

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

**CRIMINAL REVISION APPLICATION NO.32 OF 2022**

1. Sarita w/o Pravin Bari,  
age major, Occ. Service.
2. Sagar s/o Pravin Bari,  
age major, Occ. nil.

Both r/o c/o Devram Waman Bari (Tade),  
Surya Kiran Apartment, Adarsh Nagar,  
Block No.104, Shirsoli Naka,  
Mohadi Road, Tq. & Dist. Jalgaon.

Applicants.  
(orig non applicants)

VERSUS

Pravin s/o Khemchand Bari,  
age 48 yrs, Occ. Business,  
R/o RMS colony, near Ghodepirbaba,  
Shirpur Karhale Road,  
Bhusawal, Tq. Bhusawal,  
Dist. Jalgaon.

Respondent.  
Orig applicant.

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Advocate for Applicants : Mr. S. R. Patil

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**CORAM : S. G. CHAPALGAONKAR, J.**  
**Dated: September 04, 2023**

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**ORDER :-**

1. The applicants impugns the order dated 21.12.2021 passed by the Family Court, Jalgaon in exercise of powers u/s 127 of the Criminal Procedure Code in Criminal M.A. No.17 of 2021

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(old No.282 of 2017) thereby canceling the maintenance granted to the applicants under section 125 of the Criminal Procedure Code.

2. Learned counsel appearing for the applicants would submit that applicant no.1 is the legally wedded wife and applicant no.2 is the son of the respondent. The respondent failed to maintain the applicants. Hence, the proceedings vide Criminal M.A. No.269 of 2000 was filed before the Judicial Magistrate First Class, at Jalgaon under section 125 of the Criminal Procedure Code, 1973. Said application was allowed and the respondent was directed to pay the maintenance @ Rs.800/- p.m. to both the applicants w.e.f. 20.5.2000. The respondent had filed criminal revision application no.114 of 2003 before the Additional Sessions Judge, Jalgaon challenging the order of the learned Magistrate, however, said revision application is also dismissed vide order dated 24.7.2003. It is submitted that in pursuance of the said order, the respondent had hardly deposited the amount. He avoided the execution of the order by various modes. In all amount of Rs.55,400/- is paid by him towards the maintenance to applicants since the year 2000.

3. Learned counsel appearing for the applicants would further submit that the respondent filed Criminal M.A. No.17 of 2021 before the Family Court, at Jalgaon under section 127 of the Criminal Procedure Code seeking cancellation of the maintenance

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granted in favour of the applicants on the ground that the applicant no.1 is employed as “Anganwadi Assistant” and the applicant no.2 attained majority and having his own earning. Applicants opposed said application, however, the Family Court at Jalgaon allowed the same vide the impugned order and cancelled the maintenance granted in favour of the applicants.

4. Learned counsel appearing for the applicants would submit that there is no provision for cancellation of the maintenance. The modification of the maintenance amount can be made for specific reasons stipulated under the clauses, sub-clauses of section 127 of the Criminal Procedure Code, he would submit that none of the contingencies as stipulated under the Section 127 of the Code arises in the present matter. He would further submit that only because applicant no.1 got a contractual employment in her struggle to earn livelihood, it cannot give cause of action to the respondent to seek cancellation of maintenance invoking jurisdiction under section 127 of the Criminal Procedure Code. He would submit that so far as applicant no.2 is concerned, except the fact that he has attained the majority, no evidence is brought on record to show that he has earning source to maintain himself. In support of such contentions, learned advocate appearing for the applicants rely upon the judgment of the Supreme Court of India in the case of *Chaturbhuj Vs. Sita Bai reported in 2008 (2) SCC 316*. He further relies upon the order passed by this Court in Criminal

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Revision No.202 of 2010 in the case of **Prashant Manikrao Bagade Vs. Sou. Kanchan Prashant Bagade dated 25.8.2015** to contend that mere employment of wife would not entail cancellation of the maintenance.

5. Though, respondent served, none appears for him, hence, criminal revision application proceeded ex-parte against him vide order dated 14.7.2023.

6. Having considered the submissions advanced, it is necessary to deal with the first objection raised on behalf of the applicants that section 127 of the Criminal Procedure Code empowers modification of the order passed under section 125 of the Criminal Procedure Code only in special contingencies and cancellation of the maintenance for any other reason would not be permissible. Section 127 of the Criminal procedure Code states as under :-

**27. Alteration in allowance :-**

1. On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife, child, father or mother, as case may be, the Magistrate may make such alteration in the allowance he thinks fit: Provided that if he increases the allowance, the monthly rate of five hundred rupees in the whole shall not be exceeded.

