

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL REVISION APPLICATION NO.63/2018

Gajanan S/o Madhukar Kakad

..Vs..

Sau. Asha W/o Gajanan Kakad

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.M. Mardikar, Advocate for the applicant.
Shri O.Y. Kashid, Advocate for the non-applicant.

CORAM : NITIN W. SAMBRE, J.

DATED : 23.9.2019

1] Heard.

2] The Family Court, Akola in exercise of powers under Section 127 of the Code of Criminal Procedure has enhanced the quantum of maintenance from Rs.750/- to Rs.5,000/- per month vide order dated 29th December, 2017 which is subject matter of challenge.

3] The submissions of Shri Mardikar are, in the cross-examination as the non-applicant has given an admission that she has not produced any documentary evidence so as to establish the income of the present applicant, impugned order granting enhancement from Rs.750/- to Rs.5,000/- per month is not sustainable. The learned Counsel then would urge that even otherwise, the fact that the applicant has not paid the maintenance

for more than one year in categorical terms establishes that he is in financial crisis as his income is wrongly assessed. That being so, the amount of maintenance needs to be reduced.

4] The learned Counsel for the non-applicant supported the order impugned.

5] In Miscellaneous Criminal Case No.368/2003 the Chief Judicial Magistrate, Akola on 2nd February, 2005 has awarded maintenance of Rs.500/- per month. The applicant and the non-applicant had given birth to two children, who are not dependent on them. After almost a period of more than 15 years, the non-applicant has moved a request for enhancement of compensation as the Sessions Judge, Akola on 2nd March, 2005 has enhanced the compensation from Rs.500/- to Rs.750/- per month in an revision preferred against the order of grant of maintenance of Rs.500/- by the Magistrate.

6] The non-applicant has come out with a case of enhancement, based on the factual matrix that the applicant is earning substantially as he is working in a company. The said fact is duly admitted by the applicant in his affidavit dated 4th October, 2018.

7] However, the applicant has taken a precaution not to disclose his quantum of income particularly from the said job and also income from the

agricultural property.

8] In the aforesaid background, considering the fact that the applicant holds agricultural property along with his father as is reflected in the order impugned, and the fact that since last more than 15 years, the non-applicant has not asked for any hike in the amount of maintenance commensurate to the present financial index, the Family Court has proceeded to analyze the oral evidence brought on record.

9] The claim of the applicant is that he is presently doing the work of tailoring and is earning about Rs.150/- per day.

10] The said submissions are required to be rejected particularly on the count of quantum of earning as the job of tailoring is a skilled work and even a labour earns Rs.300/- per day. As such even if presuming that the applicant is doing skilled work of tailoring, the income of the applicant is rightly assessed.

11] That being so, no case for interference is made out. The revision application fails. It is rejected **accordingly**. No costs.

JUDGE