

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.186 OF 2016

Mitali Mandar Natu and Others ...Applicants
vs.
Mandar Bhalchandra Natu and Others ...Respondents

Mr. Mulchand Chetimal I/b. Mr. S.M. Kamble, for the Applicants
Mr. Prasad Pathare, for the Respondents

CORAM : M. S. SONAK, J.

DATE : DECEMBER 20, 2018

JUDGMENT :

. Heard Mr. Chetimal, learned counsel for the Applicants
and Mr. Pathare, learned counsel for the Respondents.

2. Rule.

3. With consent and request of learned counsel for the
parties, rule is made absolute forthwith.

4. The challenge in this Petition is to the order dated 16th
December, 2015 made by the learned Family Court, Kolhapur to
the extent the said order denies to Applicant Nos. 1 and 2 i.e.
Avani and Arya now aged 11 and 9 years respectively, each the
maintenance of Rs. 10,000/- p.m. By the impugned order, the
maintenance of Rs. 5,000/- p.m. has been granted to the two
minor daughters.

5. Mr. Chetimal, learned counsel for the Applicants, at the outset makes it clear that the Applicant No. 1 mother is not claiming any maintenance for herself for the present and therefore the impugned order to the extent it denies maintenance to Applicant No. 1 is not being challenged at present. Mr. Chetimal further submits that the maintenance @ Rs. 10,000/- p.m is required to be granted to each of the two minor daughters. He submits that the Respondent-husband is a businessman who deals in Inverters and has four companies. He submits that the Respondent has Honda City car. He submits that the Respondent's mother is a pensioner and therefore he has no other liabilities. He submits that, taking into consideration, the income of the Respondent-husband and also the fact the Respondent-husband, for the present does not have to pay the maintenance to Applicant No. 1 (wife), the learned Family Court should have awarded maintenance of Rs. 10,000/- in favour of each of the minor daughters. He submits that there are expenses towards education as well as the day to day living expenses and therefore, in the facts of the present case, it is only appropriate that maintenance @ Rs. 10,000/- for each of the daughters ought to have been paid. He submits that the arrangements have to be made for the financial

future of the two daughters as well. He submits that since all these aspects has not been considered, the impugned order warrants modification by way of enhancement of the maintenance amount to Rs. 10,000/- p.m. per daughter.

6. Mr. Pathare, the learned counsel for the Respondent submits that, the business of the Respondent is dealing with Inverters and said business is only cyclical. He submits that the Respondent earns hardly Rs. 40,000/- to Rs. 45,000/- p.m. and that too on not regular basis. He states that average income would come to around Rs. 50,000/- p.m. He therefore, submits that there is absolutely no error in the impugned order.

7. Mr. Pathare, further submits that as it is the maintenance amount of Rs. 5,000/- p.m. per daughter is not being utilized for the maintenance of the daughters. He submits that the daughters time and again contact the Respondents for even the smallest of necessities, since this amount is not being spent for the maintenance of the two daughters. Mr. Pathare submits that if the maintenance amount is enhanced, then in all probabilities the same will be used by Applicant No. 1 for her own needs and this will not be conducive to the welfare of the two daughters. For all the aforesaid reasons, Mr. Pathare submits that the impugned

order may not be interfered with.

8. Without prejudice to the aforesaid contention, Mr. Pathare on the basis of instructions from the Respondent submits that the maintenance amount could be enhanced upto Rs. 7,500/- p.m. per daughter from 1st February, 2019 & the enhanced amount of Rs. 2,500/- per daughter can be invested in recurring deposit account so as to take care of the future needs of the two daughters. He makes it clear that this offer is strictly without prejudice.

9. The rival contentions now fall for determination.

10. The application for maintenance in the present case was made by the Applicants on 25th September, 2013. The impugned order is dated 16th December, 2015 in which no maintenance has been awarded to Applicant No. 1 (mother) but maintenance of Rs. 5,000/- each has been awarded to two daughters from the date of application which will be 25th September, 2013.

11. There is no doubt that the Respondent as well as the Applicant No. 1 are both responsible for the maintenance of two daughters. The custody of the two daughters is with the Applicant No. 1. There is some material on record to indicate that the Applicant No. 1 has her own income. The impugned order notes

that the income of the Applicant No. 1 was about Rs. 17,000/- p.m. The learned counsel for the Respondents state that presently the income of the Applicant No. 1 must be Rs. 35,000/- to Rs. 40,000/- by way of salary and apart from this, she must be earning Rs. 10,000/- by way of giving tuitions. His contention is recorded. However, it is clarified that there is no material in support of such contention as yet.

