

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 180 OF 2018

Sou. Manisha Ganesh Awhad,
Age 26 years, Occ. Household,
R/o. C/o. Machindra Shahu Korde,
At present r/o. Chaudhari Colony,
Chikalthana, Aurangabad, Tq. &
Dist. Aurangabad.

... **Petitioner.**

VERSUS

Ganesh s/o Vithalrao Awhad,
Age 35 years, Occ. Service,
R/o. C/o. College of Engineering
& Gechnology, Nagewadi, Tq. &
Dist. Jalna.

... **Respondent.**

...

Advocate for the Petitioner : Mr. Rakesh C. Bramhankar, h/f Mr.
N.L. Jadhav.

Advocate for the respondent : Mr. Vaibhav G. Deshmukh, h/f Mr. S.S.
Tope.

CORAM : MANGESH S. PATIL, J.

DATE : 20/09/2019

ORAL JUDGMENT :

Heard. Rule. The rule is made returnable forthwith. Learned advocate for the respondent waives service. With the consent of the parties the matter is heard finally.

2. The application of the applicant-wife claiming maintenance under section 125 of the Code of Criminal Procedure has been allowed

by the learned Judge of the Family Court and she has been directed to be paid Rs. 3500/- per month from the date of the application. Not satisfied with the quantum of maintenance she has preferred this revision.

3. The learned advocate for the applicant submits that there was documentary evidence in the form of salary slips of the respondent for the period November 2017 to January 2018 (Exhibit 22) which show that his gross salary was Rs. 24,708/- and net salary was Rs. 22,708/-. Besides, there was evidence to show that the parents and grand mother of the respondent owned agricultural land. While holding the respondent to be also responsible for maintaining his parents and grand mother, the Family Court has not taken into account the income from the agricultural land standing in their name which is clearly perverse and arbitrary. If the parents and grand mother are dependent on the respondent even he would be recovering some thing from the land standing in their name. In spite of all these facts the learned judge has vaguely arrived at the quantum of maintenance and awarded Rs. 3500/- per month only which is grossly inadequate and disproportionate to his income and the expenditure which he has to bear.

4. The learned advocate for the respondent submits that on the

objective assessment of the material before the Family Court the learned Judge has arrived at quantum of maintenance at the rate of Rs. 3500/- per month. She has also assigned cogent and sufficient reasons. This Court in revision should not intervene in the discretion exercised by the learned Judge. The respondent has to commute between his native and place of his work. He has to spend daily Rs. 150/- for such commutation. He has to maintain his parents and grand mother. There is nobody in his family to look after them. Considering all these aspects the quantum fixed by the learned Family Judge is quite reasonable and may not be intervened.

5. I have carefully gone through the papers. Since the respondent-husband has not challenged the order passed by the Family Court awarding maintenance to the applicant it is only the matter of quantum that needs to be gone into.

6. As can be seen from the record there were salary certificates showing that the respondent's gross salary was Rs. 24,708/- during the period November 2017 to January 2018. Considering the fact that statutory deductions would be only in respect of the Professional Tax, his net salary would come to Rs. 24,508/-. Whereas the Family Court has considered the net salary of Rs. 22,708/- and further has discounted Rs. 1800/- towards E.PF. It is trite that it is only the

statutory deductions to which the husband would be entitled to seek any deductions from the gross salary. The rest of the deductions like contribution to the Provident Fund, L.I.C. premium, G.I.S. premium, home loan, etc. would either be his investments or his expenditure incurred for generating asset. Therefore he cannot be allowed to have the cake and eat it also.

7. If his net salary is regarded as Rs. 24,000/- the quantum of maintenance fixed by the impugned order at Rs. 3500/- per month is apparently grossly disproportionate.

8. It has come on record that there is agricultural land standing in the name of parents and grand mother of the respondent. If as has been observed by the learned Family Court Judge they are dependent on him, he would also be getting something from the land standing in their name or else they cannot be said to be dependent on him and then he could legitimately ignore the income from the agricultural land. The respondent conveniently has not brought on record what is the exact income being derived from the agricultural land standing in the name of his parents and grand mother.

9. Taking into account all the aforementioned aspects in my considered view this is a fit case wherein interference is called for in

this revision and the impugned order restricting the quantum of maintenance of Rs. 3500/- per month. Instead, the applicant would be entitled to recover Rs. 6000/- per month and the respondent does have sufficient means to pay it.

10. The revision is allowed. The impugned order directing the respondent to pay Rs. 3500/- per month is modified and instead the respondent is directed to pay Rs. 6000/- per month to the applicant from the date of application i.e. from 01.03.2017. Rest of the order is confirmed. The rule is accordingly made absolute.

(MANGESH S. PATIL, J.)

mkd