

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 3460 OF 2014

Sau. Meena R. Pagare and anr. .. Petitioners
vs.
Rohidas M. Pagare and anr. .. Respondents

Mr. Harsh Nishar h/f. Mr. Amey Deshpande for the Petitioners.
Ms M.R.Tidke, APP for the Respondent – State.

CORAM : M. S. SONAK, J.
DATE : 22 NOVEMBER 2018.

ORAL JUDGMENT. :-

- 1] Heard Mr. Harsh Nishar, learned counsel for the petitioner.
- 2] The respondent No.1 though served, neither present in person nor through advocate.
- 3] Since the petition relates to the year 2014 and concerns the issues of maintenance, the same cannot be adjourned any further.
- 4] The challenge in this petition is to the order dated 1st July 2014 made by the Family Court at Nashik to the extent it refuses to grant enhancement of maintenance amount as prayed by the petitioner -wife and her minor son.

5] Mr. Nishar submits that the petitioners had prayed for enhancement of maintenance upto Rs.5000/- per month in respect of each of the petitioners. He points out that the respondent – husband, in the course of his cross-examination has admitted that the petitioner -wife has to pay rent of Rs.2,700/- per month towards rent for the accommodation in which they reside. He points out that there is evidence on record that the minor son was in 7th Standard in the year 2014 and the expenses for his education were then in the range of Rs.2000/- to Rs.2500/- per month. Mr. Nishar points out that the respondent – husband is an employee of Pune Mahanagar Parivahan Mahamandal Ltd., Pune which is a Municipal Corporation undertaking. He has pointed out that the pay slip dated 7th May 2013 which was produced on record had indicated that the respondent – salary as Rs.17,923/- per month. He points out that the salary as in October 2016 has now increased to Rs.25,696/-. He submits that the learned Family Court clearly erred in granting a meagre enhancement of Rs.250/- only per month in the maintenance amount. He submits that the impugned order may be modified and enhance the maintenance amount as prayed for be awarded.

6] As noted earlier, despite service, neither the respondent – husband nor his advocate are present.

7] Having considered the submissions made by Mr. Nishar and upon perusal of the impugned order as well as the material on record, this appears to be a fit case to award some enhancement in the maintenance amount.

8] The records bear out that the Family Court by order dated 14th March 2008 had granted maintenance of Rs.500/- per month to each of the petitioners. Later on, by order dated 22nd May 2011, this amount was enhanced to Rs.1500/- in respect of petitioner No.1- wife and Rs.1200/- in respect of petitioner No. 2- minor son. In the year 2014, the petitioners applied for enhancement of maintenance amount upto Rs.5000/- per month in respect of each of the petitioners by stating that expenses have increased and that this constitutes a variation in circumstances.

9] The petitioner No.1- wife has examined herself in support of the application seeking enhancement. The respondent No.1- husband also examined himself in opposition to the claim for enhancement.

10] The respondent No.1, in the cross-examination, has admitted that he was earning Rs.10,000/- per month when the initial order under Section 125 of Cr.P.C. was made. The respondent No.1 has also admitted that as on the date of his deposition, i.e., 9th June 2014, he was drawing a salary of Rs.10,000/- per month. There is no dispute that the respondent No.1 is an employee of Pune Mahanagar Parivahan Mahamandal Ltd., Pune and in that sense, the respondent No.1 has a stable job.

11] The respondent No.1, in the course of his cross-examination and in the context of discharge certificate produced by him on record has also admitted that his health was stable and he was not in requirement of any medical treatment. Significantly, the respondent No.1 has also admitted that the petitioner No.1 has to pay Rs.2700/- per month. The respondent No.1 has however, stated that he is not aware that an amount of Rs.2000 to Rs.2500 is required to be spent on education of his minor son which includes expenses towards computer and transportation allowances. The respondent No.1 has raised the defence that the petitioner No.1 was an expert at stitching and was in fact earning an amount of Rs.10,000/-. In the course of cross-examination, the respondent No.1, however, admitted that he

has no document to substantiate this statement or statement that the petitioner No.1 was earning an income of Rs.10,000/- per month.

12] The record indicates that by order dated 30th June 2017, this Court had directed the respondent No.1 to place on record the pay slips for the months of January to May 2017. However, the respondent No.1 has failed to place such salary slips on record. This calls for drawal of an adverse inference against the respondent No.1. In any case, the learned counsel for the petitioners has placed on record the salary slip for the month of October 2016 issued by Pune Mahanagar Parivahan Mahamandal Ltd., Pune indicates that in the year 2016, the respondent No.1 was drawing salary of Rs.25,696/-. The petitioner No.1 has deposed to the educational expenses of her minor son Aditya. By now, Aditya must be in 10th or 11th Standard and therefore, it is obvious that the expenses towards education must have been further increased. Further, considering the stable nature of the respondent No.1's job, it is legitimate to proceed on the basis that in the year 2018, the respondent No.1's salary will be in excess of Rs.25,696/-, which was the salary two years ago, i.e., in October 2016.

13] Taking into consideration all the aforesaid facts and circumstances as are borne out from the record, it will be appropriate if the maintenance amount payable to the petitioners is enhanced. On the basis of the material on record and taking into consideration the needs of the petitioners, the appropriate enhanced maintenance should be Rs.5000/- in respect of the petitioner No.1 and Rs.3500/- in respect of the petitioner No.2. In all therefore, the respondent No.1 must be made liable to pay maintenance of Rs.8500/- per month to both the petitioners in the proportion indicated. There shall be an order to this effect accordingly. Such enhance maintenance amount will have to be paid from the date of the impugned order dated 1st July 2014.

14] In case, any amounts have been paid in the meanwhile, the respondent No.1 – husband shall be entitled to appropriate adjustment. However, the respondent No.1- husband is directed to clear all the arrears on the basis of the present order as expeditiously as possible and in any case within a period of three months from today.

15] The impugned order is modified in the aforesaid terms. Rule is made partly absolute in the aforesaid terms. There shall however, be no order as to costs.

(M. S. SONAK, J.)