shop etc. It is

in that context that the reference to the Income Tax Returns not being a gospel for relying on the income has to be viewed. This judgment therefore is clearly distinguishable on facts. Besides, it was for the petitioner who asserted that his earnings were more than ₹3,00,000/- to ₹4,00,000/- per month to show that the respondents had these earnings and not those shown in the Income Tax Returns alone and having failed to show his income of ₹3,00,000/- to ₹4,00,000/- per month, the petitioner could not have pegged her claim as high as she did.

18. Gaurav Gupta (supra) challenged the interim orders passed by the Adhoc Additional Senior Civil Judge, Mapusa in the Matrimonial Petition. There were not only proceedings for the dissolution of marriage but also the respondent had filed a complaint against the petitioner and his parents under Section 12 read with Sections 18, 19, 20 and 21 of the Protection of Women From Domestic Violence Act, 2005, claiming maintenance of a total sum of ₹67,500/- for herself and the two minor children and the Magistrate ordered the petitioner to pay a sum of ₹50,000/- per month as interim maintenance to the respondent and her children apart from the payment of rental of a three-bedroom flat occupied by them. The petitioner in the

said proceedings was shown to be belonging to an affluent family whose marriage with the respondent was performed in a Five-Star Hotel and that they had a lavish lifestyle and lived in expansive premises. Besides they had also settled for sometime in Germany and had travelled to places like Switzerland, UK. etc. etc. Unlike the petitioner herein, the petitioner Gaurav was shown to lead a lavish lifestyle and spend huge amounts using his credit card and besides he owned both movable and immovable assets worth crores of rupees, in Goa, Mumbai, Noida and even abroad. In that context, the learned Single Judge observed that the income Tax Returns as well as the Certificate of the Chartered Accountant based on returns could not be wholly relied upon to determine his income and reiterated the observations in **Amit Shah**(supra), that the Income Tax Returns of the parties cannot be taken for the gospel particularly in matrimonial disputes. This judgment too is distinguishable and does not support the case of the petitioner that the respondent had the means and yet the Income Tax Returns could not be relied upon for determining the quantum of maintenance to be paid to the minor child.

19. Kalyan Dey Chowdhury (supra), challenge in this

appeal was to the order passed by the Calcutta High Court reviewing an order passed earlier on an application filed under Section 25(2) of the Hindu Marriage Act, 1955 enhancing the amount of maintenance from ₹16,000/- per month to ₹23,000/- per month. In the brief facts, the marriage of the appellant and the respondent was solemnized as per Hindu rites and customs at his residence and thereafter a male child was born to them who was now a major and pursuing his college education. The respondent had continued to reside in her parent's house as per the case of the appellant who requested her to return to the matrimonial house but instead of acceding to his request, she insisted that he should shift to her father's Place at Chandannagore. He filed an application under Section 9 of the Act for the restitution of conjugal rights against the respondent who on receipt of summons in the matrimonial suit lodged an FIR under Section 498A and 406 IPC against him and his parents at Chandannagore Police Station apart from the proceedings under Section 125 Cr.P.C. against him claiming maintenance for herself and her minor son.

20. In **Kalyan Dey Chowdhury** (supra), the Additional District Judge Burdwan passed the decree of restitution of

conjugal rights in his favour but she did not reconcile and challenged the judgment in the High Court which by its order made an interim arrangement directing the appellant to go to the parental house of the respondent and take her back to his residence and make necessary arrangement for a separate residence. The respondent filed a matrimonial suit as this arrangement did not work out seeking judicial separation. An ex-parte decree for judicial separation was passed consequent to which the decree for permanent alimony was also ordered under Section 25 of the Act to her amounting to ₹2,500/- per month and ₹2,000/- per month to the minor son. The appellant and his parents were acquitted by the Additional District and Sessions Judge in the case of dowry harassment and which was challenged by the respondent in a revision before the High Court at Calcutta which came to be dismissed.

21. In **Kalyan Dey Chowdhury** (supra), a divorce petition was filed by the appellant for the dissolution of the marriage and in which the respondent filed an application for permanent alimony under Section 25 of the Act. The Additional District Judge enhanced the maintenance to ₹8,000/-per month. She sought for an amendment seeking enhancement of

maintenance to ₹10,000/- per month for herself and ₹6,000/- per month for her minor son and which she allowed increasing the maintenance to ₹6,000/-per month to her and her son which was challenged before the High Court. In the meantime, the matrimonial suit was decreed and the marriage came to be dissolved by the order of the Additional District Judge. The High Court disposed off the revision petition and directed the appellant to pay a sum of ₹16,000/- per month towards the maintenance to the respondent and her minor son giving rise to a Special Leave Petition at her instance which was disposed off as withdrawn with a liberty to approach the High Court by way of a review. The learned Single Judge of the High Court modified the order under review and enhanced the amount of maintenance from ₹16,000/- to ₹23,000/- per month being the subject matter of challenge in this appeal.

22. In **Kalyan Dey Chowdhury** (supra), it was contended on his behalf that the High Court ought not to have enhanced the maintenance from ₹16,000/- to ₹23,000/- and that he would find it difficult to pay the enhanced maintenance to her when he was getting a net salary of ₹87,500/- per month. Moreover, she was a qualified beautician, Montessori teacher earning

₹30,000/- per month and the son has also attained eighteen years of age and therefore the maintenance had to be restored to the amount of ₹16,000/- per month. The Hon'ble Apex Court considered Section 25 of the Act, which confers the powers on the Court to vary, modify or discharge any order for permanent alimony or permanent maintenance that may have been made in any proceedings under the Act considering the change in the circumstances of the parties. The Hon'ble Apex Court further found that as observed by the High Court, the appellant was getting a net salary of ₹63,842/- after deducting ₹24,000/- on account of GPF and ₹12,000/- towards income-tax and his net salary in February, 2016 was ₹95,527/-. Following **Dr. Kulbhushan Kumar v/s. Raj Kumar and Anr.** [(1970) 3 SCC 129], it was held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent-wife while further observing that the amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. The Apex Court also found that though his salary was ₹95,000/- per month in February, 2016, he had married a second time and had a child from the second marriage and in that circumstance thought it proper to reduce the amount of

maintenance from ₹23,000/- to ₹20,000/- per month as maintenance to the respondent-wife and son.

23. Coming back to the facts of this case although it has been the contention on behalf of the petitioner that the learned District Judge had passed a completely perverse judgment, however a cursory perusal thereof would reveal that the learned Judge had appropriately appreciated the material placed before him including the documents relied upon on behalf of the petitioner and had taken a little larger amount of ₹36,000/- as being the income of the respondent in his assessment after considering the Income Tax Returns placed on record. It is another matter that the learned District Judge fell in error in misinterpreting the sole para of Article 29 of the Family Laws in the matter of awarding maintenance restricting it to 1/3rd of the net income of the party, nonetheless, the judgment otherwise is not an outcome of any excessive jurisdiction or want of jurisdiction to pass the impugned judgment as to hold that the supervisory powers of this Court had to be invoked to correct such gross abuse of powers by the learned District Judge. Therefore, considering the ratio laid down by the Hon'ble Apex Court for the exercise of the supervisory jurisdiction of this

Court under Article 227 of the Constitution of India as held in **Jai Singh** and **Shalini Shyam Shetty** (supra), there is no reason to invoke the jurisdiction of this Court and to quash the judgment passed by the learned District Judge. In view thereof, no case is made out for quashing the impugned judgment and hence, i pass the following :

O R D E R

The Writ Petition is dismissed.

Rule is discharged.

NUTAN D. SARDESSAI J.

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