

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.488 OF 2015

Ajay Eknath Chandore ... Applicant
Vs.
Rajashree Ajay Chandore and others ... Respondents

WITH
CRIMINAL WRIT PETITION NO.223 OF 2012

Rajashree Ajay Chandore and others ... Petitioners
Vs.
Ajay Eknath Chandore and another ... Respondents

Ms Seema Sarnaik for Applicant in REVN No.488 of 2015 and for Respondent No.1 in WP No.223 of 2012.

Ms Snehal S. Kundalkar for Respondents No.1 and 2 in REVN No.488 of 2015 and for Petitioners in WP No.223 of 2012.

CORAM : R. G. KETKAR, J.

DATE : JUNE 7, 2018

P.C. :

Heard Ms Sarnaik, learned Counsel for the applicant in Revision Application No.488 of 2015 and for respondent No.1 in Writ Petition No.223 of 2012 and Ms Kundalkar, learned Counsel for respondents No.1 and 2 in Revision Application No.488 of 2015 and for petitioners in Writ Petition No.223 of 2012 at length.

2. Applicant in Criminal Revision Application No.488 of 2015 is a husband of the respondent No.1 and father of the respondent No.2. This Application takes exception to the judgment and order dated 25.08.2015 passed by the learned Judge, Family Court, Nashik in Petition No.E-246 of 2011. By that order, the learned Judge allowed the application made by the respondents No.1 and 2 herein under Section 126 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for enhancement of the maintenance amount. Respondents No.1 and 2 had filed application under Section 125 of Cr.P.C. By order dated 04.02.2008, application

was allowed and the first respondent was awarded Rs.1200/- and the second respondent was awarded Rs.700/- per month towards maintenance. Aggrieved by that decision, applicant preferred Revision Application before the Sessions Court. By order dated 25.07.2011, Revision Application was partly allowed. The order of maintenance awarded to the respondent No.1 @ Rs.1200/- per month was quashed and set aside. The order awarding maintenance of Rs.700/- per month to the respondent No.2 was maintained. In paragraph 8 of the impugned order, the learned Judge has noted that during the pendency of the Petition, respondent No.1 has filed application withdrawing her claim towards enhancement of amount of maintenance to her. Thus, by the impugned order, the learned Judge has enhanced maintenance awarded to the respondent No.2 from Rs.700/- to Rs.4000/-.

3. Writ Petition No.223 of 2012 is preferred by respondents No.1 and 2 in Criminal Revision Application namely, wife and son challenging the order dated 25.07.2011 passed in Criminal Revision Application No.215 of 2008. As noted earlier, by that order, the learned Sessions Judge has set aside the maintenance awarded to the petitioner No.1 wife @ Rs.1200/- per month. Since the parties are common, the Revision Application and Writ Petition can conveniently be disposed of by this common order.

4. In support of Revision Application filed by the applicant, Ms Sarnaik submitted that respondents No.1 and 2 filed application under Section 127 of Cr.P.C. In paragraph 3 of that application, it was contended that respondent No.1 is not gainfully employed. Respondent No.2 is taking education. Expenses of Rs.3,000/- per month are incurred towards his education. It was further contended that respondents No.1 and 2 are incurring expenses of Rs.5,000/- per month and they have no source of income. In paragraph 4, it was contended that applicant herein

is working as Assistant Officer, Defence Account, L.A.O. Air Force and is getting salary of Rs.40,000/- per month. Nobody is dependent on him. Respondent No.1, therefore, claimed maintenance of Rs.7,500/- for her and Rs.12,000/- per month for the respondent No.2. She invited my attention to the reply filed by the applicant and in particular paragraphs 6 and 8. In paragraph 6, applicant denied that he is getting salary of Rs.40,000/- per month. It was further contended that applicant is looking after his aged parents, who are ailing. He also denied that he has sold flat for Rs.6,00,000/-. In paragraph 8, it was contended that respondent No.1 is working as a teacher as she has qualification of B.A. (Hindi), B.Com. B.P.Ed. She submitted that pending the application, on 16.07.2016, applicant filed application calling upon the respondents No.1 and 2 to give details as regards name of the college, coaching classes, expenses towards education, etc. However, no details were furnished by the respondent No.1. Ms Sarnaik submitted that considering the fact that applicant is required to maintain his aged parents, who are ailing and also having regard to the fact that the his net salary is Rs.28,000/- approximately, the learned trial Judge was not justified in enhancing maintenance from Rs.700/- to Rs.4,000/- per month the respondent No.2. She, therefore, submitted that Application requires consideration.

