

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

CRIMINAL REVISION APPLICATION NO.243 OF 2017

Dr. Ashok s/o Pundlik Pudale
Age: 57 years, Occu: Private Service,
R/o. : Chakur, Tq.: Chakur, Dist.: Latur.

... **Applicant**

Versus

1. Smt. Ashwini divorcee w/o Ashok Pudale
Age : 43 years, Occu: Service,
R/o. Jawaharnagar, Nanded.
Additional postal addres -
C/o : Santosh s/o Keshav Gajbhare
3, Tulsi Apartment, Shastrinagar,
Bhausar Chowk, Taroda, Nanded.

2. Shruti d/o Ashok Pudale
Age : 21 years, Occu: Private Service,
R/o. : As above.

... **Respondents**

**WITH
CRIMINAL WRIT PETITION NO.1597 OF 2017**

1. Smt. Ashwini divorcee w/o Ashok Pudale
Age : 43 years, Occu: Service,
R/o. Jawaharnagar, Nanded.
Additional postal addres -
C/o : Santosh s/o Keshav Gajbhare
3, Tulsi Apartment, Shastrinagar,
Bhausar Chowk, Taroda, Nanded.

2. Shruti d/o Ashok Pudale
Age : 21 years, Occu: Private Service,
R/o. : As above.

... **Petitioners**

Versus

Dr. Ashok s/o Pundlik Pudale
Age: 57 years, Occu: Private Service,
R/o. : Chakur, Tq.: Chakur, Dist.: Latur.

... **Respondent**

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Mr. A. S. Barlota, Advocate for applicant in Criminal Revision Application No.243 of 2017 and for respondent in Criminal Writ Petition No.1597 of 2017.

Mr. A. M. Gaikwad, Advocate for respondents in Criminal Revision Application No.243 of 2017 and for petitioners in Criminal Writ Petition No.1597 of 2017.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 09-01-2020.

JUDGMENT :

. Rule. Rule is made returnable forthwith. Heard finally with the consent of both the parties.

2. The Criminal Revision Application No.243 of 2017 is filed by the husband challenging the enhancement in maintenance by learned Judge, Family Court, Nanded in Petition No.E-93 of 2014 and Miscellaneous Criminal Application No.07 of 2015 dated 11-08-2017, whereas the Writ Petition No.1597 of 2017 is filed by the wife also to challenge the same order for maintenance in respect of the daughter whose maintenance has been enhanced till the attainment of her majority only. Hereinafter the parties are addressed as husband, wife and daughter.

3. The brief facts giving rise to the present litigation are that :-

Petition No.E-93 of 2014 was filed by the wife and daughter for enhancement in the maintenance amount, whereas Miscellaneous Criminal Application No.07 of 2015 was filed by the husband for cancellation of the maintenance order. It is not in dispute that by order dated 11-09-1996, maintenance at the rate of Rs.400/- each per month was granted to the wife and daughter in Miscellaneous Criminal Application No.354 of 1996. It was increased to Rs.1,250/- per month on 30-11-2004 in Miscellaneous Criminal Application No.277 of 2004. The wife and daughter contended that the prices of essential commodities has increased since 2004 and the daughter, who is having bright future, is taking higher education and therefore, it is difficult for them to survive in the meager amount of Rs.1,250/- per month. The husband was working as an Associate Professor in Bhai Kishanrao Deshmukh Mahavidyalaya, Chakur, Dist. Latur and his monthly salary is 84,221/-. In reply to the petition by wife and daughter, the husband has stated that the daughter has completed her degree of engineering and has joined a job in good company with huge package of good salary. Wife is also qualified and is a permanent teacher in Nehru English School, Nanded with salary of Rs.40,000/- per month. As both, wife and daughter are capable financially to maintain themselves and also the fact that the wife has remarried to one Ramesh Narayan Suryawanshi, the maintenance order deserves to be cancelled and the enhancement cannot be granted. On the same ground, he had prayed for cancellation of maintenance in Miscellaneous Criminal Application

No.07 of 2015. It was also contended that since the daughter has attained majority, the maintenance order deserves to be cancelled. The application filed by the husband was resisted by the wife and daughter by filing say which is again the repetition of the contents in their petition.

