

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.258 OF 2019

Sau. Surekha w/o. Devendra Kamble,
Age 37 years, Occu. Household,
R/o. Old Renapur Naka, Latur,
Ambajogai Road, Taluka and District Latur
Pin - 413512

.. Revision Applicant

Versus

Devendra s/o. Rambhau Kamble,
Age Major, Occu. Service,
R/o. Goroba Society, Nanded Road,
Latur, District Latur, Pin - 413512

.. Respondent

...

Ms. Nirmala K. Helkute, Advocate holding for Mrs. Ranjana D.
Reddy, Advocate for Applicant (Revision Petitioner)
Mr. Ankush N. Nagargoje, Advocate for Respondent

...

CORAM : S. G. MEHARE, J.

DATE : 11-07-2022

PER COURT :-

1. Heard the learned counsel for the applicant and the learned counsel for the respondent at length.
2. The petitioner/wife has impugned the judgment and order dated 29.06.2017 passed by the learned Family at Latur, in Criminal Miscellaneous Application No. 4 of 2017.
3. Brief facts giving rise to the revision application are that, the applicant/wife had filed an application under Section 125 of the

Code of Criminal Procedure, 1973 ("Cr. P.C" for short) in the year 2001. The learned Magistrate granted her monthly maintenance of Rs.700/-, and she had preferred Revision against the said order before the learned Sessions Court. The Sessions Court enhanced the maintenance to Rs.1000/- per month. In the year 2010, the applicant-wife had moved another application under Section 127 of Cr.P.C. for enhancement of the maintenance on the ground of escalation of prices of commodities. The learned Magistrate enhanced maintenance to Rs.1500/- in the year 2012. The petitioner had preferred Criminal Writ Petition No. 1106 of 2012 before this Court. This Court, considering the entire aspects and the income of the respondent at the relevant time, has enhanced the maintenance to Rs.3500/- per month.

4. Once again, the applicant moved an application under Section 127 of the Cr.P.C. for enhancement of the maintenance, on the ground that there is a high rise in the price of daily needs, she was suffering from a few diseases, and she has been paying house rent of Rs.4500/- as she is residing at Latur. She had claimed the maintenance of Rs. 15000/- per month.

5. The respondent has resisted the application by filing a reply. He has denied every pleading of the application. He has specifically denied that the petitioner pays Rs.4500/- for house rent. He has pleaded that Rs.3500/- is just and reasonable

maintenance to her. He has also come up with a case that in 2007, Lokshahir Annasaheb Sathe Development Corporation had sanctioned her a loan of Rs. 1,00,000. She runs a Gift and General Store in Sambhajinagar, Latur. She earns Rs.10,000/- per month from the said shop. There is no change in the circumstances to enhance the maintenance. He is paying her the monthly maintenance regularly. He has two mentally challenged brothers. He has to maintain them. He has to spend a huge amount on their maintenance and medication. Therefore, he cannot pay the maintenance of Rs.15,000/- per month. He has raised bank loans for family needs and is paying monthly instalments. Therefore, the application may be dismissed.

6. The learned counsel for the applicant has vehemently argued that the learned Family Court has committed the error of law in holding that the applicant has suppressed the facts of obtaining a loan and her source of income. Hence, she cannot expect that Court should help her. The learned Family Court has also erred in holding that the wife should place on the record how much she earns from a particular source of income. She has not placed on record proof of her medical expenses. The learned counsel has vehemently argued for the applicant that without any cogent and reliable evidence and only on the oral evidence of the respondent/husband, the learned Family Court has believed that his both brothers are mentally challenged; therefore, he has the

responsibility to maintain them. The learned Family Court has erred in relying on the prescriptions of the year 2001-02. It has also been argued that the learned Family Court has erred in observing that the applicant has not tried to find out a way, to resist the allegation that she has a source of income from the shop. It has been argued that the findings recorded by the learned Family Court are against the facts on record. The applicant has no source of income. The applicant has no burden to maintain mentally challenged brothers. Raising the loan and paying its instalments is not a statutory deduction. In the absence of cogent and reliable evidence and without appreciating the evidence, the learned Family Court has erroneously rejected the application.

7. Per contra, the learned counsel for the respondent/husband would submit that the factum of suppression of fact of raising loan of Rs.1,00,000/- and the income from the said shop is a ground to reject the application. He has also argued that she has also not proved how much rent she is paying. On the contrary, it has come in her cross-examination that now she is residing in the village Mogarga. The standard of living in village Mogarga is not so high. Besides that, she has also not produced rent receipts from the landlord of village Mogarga. She has not produced documentary evidence to prove that she needs Rs.3000/- to Rs.4000/- per month towards her medical expenses. Considering the living standard of the applicant in a small village as well as the

responsibility of the respondent to maintain his two brothers, maintenance of Rs.3000/- is proper. The impugned order is free from error and infirmity. The suppression of facts from the Court dis-entitle the applicant from getting the maintenance. He has referred to the documents placed on record and prayed to dismiss the petition.

