

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL REVISION APPLICATION NO.526 OF 2016**

Vitthal Eaknath Gotarne	]	Applicant
Vs.		
Sunita Vitthal Gotarne & Anr.	]	Respondents
		
Mr. Pravartak Pathak, for Applicant.		
		

CORAM : R.G. KETKAR, J.

DATE : 12TH JULY, 2018.

P.C:

Heard Mr. Pathak, learned Counsel for the applicant at length.

2. By this application under section 397 r/w section 401 of the Code of Criminal Procedure, 1973 (for short 'Cr. P.C'), the applicant has challenged the order dated 12th November, 2014 passed by the learned Judge, Family Court, Nashik in Petition No. ER/155 of 2012. By that order, the learned trial Judge partly allowed the Petition instituted by the respondent/wife under section 127 of Cr. P.C for enhancement of maintenance. Earlier, the respondent had filed Petition No.66 of 1996 under section 125 of the Cr. P.C. By order dated 22nd September, 1997, maintenance of Rs.300/- and Rs.200/- respectively per month was awarded to her and her son Akshay. She, thereafter, instituted Petition No.498 of 2001 for enhancement of maintenance. That Petition was allowed by directing the petitioner herein to pay Rs. 1700/- each per month as and by way of maintenance to the respondent and her son Akshay. She filed present Petition, inter alia, contending that the petitioner is working in Rural Police Department and 6th

Pay Commission is made applicable to him. He is getting salary of Rs. 40,000/- to 45,000/- per month. She had placed on record pay slips from the month of January, 2014 to June, 2014 in support of her contention.

3. In paragraph 7 of the impugned order, the learned trial Judge noted that earlier Petition No.498 of 2001 was decided on 19th March, 2004 and the present Petition is instituted in the year 2012. The learned trial Judge took judicial notice that within the span of 10 years, prices of residential accommodation and requirement for survival of a woman as also needs of the growing son are increased. Considering these aspects as also the fact that no reply was filed by the petitioner and the matter proceeded without his say directed the petitioner to pay maintenance of Rs. 6,000/- per month from the date of application to the applicant.

4. Mr. Pathak submitted that the learned trial Judge was not justified in enhancing maintenance to Rs. 6,000/- per month. He submitted that the learned trial Judge has directed the petitioner to pay enhanced maintenance from the date of application i.e from 16th July, 2012 and not from the date of the order. In support of his submission, he relied on following decisions;

- [1] Jaiminiben Hirenbbhai Vyas & Anr. Vs. Hirenbbhai Rameshchandra, 2015 CRI. L. J. 608.
- [2] Shyambai wd/o Surajkaran Joshi and others Vs. Madam Mohan Mandir Sanstha, 2010 (2) Mh. L. J. 476.
- [3] Shail Kumari Devi and Anr. Vs. Krishan Bhagwan Pathak alias Kishun B. Pathak, AIR 2008 Supreme Court 3006.
- [4] Raj Kumar v. Mst. Shanta Bai, 2002 CRI. L. J. 2894.
- [5] Chhotu Singh and another Vs. Smt. Ramdini, 2002 CRI. L. J. 3499.

5. As noted earlier, the petitioner did not file his say and the matter proceeded further without his say. In paragraph 6, the learned trial Judge has considered income and the deductions and observed that after deductions, the petitioner is getting Rs. 20,000/- to 21,000/- per month net pay in his hand. In paragraph 7, the learned trial Judge also noted that after near about ten years gap, present Petition is instituted for enhancement of maintenance. The reliance placed by Mr. Pathak on the decisions referred above does not advance the petitioner's case.

6. For the reasons recorded in paragraphs 6 and 7, I do not find that any case is made out for interfering with the impugned order. Hence, Petition fails and the same is dismissed. It is made clear that I have not examined merits of the case from the point of view of respondent/wife as by the impugned order, the learned trial Judge has not enhanced maintenance payable to the son. Order accordingly.

[R.G. KETKAR, J.]