4. Both the proceedings were commonly tried by the learned Judge of the Family Court and after hearing both the sides and perusing the evidence, both the petitions were partly allowed. The husband was directed to pay maintenance at the rate of Rs.10,000/- per month to the wife from the date of the petition i.e. 23-02-2012. So also, the maintenance amount was increased in respect of daughter to Rs.10,000/- per month, however, it was stated that it should be till the attainment of the majority of the daughter i.e. till 04-06-2012. It was specifically stated that the maintenance order passed in favour of the daughter stood cancelled from the date of her attaining the majority. Hence, both the parties have filed these respective petitions.

5. Heard learned Advocate Mr. A. S. Barlota for husband and learned Advocate Mr. A. M. Gaikwad for wife and daughter in respective petitions.

6. The learned Advocate appearing for the husband has submitted that though the marriage took place between husband and wife on 30-05-1993 and the daughter was born to them, the husband has filed H.M.P No. 158 of 2008 for

getting divorce and accordingly by judgment and decree dated 04-01-2011, the marital status between them has come to an end by decree of divorce. The stay of the wife with the husband was only for 8 to 10 days and then she had gone back to her parental house to complete B.Ed. course. She was adamant and then refused to come along with the husband. In spite of birth of daughter her attitude did not change, but in order to pressurize the husband and his family members false complaint for the offence punishable under Section 498-A of Indian Penal Code was lodged by her. The husband was acquitted by the learned 3rd Joint Judicial Magistrate First Class, Nanded from the said offence on 18-09-1996. Earlier also, the husband had filed the H.M.P No.77 of 1996 for getting divorce, however, it came to be dismissed by observing that the husband has failed to prove continuous desertion of two years. He had preferred appeal before the learned Joint District Judge, Nanded bearing Appeal No.202 of 1998 and it came to be allowed on 30-04-2003. The decree was set aside and the decree of judicial separation was awarded. The wife never turned up to the husband for cohabitation and therefore, ultimately, H.M.P No.158 of 2008 was filed by him for getting divorce and accordingly, it has been decreed on 04-01-2011. In view of the said fact, the wife is not entitled to get maintenance. So also, since the daughter has completed her degree and has got a good job, they are no longer dependent on the husband. The learned Judge of the Family Court ought to have cancelled the maintenance order in respect of both of them. The learned Advocate

for the husband has relied on the decision in **Sri Jasholal Agrawala alias Jain Vs. Smt. Puspabati Agrawala [1994 CRI. L. J. 185]**, wherein it has been held by Orissa High Court that :

“It is an accepted principle that finding of civil court in a matrimonial proceedings that wife had deserted her husband and had not joined the matrimonial home on her will and desire is binding on the Criminal Court and the Criminal Court is not entitled to question the correctness of validity of civil courts decision. But while negating the claim of wife for maintenance it is incumbent on part of trial court to scrutinise the judgments passed in the civil suits and ascertain if any such finding had been recorded therein. A further question which needs to be examined in such a case is that if such a finding was recorded by the civil court whether in the averments made petition filed under S. 125, Cr. P.C. and in the evidence led in the proceeding there is anything to show that subsequent to the decree of the civil court there has been a material change in the fact position or a supervening circumstance has taken place which entitles the wife to maintenance.”

Further, reliance has been placed on the decision in **Rohtash Singh Vs. Smt. Ramendri and others, [AIR 2000 SC 952]**, wherein it has been observed that :-

“A wife against whom a decree for divorce has been passed on account of her deserting the husband can claim Maintenance Allowance under Section 125, Cr.P.C. and the plea of desertion by wife cannot be treated to be an effective plea in support of the

husband's refusal to pay her the Maintenance Allowance. After decree for divorce is passed she is under no obligation to live with the husband but though marital relations come to an end by the divorce granted by family court under S. 13 of Hindu Marriage Act, the respondent continues to be wife within meaning of S. 125, Cr.PC. on account of Expln.(b) to sub-sec (1) of S. 125 which provides that a woman who has been divorced by her husband on account of a decree passed by the Family Court under the Hindu Marriage Act, continues to enjoy the status of a wife for the limited purpose of claiming Maintenance Allowance from her ex-husband. As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125(4). In another capacity, namely, as a divorced woman, she is again entitled to claim maintenance from the person of whom she was once the wife. A woman after divorce becomes a destitute. If she cannot maintain herself or remains unmarried, the man who was, once, her husband continues to be under a statutory duty and obligation to provide maintenance to her."