8. Upon hearing the learned counsel for both sides, the following points arise for determination, and the findings thereon are recorded for the reasons to follow;

Nos.	Points	Findings
1	Whether the impugned order is legal, .. correct and proper?	No
2	What order?	.. As per the final order

REASONS

Point No.1:

9. The application under Section 127 of the Cr.P.C. for alteration of the maintenance has to be dealt with with changed circumstances. The change in pecuniary or other circumstances of the party would justify the increase or decrease of the monthly maintenance amount. The law is settled that the rising cost of living results in change of circumstances. The rule of inflation would definitely apply to the cases filed under Section 127(1) of the Cr.P.C. The hike in the prices of daily needs and the expenses

required for medication is also the change in circumstances to consider the alteration in the maintenance granted by the competent Court. So far as the standard of living rule is concerned, the family stands and the way of life, which the applicant-wife was expected to live depending on the income of the family, is also the factor to be considered by the Court while determining the quantum of the maintenance. No doubt, the responsibility of the husband to maintain the other dependents, is also the ground to be considered by the Court while determining the quantum of maintenance. The rule of burden of proof is well known that who says has to prove. This rule has been enumerated in Section 101 of the Indian Evidence Act. The proceeding under Section 127 of the Cr.P.C. is a trial as if the application under Section 125 of the Cr.P.C. except the liability to prove the refusal and neglect without any reasonable cause.

10. The Courts have to appreciate the evidence produced by the respective parties. So far as the cases under Section 127 of the Cr.P.C. are concerned, the party has to prove the change in circumstances on the date of the application filed by him or her.

11. It appears from the observations recorded by the learned Judge of the Family Court that he has considered only the fact of raising loan by the applicant/wife in the year 2005. The respondent/husband has a case that, the applicant/wife has source

of income from the shop. Therefore, the burden was on the respondent/husband would be to prove that, she has sufficient source of income, and therefore, she does not require maintenance from the husband. For the first time, the respondent/husband has come with a case that she has raised the loan of Rs.1,00,000/- and she runs a shop. The documents placed on record by him show that the loan was sanctioned to her. Some quotations were also called. She had ordered some material for business. The lease agreement is also placed on record. All these documents are of the year 2005. If that was the fact in the knowledge of the present respondent, he had an opportunity to file an application under Section 127 of the Cr.P.C. for cancellation of the maintenance of the petitioner/wife. However, he did not file any proceeding against the petitioner.

12. It has been observed by the learned Judge, that the petitioner/wife has suppressed this fact even when she had claimed enhancement of the maintenance in the year 2012. A fact that must not be ignored is that the respondent/husband served in Municipal Council. Every shop is registered with the Municipal Council. The respondent/husband was the person, who may have the best knowledge about the shop run by the applicant/wife or at least he could produce the evidence to show that she runs the shop. The objection was never raised before the Court when the earlier enhancement application was filed. Be that as it may,

merely sanctioning the loan, taking the shop on rent and calling quotations for supplying the goods, is not a proof that the shop was actually run by the petitioner/wife. So far as the shop license is concerned, it was valid only from 2006-2007 and it does not reflect that it was renewed time to time. The sole rent receipt of the year 2005 of the shop reveals that it was paid for one month only.

13. It has been observed by the learned Judge of the Family Court that this fact has been suppressed by the petitioner/wife, when she had obtained the order in the year 2012. In absence of any pleadings by either of the sides, it would be very difficult to accept the objection raised by the learned Family Court that the applicant/wife had suppressed the fact from the Court that she has an income source from the shop. The contrary finding was recorded by the learned Family Court that the non-applicant/husband is unable to bring the evidence before the Family Court. The fact remains that whatsoever document the respondent/husband has placed on record were of the year 2005 and the enhancement proceeding was initiated in the year 2012. Considering these aspects, this Court is not agreeable with the findings recorded by the Family Court, that the applicant/wife has suppressed the fact that she runs a shop and has income from the said shop.