12. The impugned order notes that the Respondent-husband in the course of cross examination admitted that he owns four companies. Office of one of the companies is at Thane and other at Pune. There is also material on record to indicate that the Respondent has his own house at Pune. The Respondent also has a Honda City car. There is material to indicate that Respondent's mother has an independent apartment and she is a retired teacher who gets pension. All this is recorded in paragraph 32 of the impugned order, which, the Respondent-husband has chosen not to challenge.

13. The Respondent-husband did not place on record any material to indicate his precise income. Today in this Court, it is stated that his income is average Rs. 40,000/- to Rs. 50,000/- p.m. Taking into consideration, the material on record which has

not even been challenged by the Respondent, it is not possible to accept that the Respondent's income is only Rs. 40,000/- to Rs. 50,000/- p.m. The Respondent is admittedly doing business dealing with Inverters. The Respondent has his own house in Pune, not to mention the Honda City car. The Respondent owns four companies which have offices at Thane and Pune. Therefore, there can be absolutely no difficulty in the Respondent paying additional maintenance to his two daughters.

14. If the contention now raised by the Respondent through his learned counsel that the daughters are required to approach the Respondent for even small purchases is true, then a legitimate inference can be drawn that even the maintenance of Rs. 5,000/- p.m. which is awarded in their favour is not at all sufficient for their needs. There is no basis to hold that the Applicant No. 1 is spending the maintenance amount meant for the daughters on herself. The Applicant No. 1 with whom two daughters reside obviously, must be spending a significant portion of the amounts which she earns for the maintenance of the two daughters.

15. The Respondents state that he does not contribute towards educational fees of the two daughters, since, according to him, these expenses are to be borne out of the maintenance of Rs.

5,000/- p.m as awarded by the impugned order. Ordinarily, the Respondent, on his own should have offer to bear educational fees of both daughter or at least one of the daughters so that two daughters have proper education or that their education does not suffer on account of the dispute between their parents.

16. The apprehension that the Applicant No. 1 will spent the amount of maintenance of the daughters, if such amount is enhanced, is again, without any basis. However, there is merit in the contention of Mr. Pathare that the some arrangements are required to be made for the future needs of the two daughters.

17. Therefore considering the material on record, the needs of the two daughters who have, by now, become 11 and 9 years respectively, the financial status of the parties, it is only appropriate that the two daughters are granted maintenance @ Rs. 10,000/- p.m. from the date of the application which is 25th September, 2013.

18. However, for the present, two daughters can be paid maintenance of Rs. 5,000/- p.m and the balance maintenance of Rs. 5,000/- can be invested in a suitable financial instruments by way of fixed deposits and recurring deposits. This is necessary because some provisions will have to be made for the future needs

of the two daughters. There are expenses for higher education as well as marriages of the two daughters. It will be in the interest of the two daughters if the saving/investments are made at this stage itself.

19. For all the aforesaid reasons, this Petition is disposed of with the following order:

(a) The impugned order dated 16th December, 2015 is modified and the Respondent is directed to pay maintenance to the two daughters (Applicant Nos. 2 and 3) @ Rs. 10,000/- p.m. each effective from 25th September, 2013 i.e. the date of application.

(b) The Respondent is directed to make 2 separate fixed deposits in the names of two daughters by investing therein, the arrears of maintenance from 23rd September, 2013 till 31st January, 2019 in the Nationalized Banks. There are bound to be arrears, now that maintenance amount have been enhanced then Rs. 5,000/- p.m. to Rs. 10,000/- p.m. w.e.f. 25th March, 2013. This should be done latest by 31st March, 2019.

(c) The Respondent is directed to report compliance to the Family Court at Kolhapur by filing affidavit indicating the details of fixed deposits receipts. Such fixed deposits should be in the name of the Respondent and the daughters for initial period of five years.

(d) Under no circumstances, the Respondent will encash such fixed deposits. These fixed deposits can be encashed by the two daughters only after seeking leave from the Family Court at Kolhapur at the appropriate stage, preferably when they attain the majority or if there is any dire need for higher education etc.

(e) From 1st February, 2019 onwards, the Respondent is directed to open recurring deposit account in the name of two daughters in which the Respondent is directed to deposit Rs. 5,000/- p.m. in the name of two daughters. The Respondent to continue to do so until further orders are made by the Family Court and under no circumstances, the Respondent shall withdraw the amounts from the recurring deposit account.

(f) The compliance to be reported to the learned Family Court at Kolhapur by filing affidavit in evidence.

20. The Family Court to ensure that the aforesaid directions are complied with and also make orders on the issue of operating of fixed deposits and recurring deposits as aforesaid.

21. The rule is made absolute in the aforesaid terms.

22. There shall be no order as to costs.

(M. S. SONAK, J.)