7. Per contra, the learned Advocate appearing for the wife and daughter submitted that as regards basic enhancement in the amount is concerned, the learned trial Judge was correct. Though it had come on record that the wife is earning Rs.12,800/- per month, yet, that amount is not sufficient and to the status of the husband, who was getting salary around Rs.1,28,460/- per month, the enhancement was correct. Though enhancement was granted, it was not sufficient. So also, he erred in restricting the enhancement granted to the

daughter till attainment of majority. Reliance has been placed on the decision in **Jagdish Jugtawat Vs. Manju Lata [2002 (5) SCC 422]**, wherein it has been held that “the major daughter is also entitled to maintenance under Section 125 till her marriage.” In this case also, the learned Judge of the Family Court by applying Section 125 of the Code of Criminal Procedure and Section 20(3) of the Hindu Adoptions and Maintenance Act, had granted maintenance to the major daughter till her marriage.

8. At the outset, it can be said that initially maintenance order was passed on 11-09-1996 in Miscellaneous Criminal Application No.354 of 1996. At that time, the relationship between the husband and wife was of legally wedded husband and wife. Even at the time of enhancement of maintenance on 30-11-2004, in Miscellaneous Criminal Application No.277 of 2004, the relationship was same. The decree for divorce has been passed on 04-01-2011. In **Rohtash Singh’s** case (Supra) itself, it is stated that a women after divorce becomes destitute and she continue to enjoy the status of ‘wife’ for claiming maintenance. In that case, the plea that divorce was on account of desertion by wife, would be irrelevant. Therefore, major part of the argument submitted on behalf of the husband is not helpful to the husband. We are here only restricted to consider the enhancement in the maintenance amount. Taking into consideration the salary of the husband to the tune of Rs.1,28,460/-, the maintenance which

was awarded in the year 2004 at the rate of Rs.1,250/- each is too much meager. Though it had come on record that the wife is serving, yet, the salary which was brought on record was to the tune of Rs.12,800/-per month only. The learned Judge of the Family Court was justified in observing that the salary of the wife is inadequate for dignified sustenance of the person who is qualified and who, as a wife, would have enjoyed prior to the divorce. Even after divorce, the maintenance should be commensurate with the living standard of the parties. Therefore, taking into consideration that aspect, enhancement at the rate of Rs.10,000/- per month to the wife is perfectly justified. So also, it is justified in respect of daughter as regards the quantum is concerned. Though the husband has stated that the daughter after getting the degree of engineering is serving, no evidence has been adduced to support the said fact. Further in view of the decision in **Jagdish Jugtawat's** case (Supra) the learned trial Judge ought not to have restricted the enhancement till attainment of the majority by the daughter. It should have been till her marriage. Therefore, the criminal revision application filed by the husband deserves to be dismissed and the criminal writ petition filed by the wife and daughter deserves to be partly allowed. Hence, the following order :-

ORDER

- I) Criminal Revision Application No.243 of 2017 stands dismissed.

II) Criminal Writ Petition No.1597 of 2017 is hereby partly allowed.

III) Clause No.3 of the operative order passed by the learned Judge of the Family Court, Nanded on 11-08-2017 in common judgment in Petition No.E-93 of 2014 and Miscellaneous Criminal Application No.07 of 2015 in respect of maintenance to original petitioner No.2 restricting the enhancement in the maintenance till the attainment of majority i.e. 04-06-2012 is hereby set aside and modified as follows :

“3. Respondent do pay Rs.10,000/- per month to petitioner No.2 in respect of Rs.1,250/- per month from the date of the filing of Petition No.E 93 of 2014 i.e. 23-02-2012 till the marriage of petitioner No.2.”

IV) Clause No.4 in the operative order of the impugned judgment stands set aside.

V) Rule is made absolute in the above terms.

VI) Parties to bear their own costs.

[SMT. VIBHA KANKANWADI, J.]