14. The learned Family Court has also erred in observing that the applicant/wife had to deny the fact of obtaining the loan and running the shop on affidavit and without this exercise, the applicant/wife has tried to find a way to resist these allegations. While conducting the cross examination of non-applicant/husband, she has tried to bring on record that she has now been residing at village Mogarga and not at Latur. In her cross-examination by the non-applicant/husband, she has admitted that since the death of her mother, she is residing at village Mogarga on rent in the house of her uncle. When the question was put to her that now she is not residing in Latur on rent, to this question, her answer was that after filing the application, her mother has died and, hence, she has shifted to village Mogarga. Though such evidence was available, the learned Family Court has erred in observing that she completely failed to prove the fact that now she is residing at village Mogarga.

15. The burden to prove that the non-applicant/husband has to maintain his two brothers was on him. He has specific defense that his two brothers are mentally challenged and he has to spend huge amount on their medication and maintenance. To prove his liability, he has barely placed on record the medical prescription and bills of his one brother Vikram Kamble. The medical prescription and bills of the year 2001 and 2002, and last prescription is of dated 04.09.2002. Merely, filing the prescriptions

that too of the year 2002 is not the sufficient evidence to believe that the brothers of the respondent/husband are mentally challenged and the respondent/husband has the responsibility to maintain them.

16. As far as the income of the respondent/husband is concerned, his salary slip has been placed on record. His last drawn salary was of Rs.33,348/- per month. A question is, whether deduction towards bank loan and other non-statutory deductions, shall be considered for determining the quantum of maintenance. The learned Family Court has observed that all deductions except the deduction towards maintenance payable to the applicant/wife, income tax and profession tax are for his own benefit. It has also been observed that the respondent/husband is required to maintain his two brothers. There is absolutely no evidence that how much amount the respondent/husband has to spend on the medication of his two brothers. There is no evidence that the second brother is also suffering from mental disorder or the respondent/husband has to maintain him. Therefore, it can be believed that the applicant has responsibility to maintain his two mentally challenged brothers.

17. The learned Family Judge has observed that the respondent/husband has two mentally challenged brothers and the applicant/wife has suppressed the fact from the Court about her

independent source of income, therefore, it cannot be said that there is change in the circumstances to enhance the maintenance amount.

18. The respondent/husband has brought in her cross-examination that she was suffering from blood pressure and vertigo, she feels weakness and giddiness. No doubt, she has not filed the documentary evidence that she is residing on rent in her uncle's home and she spend money on her medication regularly. However, she has categorically explained that she has shifted to village Mogarga after her mother has died. Hence, she has to go for shelter to her uncle in the village. Therefore, considering this fact, her evidence cannot be thrown that she did not spend on rent.

19. Normally, the blood pressure and vertigo patient takes medicine regularly. Considering this fact brought by respondent/husband in her cross-examination, that she has blood pressure and vertigo, it can safely be inferred that she must have spent some amount on her medication.

20. Whatever the documents filed by respondent on record, are insufficient to believe that she runs the shop and she has income source from that shop. Evaluating the fact and material on record, this Court is of the view that the respondent/ husband failed to discharge the burden to prove that she has independent source of

income and does not require the enhancement.

21. Considering the inflation of the day, it is very difficult to maintain oneself with a meager amount of Rs.3500/- per month. Even minimum wages are much higher than the maintenance granted to the applicant. The last salary drawn by the applicant was Rs.33,348/- per month. Non-statutory deductions shall be taken into consideration while deciding the quantum of maintenance. Considering the evidence placed on record, the living standard of the respondent/husband, this Court is of the considered view that the impugned order is erroneous, illegal and improper.

22. Considering the last salary drawn by the respondent/husband and the standard of living as well as the inflation of the day, this Court is of the view that the monthly maintenance of Rs.10,000/- would be just and proper. Therefore, the revision application deserves to be allowed.

23. In view of the above, point No.1 is answered in the negative.

Point No.2 :

24. This Court has discussed the facts, law and also appreciated the evidence and come to the conclusion that the impugned order is erroneous, illegal and improper, and therefore, the interference at the hands of this Court is required. Thus, the following order -

ORDER

- (i) The Revision Application is allowed.
- (ii) The impugned Judgment and order passed by the learned Judge, Family Court, Latur in Criminal Miscellaneous Application No. 4 of 2017, dated 29.06.2017, is quashed and set-aside.
- (iii) The application filed by the applicant/wife is allowed.
- (iv) The maintenance of Rs.3500/- (Rs. Three Thousand Five Hundred) per month granted to the applicant is altered and enhanced to Rs.10,000/- (Rs. Ten Thousand) per month.
- (v) The respondent/husband do pay the maintenance of Rs.10,000/- (Rs. Ten Thousand) to the applicant/wife from the date of the application and maintenance paid by him as per the earlier orders shall be adjusted.
- (vi) The record and proceeding be returned to the concerned Family Court.

**(S. G. MEHARE)
JUDGE**