

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

CRIMINAL REVISION APPLICATION NO. 122 OF 2020

Kisan Sarjerao Gavali .. Applicant

Versus

Chandrakala Kisan Gavali .. Respondent

Mr. Nitin S. Kadarale, Advocate for the Applicant.

Mr. Hemant Surve, Advocate for Respondent.

CORAM : BHARAT P. DESHPANDE, J.

DATED : 22nd AUGUST, 2022.

PER COURT:-

1. This is a revision application filed by the applicant challenging the order dated 13.10.2020 in Criminal Miscellaneous Application No. 24/2014 whereby the learned Family Court allowed the said application for enhancement of maintenance claimed by the respondent. Vide impugned order, maintenance was enhanced from Rs. 3000/- (Rs. Three Thousand only) to Rs. 7000/- (Rs. Seven Thousand only) to the respondent.

2. Heard learned counsel Mr. Kadarale for the applicant and learned counsel Mr. Surve for the respondent.

3. Learned counsel appearing for the applicant pointed out that, the applicant preferred Criminal Writ Petition No. 1053/2019 challenging the order passed by the learned Family Court wherein, his prayer to exhibit VCD

and photographs was rejected. This Court vide order dated 21.09.2019 quashed and set aside the said order directing the learned Family Court to decide all issues including the issue about admissibility of proof of the VCD and photographs by extending opportunity to both sides to re-agitate the issue during course of final argument.

4. Learned counsel for the applicant pointed out that, in the impugned order dated 13.10.2020, the learned Family Court, Aurangabad failed to consider and decide the aspect of VCD and photographs placed by the applicant on record though directed by this Court.

5. Learned counsel for the respondent pointed out paragraph No. 15 of the impugned judgment to submit that such aspect was considered by the Trial Court.

6. On perusal of the entire order dated 13.10.2020 in Criminal Miscellaneous Application No. 24/2014, it is clear that, the learned Family Court even did not whisper about the admissibility or otherwise of the VCD and photograph produced by the applicant. This clearly shows that the learned Family Court completely ignored the order passed by this Court in Criminal Writ Petition No. 1053 of 2019 dated 21.09.2019. Such conduct on the part of the learned Family Court needs to be deprecated. When the directions are given to decide admissibility of the documents placed on record it is the duty of the learned Family Court to decide such aspect by giving opportunity to both sides.

7. Learned counsel for the applicant submits that there are two other applications pending for decision which are not decided by the learned Trial Court out of which one is at Exhibit-45 another is at Exhibit-47.

8. Perusal of the record and the impugned judgment clearly shows that these applications are not decided. Therefore, on this count alone the matter needs to be remanded.

9. The fact of the matter shows that the maintenance amount was granted to the respondent at Rs. 3000/- (Rs. Three Thousand only) per month vide order dated 16.11.2011 in Criminal Miscellaneous Application No. 91/2010 by the learned Family Court. The said order was never challenged by the applicant.

10. Subsequently, the respondent filed application for enhancement vide Criminal Miscellaneous Application No. 24/2014. The applicant challenged the impugned order and also prayed for stay. Vide order dated 12.01.2021, this Court stayed the execution of the impugned order subject to deposit an amount of Rs. 1,00,000/- (Rs. One Lakh only) as arrears. The impugned order in this revision application is dated 13.10.2020 in Criminal Miscellaneous Application No. 24/2014. The said impugned order is only with regard to enhancement of the maintenance i.e. Rs. 4000/- (Rs. Four Thousand only) per month in addition to earlier maintenance of Rs. 3000/- (Rs. Three Thousand only) per month. Therefore, it is made clear that the

execution was stayed only with regard to amount which was enhanced subject to deposit of an amount of Rs. 1,00,000/- (Rs. One Lakh only). There was no stay with regard to the maintenance granted at Rs. 3000/- (Rs. Three Thousand only) per month under Section 125 of the Code of Criminal Procedure in the original proceedings. Therefore, the applicant is duty bound to pay the original amount of Rs. 3000/- (Rs. Three Thousand only) per month regularly.

11. Considering the above submissions, the impugned order needs to be quashed and set aside and the matter needs to be remanded to the learned Family Court with direction to decide admissibility and proof of VCD and photographs, as decided by this Court in Criminal Writ Petition No. 1053 of 2019 dated 21.09.2019, by giving opportunity to both sides. Similarly, the learned Family Court to decide pending applications in the matter while deciding the application for enhancement. Since, the parties are litigating from the year 1995, the learned Family Court is directed to decide the matter afresh within a period of two (02) months from the date of first appearance of the parties. It is made clear that, the applicant shall deposit maintenance of Rs. 3000/- (Rs. Three Thousand only) per month granted to the respondent in the original proceeding, alongwith arrears. The amount paid in this Court as part arrears of Rs. 1,00,000/- (Rs. One Lakh only) shall be adjusted to the amount of arrears. With these observations, I pass the following order.

ORDER

- (I) The revision application is partly allowed.
- (II) The impugned order is quashed and set aside.
- (III) The matter is remanded to the learned Family Court at Aurangabad by restoring Criminal Miscellaneous Application No. 24/2014 with direction to decide such application afresh together with all pending applications and the admissibility and proof of VCD and photographs produced by the applicant, by giving opportunity to both sides, within a period of two (02) months from the date of first appearance of the parties. Both the parties are directed to appear before the learned Family Court on 19.09.2022. The applicant shall deposit amount of arrears thereby adjusting amount paid in this Court, within a period of one (01) month from today. The respondent is permitted to withdraw such amount of arrears if deposited by the applicant.
- (IV) Record and proceeding to be sent immediately.
- (V) Proceeding is closed.

(BHARAT P DESHPANDE, J.)