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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRI. WRIT PETITION NO. 109 OF 2017**

Mr. Maksudali Akhatarali Pirjade

.... Petitioner.

V/s

Mrs Nursaba alias Nafisa Maksudali Pirjade
and Others

.... Respondents.

Mr. Satyajeet Dighe for the Petitioner.

Mr. Pravartak Pathak a/w Ms. Tanvi Sangle for the Respondent Nos. 1
and 2.

CORAM: NITIN W. SAMBRE, J.

DATE: 26th OCTOBER, 2020

P.C.:-

1] Heard Mr. Dighe, learned Counsel for the Petitioner.

2] Impugned in the Petition is an order dated 30/09/2016 passed by the Family Court, Nashik in exercise of powers under Section 127 of the Code of Criminal Procedure, thereby enhancing maintenance as was fixed at Rs 1,000/- and Rs 500/- for the Respondent and her son respectively to Rs 7,000/- and Rs 5,000/-.

3] Mr. Dighe, learned Counsel for the Petitioner invited attention of

this Court to the scheme of Section 127 of the Code of Criminal Procedure and would urge that while dealing with the claim for enhancement under Section 127, the Court while passing the order impugned has committed an error in law in re-appreciating the entire gamut of the matter afresh, as if it is passing a fresh order under Section 127 for grant of maintenance. As such, according to him, the order impugned is not sustainable as it is contrary to the scheme under Section 127 of the Code of Criminal Procedure.

4] The next contention of Mr. Dighe is, the Petitioner is working as a labour with various contractors with whom as and when the work is available. According to him, that being so, it is impossible for him to furnish details of his employer i.e. contractors under whom he has worked and received wages. Mr. Dighe then would urge that enhancement from Rs 1000/- and Rs 500/- for Respondent Nos. 1 and 2 respectively to that of Rs 7,000/- and 5,000/- is at much higher rate i.e. in excess of the income of the Petitioner and therefore the order impugned warrants interference. Mr. Dighe would urge that the Petitioner is not denying his liability to pay maintenance but not at an enhanced rate.

5] Mr. Pathak, learned Counsel for the Respondent would support the order impugned and would submit that Respondent Nos. 1 and 2 were awarded maintenance of Rs 1,000/- and Rs 500/- respectively way back in 2005. Mr. Pathak then would urge that the Petitioner, who is the holder of Aadhar Card and Pan Card, is earning sufficiently so as to discharge his financial burden of paying maintenance, as according to him, Petitioner is acting in a smart way as he is not leaving any evidence so as to infer his exact income. Mr. Pathak invited attention of this Court to the admission by the Petitioner that the Petitioner has executed work for the Nashik Municipal Corporation. In addition, attention of this Court is invited to the order of this Court directing the Petitioner to disclose details of his employer under whom he has worked.

6] Considered rival submissions.

7] The order of award of maintenance was passed on 06/02/2007 by the Chief Judicial Magistrate, Nashik awarding maintenance of Rs 500/- and 300/- with effect from 07/06/2005, which was

enhanced in revision to Rs 1,000/- and Rs 500/- respectively for Respondent Nos. 1 and 2. As such, the said maintenance of Rs 1,000/- and 500/- was awarded in 2005 and it is after a lapse of period of almost 10 years, Family Court has enhanced the same to Rs 7,000/- and Rs 5,000/- respectively. It is worth to observe here that the Petitioner who is claiming to be labour, is a Pan Card holder and he has stated in categorical terms that he has executed some work for Nashik Municipal Corporation. Apart from above, order of this Court directing the Petitioner to disclose details about his employer is not complied with, though he is working with various employers/contractors. The aforesaid approach on the part of the Petitioner is nothing but suppressing his true source of income.

8] Considering the aforesaid background, enhancement granted by the Family Court cannot be termed to be exorbitant, particularly when fact remains that the Petitioner-husband is acting in such a way that he is not permitting the Respondent to have any evidence about his earning to be placed before the Court.

9] It is also required to be noted that it was always open for the

Petitioner to place on record as to what was the necessity of he having the Pan Card, his place of residence and his income as labour which he has failed to demonstrate. In view of above, inference drawn by the Family Court for granting enhancement cannot be faulted with. There is no illegality committed or noticed in the order impugned. Petition as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)