

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

CRIMINAL APPLICATION (APL) NO.622 OF 2021

Shri Mahadeo Kanhuji Dhore,
 Aged about 62 years,
 Occupation: Retired,
 R/o Gothangaon, Tahsil Kurkheda,
 District Gadchiroli. **APPLICANT**

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

Sou. Anita w/o Mahadeo Dhore,
 Aged about 54 years,
 Occupation: Labour,
 R/o Dewai Govindpur Tukum,
 Tahsil & District Chandrapur. **NON-APPLICANT**
RESPONDENT

 Mr. N. M. Jibhakate, Advocate for Applicant.
 Ms. Ayushi Dangre, Advocate h/f Mr. H. Dangre, Advocate
 for Non-Applicant/Respondent.

CORAM: **VINAY JOSHI, J.**
DATE: **28th JULY, 2022.**

ORAL JUDGMENT:

Heard finally by consent of both the sides.

2. **Admit.**

3. The applicant – husband has raised a challenge to the

enhancement in the amount of maintenance as has been awarded by trial Court and confirmed by the Revisional Court. It is the applicant's case that both the Courts below have seriously erred in enhancing the maintenance at excessive rate.

4. It is the submission that the very basis for enhancement is incorrect as though the applicant was retired the Court has considered his salaried income. It was brought to the notice of the trial Court that the applicant (husband) is retired from service on 31.03.2017. Despite that the trial Court while fixing the quantum, by considering the salary slip, fixed the quantum at enhanced rate. There is no dispute that on the above mentioned date the applicant was retired.

5. The learned counsel appearing for the respondent wife would contend that the applicant though retired, however he is receiving handsome pension. In support of the said contention she has filed a chart showing that the applicant's monthly pension is to the tune of Rs.30,000/-.

6. While fixing the quantum of maintenance it is the basic requirement that, the husband's financial condition and more

particularly; the source of income has to be considered. The trial Court went wrong in fixing the quantum on the basis of salaried income though he was retired from service. For the said very reason, the impugned order would not sustain. Certainly, the trial Court has to reconsider the issue on the basis of the factual aspect. It emerges that the trial Court has enhanced the rate of maintenance from Rs.800/- per month to Rs.6000/- per month on the basis of salary which was to the tune of Rs.53000/- per month. It is brought on record that the husband is getting monthly pension of near about Rs.30000/- and thus it is advisable that during the pendency of this application the applicant shall pay the maintenance at the rate of Rs.4000/- per month which would be appropriated. Hence, I pass the following order:

- [i] The application stands allowed.
- [ii] The impugned order dated 15.03.2021 passed in Criminal Revision No.20/2018 and the order of the learned Magistrate dated 01.02.2018 are hereby quashed and set aside.
- [iii] Criminal Application No.81/2009 is restored on the file of trial Court which shall be decided afresh on its

own merit.

- [iv] The applicant – husband shall deposit the interim maintenance at the rate of Rs.4000/- per month commencing from 01.08.2022 till the disposal of enhancement application.

JUDGE

NSN