

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

CRIMINAL REVISION NO. 40/2018

Janardhan Devidas Shirsat,
aged 50 years, Occ. Service,
r/o c/o Z.P. School, Vivra, Tq. Patur,
Dist. Akola.

.....APPLICANT

...V E R S U S...

1. Sau. Prarthana Janardhan Shirsat,
aged 34 years, Occ. Nil.
2. Ku. Sakshi Janardhan Shirsat,
aged 17 years, minor,
through Natural Guardian Mother
Both r/o c/o V. D. Ingle, Ramesh Nagar,
Dabki Road, Akola, Tq. Dist. Akola.

...NON APPLICANTS

WITH
CRIMINAL REVISION NO. 52/2019

1. Sau. Prarthana Janardhan Shirsat,
aged 34 years, Occ. Nil.
2. Ku. Sakshi Janardhan Shirsat,
aged 17 years, minor, through Natural
Guardian Mother Both r/o c/o V. D. Ingle,
Ramesh Nagar, Dabki Road, Akola,
Tq. Dist. Akola.

.....APPLICANT

...V E R S U S...

Janardhan Devidas Shirsat,
aged 50 years, Occ. Service,
r/o c/o Z.P. School, Vivra,
Tq. Patur, Dist. Akola.

...NON APPLICANT

Mr. P. S. Girdekar, Advocate for applicant in Criminal Revision No.40/2018 and non applicants in Criminal Revision No.52/2019.
Mr. U. J. Deshpande, Advocate for applicants in Criminal Revision No.52/2019 and non applicant in Criminal Revision No.40/2019.

CORAM:- V. M. DESHPANDE, J.
DATED :- 01.02.2021

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. These two revision applications can conveniently disposed of by this common judgment in view of the fact that in both these revisions challenge is set up to the judgment and order dated 02.11.2017 passed by learned Judge, Family Court, Akola in E Petition No.28/2017.

3. There were marriage ties between applicant-Janardhan in Criminal Revision No.40/2018 and applicant no.1-Smt. Prarthana in Criminal Revision No.52/2019. Thus, till their marriage was dissolved by a decree dated 06.12.2010 by learned 2nd Jt. Civil Judge Senior Division, Akola, they were husband and wife. Therefore, in this judgment, for the sake of convenience, they are referred as 'husband' and 'wife'.

4. Initially, in the year 2002, wife and child were required to file proceedings under Section 125 of the Code of Criminal Procedure. By filing the application, they claimed maintenance from the husband. The application was registered as Criminal Application No.442/2002. It was contested by husband. However, learned Magistrate, vide judgment and order dated 21.07.2007, allowed the application under Section 125 of the Code of Criminal Procedure and directed the husband to pay maintenance to wife at the rate of Rs.800/- per month and to child at the rate of Rs.500/- per month. This order was never challenged by the husband and thus he has accepted the verdict given against him by the learned Magistrate.

5. The wife and child, in the meanwhile, filed an application i.e. Misc. Criminal Application No.1154/2005 for enhancement of maintenance granted in their favour. The said application was also contested by husband. However, during the pendency of the said, there took compromise in between husband and wife and the husband agreed to pay enhanced maintenance from Rs.800/- to Rs.1400/- to wife and from Rs.500/- to Rs.1000/- to the child. One of the term of the compromise was to

file an application for divorce. Accordingly, decree of divorce was granted in the Hindu Marriage Petition.

6. The wife and child, thereafter, in the year 2017, filed application under Section 127 of the Code of Criminal Procedure being E Petition No.28/2017. By this application, the wife and child claimed enhanced maintenance of Rs.10,000/- each. The application was contested by the husband mainly on the ground that after the decree of divorce, the husband entered into second marriage and from the wedlock, he is having two daughters and one son. He has to maintain them also.

7. The learned Judge, Family Court, after considering the respective cases of husband and wife, partly allowed the application filed on behalf of the wife and child and by the impugned judgment dated 02.11.2017, awarded the enhanced maintenance of Rs.5,000/- to the wife and Rs.1000/- to the child.

8. After hearing learned counsel for the parties, I am of the view that learned Judge of the Family Court, Akola has aptly considered the evidence, which was adduced before the said Court

in respect of the enhanced compensation. There is some force in the submissions made by learned counsel for the wife and child that the learned Judge, without ascribing any reasons as to why the maintenance is being enhanced from the date of the order, passed the said order. A submission is made on their behalf that enhancement ought to have been from the date of the application. Normally, maintenance is granted from the date of the application. If the learned Judge, who has granted maintenance wishes to grant maintenance from the date of the order, it is expected to give reasons as to why the applicants, who are otherwise entitled for the maintenance, are to be granted maintenance from the date of the order and not from the date of the application. In the present case, the impugned judgment does not give any reasons as to why the learned Judge is granting enhanced maintenance from the date of the order and not from the date of the application. Therefore, to that extent, the judgment passed by the learned Judge of the Family Court is required to be upset.

9. When initially enhancement was granted in view of the compromise between husband and wife, that time monthly salary of the husband was Rs.9,422/-. At the time of decision of the

application under consideration by the learned Judge, Family Court, monthly salary of husband was Rs.45,954/-. According to learned counsel for husband, it was gross salary and not the net salary. Therefore, he submits that grant of enhancement is required to be reduced. It is the settled law that except statutory deductions, no other deduction has to be considered while determining the quantum of maintenance. The learned Judge has rightly considered the said aspect and found that the husband cannot rely on his net salary. The learned Judge has also considered the fact that now the husband has remarried and he has to maintain his second wife, two daughters and one son. The learned Judge, after considering the monthly income as well as income received from the agricultural property, has rightly reached to the conclusion about enhancement.

10. In view of above, Criminal Revision No.40/2018 is dismissed and Criminal Revision No52/2019 is partly allowed. Judgment and order passed by learned Judge, Family Court, is set aside only to the extent it grants maintenance from the date of the order. Instead, the husband shall be liable to pay enhanced maintenance from the date of the application under Section 127 of

the Code of Criminal Procedure i.e. 30.03.2017. Difference of enhanced maintenance for this period shall be deposited by husband within six weeks from today in the Family Court, Akola. On deposit of such amount, the wife and child shall be entitled to withdraw the said amount.

Rule is made absolute in the above terms.

JUDGE

kahale