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

CRIMINAL REVISION APPLICATION NO.76 OF 2022

**HIMMATSING DEOBA GIRASE
VERSUS
KAVITA HIMMATSING GIRASE AND OTHERS**

...
Advocate for Applicant : Mr. Jain Mohan C. & Mr. Waramaa B.R.
Advocate for Respondent Nos.1 to 3 : Ms. Sabahat T. Kazi

...

CORAM : S.G. MEHARE, J.

DATED : 17th OCTOBER, 2022

PER COURT:-

1. Heard learned counsel for the applicant-husband and learned counsel for respondent-wife.
2. The applicant-husband has challenged the quantum of maintenance granted to the respondent-wife and his children for Rs.11,000/- per month based upon his monthly income of Rs.18,000/-.
3. Learned counsel for the applicant would submit that the learned Courts did not assigned the reasons for quantifying the income. In the absence of any income apart from the salary, the property of the father of the petitioner having no income source has been tried to be taken into consideration. The findings have been recorded by the Courts that the father of the petitioner has some properties. However, the income was not proved. The applicant-

husband is a medical officer, posted in tribal area on contract. The applicant-husband and his family is not residing in their house. The respondent-wife and her children have occupied the entire house. They have disproportionate expenses to the income of the applicant-husband. The case of the respondent-wife that she has to spent much amount for the education is not relevant. She has chosen the school of high fees. She did not have to spent money on house rent. She is residing in a small town like Shirpur. Therefore, without assigning any appropriate reason, the order granting maintenance of Rs.5,000/- to wife and Rs.3,000/- each to children is disproportionate and against the law.

4. Per contra, learned counsel appearing for the wife and children has vehemently argued that the learned Courts have quantified the correct maintenance amount considering the standard of living, the educational need of the day and the property of the father of the husband. The amount quantified by the Court below is correct that the maintenance amount is also less. The applicant has no case that the quantum is excessive. Therefore, the petition deserves to be dismissed.

5. While quantifying the maintenance, the usual rule is to consider the source of income of the husband, standard of living and the family background. Admittedly, the husband is a BAMS and working as a medical officer at Primary Health Centre, Rohini and

was getting the salary of Rs.18,000/- per month. He was working on adhoc basis.

6. Though it has been argued that apart from the job at Primary Health Centre, he is practicing medicine. No evidence is led on record. The Court has to consider the proved income of the husband, who is responsible to maintain his wife and children. Naturally, the expenses of each family depends on the income. Family expenses should proportionate to income. Admitting the boys in high fee charging school may not be a ground to consider that it was the proportionate requirement for the upliftment of the children. It is not in dispute that the respondent-wife and children are residing in the house. On the contrary, the parents of the applicant-husband are residing somewhere else. So naturally, she had no expenses of house rent. The applicant-husband has to attend his duty at village Rohini and surrounding tribal villages. Since he is not residing in his house, he has to spent money on conveyance, food etc.

7. In short, considering the income of the husband and in the absence of any reason for determining the quantum, the Court is of the view that the quantum determined by the learned Judicial Magistrate First Class and learned Additional Sessions Judge, appears disproportionate. No doubt, the applicant-husband is a medical practioner but it is not a thumb rule that every medical practioner has high income and standard of living.

8. Learned counsel for the applicant would submit that the applicant was educated in Zilla Parishad School and got admission into BAMS on merit. Be that as it may, the proved income is the basis to determine the quantum. The rule to consider the expenses for basic requirement is equally applicable to the husband also. In view of the facts of the case, the Court is of the view that the order granting maintenance warrants interference for the reason that the applicant has a fixed income of Rs.18,000/- per month. He has to spent money for his own. On the contrary, the wife and children are in his parents house. So the quantum of maintenance granted to the wife may be reduced to Rs.1,000/- per month. However, considering the requirement of the day, the quantum granting Rs.3,000/- each to respondent nos.2 and 3 is affirmed to be correct. The compensation of Rs.30,000/- also appears correct. Hence, the following order :

ORDER

- I) Revision application is partly allowed.
- II) The order granting maintenance by learned Judicial Magistrate First Class, Court No.2, Shirpur in Criminal M.A. No.515 of 2017 dated 10.12.2018 and confirmed by the learned Additional Sessions Judge at Dhule in Criminal Appeal No.134 of 2018, is set aside and modified as follows :

(5)

- (a) The respondent-wife is entitled to the maintenance of Rs.4,000/- per month as per the orders passed by the learned Judicial Magistrate First Class at Shirpur and confirmed by the learned Additional Sessions Court at Dhule.
- (b) The excess amount of Rs.1,000/- which has been reduced shall be adjusted in arrears of the maintenance.
- (c) The applicant-husband shall continue to pay the maintenance amount as directed above and clear the arrears as per the order of the learned Judicial Magistrate First Class in three equal installments of two months each.
- (d) The order granting compensation is confirmed.

(S.G. MEHARE, J.)