2. Where it appears to the Magistrate that, in consequence of any decision of a competent

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Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

3. Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that-

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,-

(i) in the case where, such sum was paid before such order, from the date on Which such order was made,

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband by the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a monthly allowance has been

ordered to be paid under section 125, the Civil Court shall take into account the sum which has been paid to, or recovered by, such person as monthly allowance in pursuance of the said order.

7. Clause No.1 of section 127 clearly stipulates that on proof of change in the circumstances any party to the order passed under section 125 can apply to the Magistrate for alteration in the allowance and the Magistrate is empowered to make such alterations in the allowance as he thinks fit. Plain reading of the aforesaid provision would show that apart from the contingencies provided in sub-clause 2,3 and 4, the Magistrate is empowered to make alteration in maintenance allowance as he thinks fit. The term alteration cannot be given restrictive meaning and it should be also construed that such alteration may be the cancellation of the maintenance also in the given facts of the case. Therefore, the contention of the learned advocate for the applicants that the section 127 of the Criminal Procedure Code cannot be applied for cancellation of the maintenance in facts of this case is not acceptable.

8. Second contention of the learned counsel appearing for the applicants that only because applicant no.1 has been employed as “Anganwadi Assistant” and she is getting monthly allowance of Rs.2,500/- on contractual basis shall not be construed to mean that she has sufficient means to maintain herself or that would give right in favour of respondent to seek

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cancellation of the maintenance. It is the trite that earning wife is also entitled for maintenance so as to enable her to maintain the dignity and standard of living that she could have enjoyed as a wife of the respondent/husband.

9. In the present case, it is not in dispute that the applicant no.1 has been employed since December, 2016 and earning Rs.2,500/- towards remuneration for her services as “Anganwadi Assistant”, however, respondent has not disclosed his exact income. Pertinently, in view of the law laid down by the Hon’ble Supreme Court of India in the case of ***Rajesh Vs Neha reported in (2021) 2 SCC 324*** it was obligatory on the part of respondent to first disclose his income and file affidavit to that effect. On the other hand, wife has candidly admitted her employment and income. Therefore, when the **respondent** has suppressed his income, merely because wife is getting monthly allowance of Rs.2,500/- cannot be construed to give cause of action to the Respondent/husband under section 127 of the Criminal Procedure Code and seek cancellation of meager maintenance of Rs.800/- p.m. granted to her under the order passed under section 125 of the Criminal Procedure Code. It appears that the Family Court assumed that remuneration of Rs.2,500/- itself is sufficient to maintain the applicant no.1. Considering the rising price index, such amount would not be sufficient to maintain for applicant no.1. Additional amount of Rs.800/- granted as a maintenance under the orders passed under

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section 125 of the Criminal Procedure Code may support her to certain extent and conduct herself in dignified manner.

10. So far as cancellation of the maintenance granted in favour of applicant no.2 is concern, the Family Court is justified in doing so. The applicant no.2 is a major son aged about 24 years. It is not the case that he is disabled person or cannot earn his livelihood for any other reason. Even, otherwise the provisions under section 125 of the Criminal Procedure Code would be available to the minor son till he attains the majority. No right survives in favour of the applicant no.2 to receive maintenance u/s 125 of the Criminal Procedure Code.

11. In that view of the matter, no fault can be found in the order passed by the Family Court to the extent of cancellation of maintenance granted in favour of applicant no.2. However, in view of the foregoing observations, the order regarding cancellation of the maintenance granted in favour of applicant no.1-wife requires to be quashed and set aside. Resultantly, the following order is passed.

### **ORDER**

- i. The criminal revision application is partly allowed.
- ii. The impugned order dated 21.12.2021 passed by the Family Court, Jalgaon in Criminal M.A. No.17 of 2021 is hereby quashed and set aside to the extent of cancellation of the maintenance granted to applicant no.1 in Criminal M.A. No.269 of 2000.

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- iii. Respondent shall continue to pay the maintenance to applicant no.1-wife as directed under order dated 13.2.2003 passed by the Judicial Magistrate First Class, Jalgaon.
- iv. Criminal Revision Application is disposed off.

( S. G. CHAPALGAONKAR, J. )

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