

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 3602 OF 2017

Sou.Ujwala Jaywant Ubale

...Petitioner

Versus

Shri.Jaywant Baburao Ubale And Anr.

...Respondents

Mr.Vikas Kolekar i/by Ms.Amruta Deepak Devkat for the Petitioner.

Mr.Milind Achyut Kale for Respondent No.1.

Mrs.M.R. Tidke, APP for Respondent-State.

CORAM : SMT.BHARATI H. DANGRE, J.

DATE : 02nd APRIL 2018

P.C.

1. The present Writ Petition challenges the order passed by the learned Judge, Family Court, Thane, below Exh.112 thereby, rejecting the application filed by the petitioner seeking amendment to the application filed under Section 125 of the Criminal Procedure Code. The petitioner who had instituted proceedings under Section 125 of the Cr.P.C. seeking maintenance, moved an application on 03rd July 2017, seeking an amendment in the said application. In the application, it was specifically stated that certain new facts have been revealed, which includes the details of the post retirement benefits being received by her husband and his employment with

SIS Prosegur Holdings & Private Limited. The application for amendment therefore sought to incorporate the details of such employment and she sought an amendment claiming maintenance to the tune of Rs.35,000/- per month.

2. It is this application which came to be rejected by the Judge Family Court on solitary ground that the matter is pending for 7 & ½ years, the case being filed in the year 2010 and since application is preferred after the matter is closed for evidence. The learned Judge, Family Court, Thane, did not deem it fit to allow the said application. The learned counsel for the petitioner would invite attention of this Court to pertinent observation made by the Judge Family Court that the opponent has retired long back and it cannot said to be a new fact and she cannot give any details of date of retirement etc. However it can be seen that the date of retirement as well as the emoluments which would be tentatively drawn were mentioned in the application and therefore the said reasoning adopted by the Family Court do not appear to be cogent.

3. The learned counsel for the respondent No.1 would also submit that the application came to be rejected only with a view of not prolonging the matter and the learned Judge, Family Court, was

perfectly justified to reject the said application after the applicant's evidence was closed. However, the learned counsel for the respondent No.1 would fairly concede to a suggestion from a court that the quantum of maintenance would be effectively adjudicated if the relevant facts are on record and he accord his consent as the matter to be reconsidered by remanding it back in the interest of justice.

In such circumstances, by consent of the parties, the impugned order is quashed and set aside. The Judge Family Court should take into consideration the application of amendment preferred by the applicant on 03rd July 2017 and would proceed with the matter by taking into consideration the amended claim of the petitioner and would make an endeavor to dispose of the claim of the maintenance within a period of four months from the date of receipt of this order.

4. Writ Petition stands disposed of.

(SMT.BHARATI H. DANGRE, J.)