5. On the other hand, Ms Kundalkar supported the impugned order. She submitted that at the time of making application under Section 125, respondent No.2 was studying and presently he is studying in College of Engineering in Pune. Having regard to the fact that the applicant's net salary is Rs.28,000/-, enhancement of maintenance of Rs.7,00/- awarded in the year 2008 to Rs.4,000/- awarded in the year 2015 cannot be said to be exorbitant or excessive. She, therefore, submitted that no case is made out for interfering with that order.

6. In support of Writ Petition No.223 of 2012, Ms Kundalkar submitted that the learned Sessions Judge was not justified in denying maintenance to the petitioner-wife on the ground that she has deserted and neglected to cohabit with the respondent-husband. She, therefore, submitted that the impugned order dated 25.07.2011 deserves to be set aside thereby restoring order dated 04.02.2008 passed by the learned Magistrate in so far as the award of maintenance to her is concerned.

7. On the other hand, Ms Sarnaik supported the impugned order. She invited my attention to paragraph 19 of the impugned order and submitted that for the reasons recorded in paragraph 19, no case is made out for interfering with the impugned order.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In so far as Criminal Revision Application is concerned, the moot question is whether the learned trial Judge was justified in enhancing the maintenance to the respondent No.2 from Rs.700/- to Rs.4000/- per month. It is not in dispute that initially, application under Section 125 of Cr.P.C. was made. By order dated 04.02.2008, the learned Magistrate awarded maintenance to wife @ Rs.1200/- per month and to the respondent No.2 @ Rs.700/- per month. The application under Section 127 of Cr.P.C. for enhancement is made on 02.12.2011 and is actually decided on 25.08.2015. Thus, we have to consider the award of maintenance in the year 2015 as against the initial award of maintenance to the respondent No.2 in the year 2007. Ms Sarnaik invited my attention to the salary slip of the husband, which discloses that his gross pay is Rs.35,456/-. Amount of Rs.11,111/- is deducted towards subscriptions. Rs.6,950/- is deducted towards medical advance. Rs.60/- is deducted towards ES. After deductions, the net pay is shown as Rs.15,275/-. It is material to note that the amount of Rs.11,111/- is

deducted towards subscription. If this is added to the net pay, salary of the applicants comes to Rs.26,386/-. Thus, as against Rs.26,000/-, the learned Judge has awarded maintenance of Rs.4,000/- to the second respondent. Having regard to the fact that the respondent No.2 is taking education in College of Engineering in Pune as also for the reasons recorded in paragraph 11 of the impugned order, I do not find that the enhancement of maintenance from Rs.7,00/- to Rs.4,000/- can be considered as exorbitant or excessive. In paragraph 11, the learned trial Judge has considered all the circumstances on record, costs of essential commodities, educational requirement of respondent No.2, respondent No.1's source of income and observed that enhancement of Rs.4,000/- per month would be just and appropriate. In view thereof, I do not find that the learned trial Judge has committed any error in enhancing the maintenance from Rs.700/- to Rs.4,000/-. Hence, Revision Application fails and the same is dismissed.

9. In so far as Writ Petition filed by the wife and son is concerned, the learned Sessions Judge observed that petitioner wife had deserted the husband. She has also neglected to cohabit with the husband. After considering Section 125 of Cr.P.C., the learned Sessions Judge observed that there was no refusal and neglect on the part of the husband. There was no cruelty to her by the husband. On the contrary, there was cruelty by the wife to the husband. For the reasons recorded in paragraph 19 of the order dated 25.07.2011, I do not find that the learned Sessions Judge committed any error in denying maintenance to the wife. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)