

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

CRIMINAL WRIT PETITION NO. 369/2022.

Gajanan Manikrao Mandekar.

-VERSUS-

Deepashri Gajanan Mandekar.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri B.N. Mohta, Advocate for the Petitioner.
None for the Respondent – Served.

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CORAM : VINAY JOSHI, J.

DATE : JULY 19, 2022.

Heard learned Counsel for the petitioner. In response to the notice issued by this Court, the respondent – wife failed to put in her appearance, but, has forwarded her reply by post.

2. The petitioner/husband has challenged two orders of even date i.e. 23.03.2022 passed below Exhs.22 and 25 in the proceedings under Section 127 of the Code of Criminal Procedure. It is submitted that the petitioner/husband has filed an application Exh.22, seeking to keep the petition bearing No.130/2019, in abeyance and application Exh.25, seeking for dismissal of the said

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application.

4. Initially the respondent / wife has filed the proceeding claiming maintenance in terms of Section 125 of the Code of Criminal Procedure in the year 2009, wherein certain amount of maintenance has been awarded. In the year 2015, the respondent / wife has filed application under Section 127 of the Code for enhancement, which was partially allowed. The said order came to be challenged by the husband before the Sessions Court, and then before this Court. The matter is pending before this Court for adjudication.

5. In the wake of said position, the respondent / wife has filed another application for enhancement of amount of maintenance in the year 2019, on account of change in circumstance. The respondent/wife has contended that her husband's salary has been considerably increased and due to change of price index, she is once again entitled for enhancement. In said proceeding, these two applications are filed by the petitioner/ husband stating that the earlier challenge to the enhancement granted in the year 2015 is subjudice before this

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Court and therefore, subsequent similar application filed in the year 2019 is not maintainable.

6. Section 127 of the Code is meant for alteration of allowances in changed circumstances. The respondent / wife first time in the year 2015 sought for enhancement and again in the year 2019. The trial Court has not decided both the aforesaid applications on merits, but, in view of some orders passed below Exh.32 has disposed of both the applications.

7. With the assistance of the learned Counsel for the petitioner, the application Exh.32 has been perused. The said application was filed by the petitioner/husband at his own putting his grievance against the respondent/ wife. The learned Family Court under assumption that the petitioner has waived his urge for the reliefs claimed at Exhs. 22 and 25, has simply disposed of those applications. Filing of application Exh.32, without any specific prayer cannot be termed that the petitioner / husband has waived his right to claim the reliefs as sought in the application Exh.22 and 25. So far as the prayer regarding quashing of order regarding imposition of costs by the Family Court, I am not

inclined to interfere with the same.

8. In view of above, the impugned orders of dismissal of both applications are set aside. The learned trial Court shall decide both the applications on their own merit and in accordance with law.

9. Criminal Writ Petition is accordingly disposed of.

JUDGE