

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1315 OF 2019

Shaikh Roshna D/o Shaikh Zakir
Age: 10 Yrs. Occ. Education
U/g Grandmother – Rajiya Sultana
w/o Gulam Mustafa, Age: 70 Yrs.,
occu. Household, R/o Jawahar
Colony, Dhar Road, Parbhani

= PETITIONER
(orig.Applicant)

VERSUS

Shaikh Zakir s/o Shaikh Hussain
Age: 48 Yrs., occu. Service
(LIC Dept.) R/o Gulshan Nagar,
Devnandra Parisar, Pathri,
Tq.Pathri, Dist. Parbhani.

= RESPONDENT
(orig.Non-applicant)

Mr.Shaikh Wajeed Ahmed, Advocate for Petitioner;
Mr.Pravin N.Kalani, Advocate for Respondent.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 12th March, 2020.

JUDGMENT:-

1. Rule. Rule is made returnable forthwith
by consent of learned Advocates appearing for the
respective parties.

2. Present Criminal Writ Petition has been
filed by original applicant, who is ten years old
daughter of respondent. Original applicant had
filed an application, i.e. Misc. Criminal

(2)

Application No.630/2016 for getting maintenance under Section 125 of Cr.P.C. before Chief Judicial Magistrate, Parbhani. It came to be partly allowed on 12th December, 2018, whereby maintenance @ Rs. 10,000/- per month was granted to the petitioner-applicant. Father preferred a revision application bearing Criminal Revision No.1/2019 before the Sessions Court. Learned Additional Sessions Judge, Parbhani has partly allowed the said Revision on 12th March, 2019 and reduced the maintenance amount to Rs.3,000/- per month. This order in Revision has been challenged by the present petitioner in this Criminal Writ Petition.

3. The factual matrix, leading to the original application seeking maintenance are, that the present respondent-husband has given divorce to mother of the present petitioner on 25.2.2010. Thereafter, mother of the present petitioner performed second marriage and she is residing with her husband. The original applicant-daughter was residing with her grand-mother. She is minor and has no source of income and unable to maintain herself. The respondent is working as Senior Clerk

(3)

in LIC department and it was contended that he is earning Rs.45,000/- per month and, therefore, maintenance was claimed.

4. The original respondent objected the said application by saying that, he has given *Talaq* to his wife as per the Muslim customs. Said wife had taken the applicant-petitioner along with her and left her with her parents. Said wife had demanded an amount of Rs.2,00,000/- as One-time maintenance for herself and for her daughter, so also for maintenance of the daughter including her medicine expenses and educational expenses, which was given by him in the name of his ex-wife on 12th March, 2010. The father says that in view of this fact, the daughter cannot claim maintenance.

5. As aforesaid, learned Chief Judicial Magistrate granted the maintenance @ Rs.10,000/- per month; whereas it has been reduced by the revisional court to Rs.3,000/- per month.

6. Heard learned Advocate appearing for the respective parties.

7. It has been vehemently submitted on behalf of the petitioner that, learned Judge of the Revisional Court has failed to consider the needs of the applicant-petitioner. The petitioner had pointed out that father is receiving huge amount as salary and Salary Certificate was thoroughly considered by the learned Trial Court. The Salary Certificate showed Gross Salary of the respondent at Rs.52,324/-. The Net salary has been considered by the learned Additional Sessions Judge, which is wrong. There was, in fact, no necessity for the Revisional Court to interfere with the quantum of maintenance fixed by the learned Trial Judge.

8. Per contra, learned Advocate appearing for the respondent, submitted that liability of the respondent has increased. He has married again and is having two sons. When his net salary is Rs. 19,050/- and out of that, if he was supposed to give Rs.10,000/- per month to the daughter, then he himself; his wife and two sons could not have managed to maintain in Rs.9,050/- per month and, therefore, balance has been rightly struck by the learned Additional Sessions Judge while reducing

the amount of maintenance.

9. At the outset, I do not agree with the proposition put by learned Advocate for the respondent as well as the reasons assigned by the learned Additional Sessions Judge, Parbhani that net salary is required to be considered while computing the maintenance amount. In fact, the Salary Certificate of the respondent has been produced at Exhibit-32, which shows that the Gross Salary is Rs.52,324/- for all the purposes. He is deducting huge amount which cannot be totally considered and only compulsory deductions at the most can be considered. If the proposition put by the respondent and which has been accepted by the Additional Sessions Judge, is taken into consideration, then it will give much rooms to the husbands to have more deductions or even raise various loans and deduct installments from the salary. This cannot be countenanced to defeat genuine rights of the dependents.

10. Though, mother of the petitioner has been divorced by the respondent and some amount appears

(6)

to have been paid by the respondent to her, that will not dis-entitle the petitioner from getting maintenance. Father is bound to maintain his daughter till she attains maturity. The price index ought to have been considered by the learned Additional Sessions Judge. Further, the growing needs of a girl, who is ten years old; school fees; daily needs of clothing; food etc, will have to be included. The amount of Rs.3,000/- per month reduced and fixed by the learned Additional Sessions Judge appears to be a meager and, therefore, taking into consideration the Gross salary of the respondent coupled with the needs of the petitioner, maintenance @ Rs.5,000/- per month to the petitioner would be appropriate amount. Hence, following order, -

ORDER

- 1) Writ Petition stands partly allowed.
- 2) The judgment and order dated 12.3.2019 passed by Additional Sessions Judge, Parbhani, thereby reducing the maintenance of Rs. 10,000/- to Rs.3,000/-, is hereby set aside. The said revision stands partly allowed.
- 3) The order of maintenance passed in

(7)

Cri.M.A. No.630/2016 by learned Additional Chief Judicial Magistrate, Parbhani, on 12.12.2018, is hereby set aside and modified as under, -

i. The original non-applicant, viz. Shaikh Zakir Shaikh Hussain, shall pay monthly maintenance of Rs.5,000/- to the original applicant(present petitioner) from the date of the application;

ii. It is clarified that the excess amount, if any, be adjusted and the balance, if any, be paid within a period of two months from today;

iii. Rest of the order passed by the Additional Chief Judicial Magistrate is maintained.

4) Rule is made partly absolute in the aforesaid terms.

(SMT. VIBHA KANKANWADI,J.)

BDV