

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

19 CRIMINAL REVISION APPLICATION NO.230 OF 2018

Janardhan s/o Gangadharrao Jadhav,
Age 46 years, Occ. Service, Primary Teacher,
R/o. Nathnagar, Rampur Road, Degloor,
Tq. Degloor, Dist. Nanded.

... **Applicant.**

Versus

1. Prathamesh s/o Janardhan Jadhav,
Age 14 years, Occ. Education.
2. Shrushti d/o Janardhan Jadhav,
Age 7 years, occ. Education.

Respondents No. 1 & 2 minors
u/g of their mother Manjula
w/o. Janardhan Jadhav, Age 43
years, Occ. Service, R/o. c/o. Ram
Bharti, Vasant Nagar, Nanded, Tq.
& Dist. Nanded.

... **Respondents.**

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Advocate for Applicant : Mr. Tripathi Manish P.
Advocate for Respondents : Mr. Anand Kulkarni, h/f Mr. Deshmukh
Rajendra.

CORAM : MANGESH S. PATIL, J.

DATE : 13/09/2019

ORAL JUDGMENT :

Heard both the sides. Rule. The rule is made returnable
forthwith. Learned advocate Mr. Anand Kulkarni h/f Mr. Deshmukh
waives service for respondent No. 2. At the request of both the sides

the matter is heard finally at the stage of admission.

2. The applicant is the father of the respondents minor children and impugns the judgment and order passed by the Family Court, Nanded in their favour directing him to pay maintenance to them under section 125 of the Code of Criminal Procedure at the rate of Rs. 5,000/- and Rs. 4,000/- per month from the date of filing of the petition.

3. The learned advocate for the applicant submits that it is equally the responsibility of both the parents to maintain their minor children. It is not that the applicant alone is the earning hand. The mother of the respondents is also in a permanent employment and has been earning a salary which is more than his salary. Besides, the applicant has to maintain his aged parents. His net salary is only Rs. 28,000/- per month as against which his wife is receiving a net salary of Rs. 46,180/-. Taking into account all these aspects, the applicant is being put to a heavy burden to pay the maintenance at an exorbitant rate. Having considered the need of respondents-children, the Family Court ought to have divided such expenses equally between the applicant-father and respondents' mother. That having not been done. It is quite illegal to fasten the applicant alone with the responsibility to provide maintenance. The learned advocate would further submit that

the mother of the respondents has even bought a flat from her own income which clearly shows that she is well off and still has engineered this proceeding with an oblique intention to extort some money from the applicant. Therefore, considering the evidence on record, the quantum of maintenance awarded to the respondents deserves to be brought down.

4. The learned advocate for the respondents submits that since the couple has separated the applicant has never provided any thing for the maintenance of the children. She has been maintaining them at least since the year 2016. Although she would now get something since the respondents have been granted maintenance from the date of the petition, the fact remains that without any such help from the applicant the mother had alone maintained the respondents. The learned advocate would further point out that the learned Judge of the Family Court has clearly considered that the respondent No. 1 was studying in 10th standard in the academic year 2017-2018, whereas the respondent No. 2 was studying in 2nd standard. The documents at Exhibits 30 to 35 showing educational expenses of the respondents were also taken into consideration. Future educational expenses of the respondents were also taken into consideration by the learned Judge and after such objective assessment the quantum of maintenance was

fixed reasonably which need not be interfered with in this revision. At least there is no perversity or arbitrariness in fixing the quantum at that rate.

5. The learned advocate for the respondents further points out that it is not that the applicant alone has the responsibility to maintain his parents. He points out that he has two brothers and two sisters and the fact has been admitted by him during his cross-examination. There is agricultural land as well. The responsibility to maintain the parents therefore will have to be shared by all the children.

6. The learned advocate would further point out that the applicant is not entitled to seek any allowance on account of the deductions from his salary. It is only the statutory deductions in the form of Professional Tax at the rate of Rs. 200/- per month which can be legitimately and legally deducted from his gross salary. The deductions on account of his contribution to the provident fund, insurance and a housing loan which in fact are his investments cannot be allowed to be deducted. Taking into account all these circumstances and the evidence, there is absolutely no illegality committed by the learned Judge in fixing the quantum of maintenance.

7. I have carefully gone through the papers and the record and

proceedings. Needless to say that it is equal responsibility of both the parents to maintain their children. However, the petitioner is apparently seeking to rely upon such argument qua respondents alone. When it comes to maintaining his own parents he has been conveniently saying that he has to maintain his parents when he has couple of brothers and sisters.

8. Be that as it may, as can be seen from the evidence on record the applicant and his wife both are earning hands and earing sumptuously. It has come on record that the applicant's gross salary for the month of November 2017 was Rs. 49,649/- and after several deductions he got net salary of Rs. 23,290/-. Conspicuously such deductions were Rs. 10,000/- towards Provident Fund contribution, Rs. 679/- towards LIC premium, Rs. 200/- towards Professional Tax, Rs. 120/- towards General Insurance premium, Rs. 10,000/- towards home loan repayment and Rs. 5360/- towards repayment of advance taken from a credit society. It is settled principle that it is only the statutory deductions to which a person would be entitled to in such cases. Such statutory deductions would only come to Rs. 200/- per month. The rest of the deductions are towards investment and generating assets. As a result, the salary after deduction of Professional Tax would come to Rs. 49,449/-. Out of that he has been directed to

pay Rs. 9,000/- per month to the respondents in aggregate. Ex facie the quantum fixed is quite in proportion to his income and by no stretch of imagination can it be said to be excessive.

9. The submission of the learned advocate for the applicant that this quantum should have been equally divided between him and his wife clearly ignores the fact that since after the couple has separated he has never provided anything for the maintenance of the respondents and she alone has been maintaining them out of her income. It is only after an objective assessment in the form of the expenses required to be incurred for their education including fees, books etc. that the learned Judge has fixed the quantum of maintenance. Conspicuously, the expenses of their food and day today expenses which are over and above such educational expenses. Since the children are being maintained by their mother she must have been bearing the expenses for their upbringing/livelihood. Therefore it cannot be said that the quantum of maintenance fixed by the learned Judge would cover all their expenses. Since rest of the expenses are being borne by the mother of the respondents, the argument of the learned advocate for the applicant only needs to be discarded.

10. As far as the alleged liabilities of the applicant to maintain his parents are concerned, as is mentioned herein above there is ancestral

land and even the applicant has two brothers and two sisters. If that is the state of affairs, it was for him to have established as to how his other siblings are not providing any thing for the maintenance of their parents and the entire burden has to be shouldered by him. Again, it was for him to have pointed out as to how much income is being derived from the land because if he is to maintain his parents, even he would get the income from the land standing in their name. In either case, it cannot be said that the responsibility to maintain the parents is to be exclusively shouldered by him. As is demonstrated herein above, his salary after statutory deductions comes to Rs. 49,449/- per month and only an amount of Rs. 9,000/- in aggregate is to be paid to the respondents per month.

11. Considering all these aspects and the evidence, the observations and the conclusions of the learned Judge of the Family Court fixing the quantum at Rs. Rs. 5,000/- and Rs. 4,000/- per month cannot be said to be either perverse, arbitrary or capricious.

12. The revision has no merits. Hence it is dismissed. Rule is discharged.

(MANGESH S. PATIL, J.)

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