

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

CRIMINAL WRIT PETITION NO. 733 OF 2021

Asruba s/o Banaji @ Baliram Kamble

... PETITIONER

VERSUS

Kashibai w/o Asruba Kamble

... RESPONDENT

Ms. P. R. Jamdhade, Advocate h/f Ms. M. R. Jamdhade, Advocate for the petitioner

Mr. C. B. Choudhari, Advocate for the respondent (appointed)

CORAM : R. M. JOSHI, J.

DATE : 12th SEPTEMBER, 2023.

P.C. :-

1. This petition takes exception to the order dated 12/02/2021 passed in Criminal Revision Petition No. 22 of 2019 where by the order dated 03/07/2019 passed in Cri. M.A. No. 144/2017, under Section 125 of Cr.P.C. granting enhancement of the maintenance to the wife is confirmed.

2. The facts which leads to the filing of the present petition can be narrated in nutshell as under:

. The marriage between petitioner and respondent was solemnized in the year 1979 and out of the said wedlock two sons are born. In the year 2001 respondent filed Misc. Criminal Application No. 141/2001 before JMFC, Bhoom for seeking maintenance under Section 125 of Cr.P.C. In the said application

petitioner appeared and filed his say. In the said proceeding the compromise arrived at between the parties wherein it was agreed that the respondent would be paid Rs.300/- per month till his retirement and after he retires from the service 1/3 amount of gratuity will be paid to her in full and final settlement. Respondent filed Criminal Misc. Application No. 144 of 2017 for enhancement of the maintenance amount. In the said proceeding it is the contention of the petitioner that there is full and final settlement between the parties with regard to the maintenance to be paid to wife and that he paying the maintenance at the rate of Rs.300/- per month. It is also contended that after the retirement of the petitioner the 1/3 amount of gratuity has been paid to the respondent. Learned JMFC passed order directing petitioner to pay sum of Rs.4000/- to the respondent by way of maintenance.

3. Learned counsel for the petitioner submits that in view of the one time settlement arrived at between the parties, it is not open for the respondent to claim any maintenance by filing fresh proceeding. It is submitted that the petitioner is retired person and does not get pension for more than Rs.2500/-. It is her submission that since the 1/3 amount of the gratuity has also been paid to the respondent – wife, the impugned order cannot sustain.

4. Learned counsel (appointed) for the respondent-wife submitted that even if it is accepted that there was some settlement between the parties, there is no evidence on record to show that 1/3 amount from the gratuity received by the petitioner after his retirement was paid to the respondent-wife. It is his submission that the amount of maintenance was fixed at Rs.300/- in year 2000 and having considered the inflation, the enhancement of the maintenance by Rs.3,700/- is not excessive.

5. There is no dispute about the fact that respondent had filed proceeding under Section 125 of Cr.P.C. being Misc. Criminal Application No. 141/2001. In the said proceeding compromise was arrived at between the parties whereby it was agreed by the petitioner to pay sum of Rs.300/- per month to the respondent. Pertinently the said agreement was entered into with further condition that on retirement of the petitioner 1/3 amount from gratuity would be paid to the respondent. Thus, it cannot be allowed to say that compliance of one of the term of the agreement is sufficient to create bar against wife to seek enhancement of maintenance. Moreover, perusal of the impugned order passed by the learned JMFC shows that the respondent has claimed to have not received such amount. On the other hand petitioner except for his oral statement that he has paid the 1/3 amount of gratuity, was

not able to prove the same by any documentary evidence. Apart from this petitioner has claimed that the said amount has been paid to wife in presence of one witness Mr. Khandekar. This witness also has not been examined in order to corroborate his oral version about the same. The learned JMFC therefore has refused to accept the contention of the petitioner that the 1/3 amount of gratuity is paid to the respondent. In the facts and circumstances of the case and considering the evidence on record the said findings cannot be called as perverse. Resultantly, the all terms of agreement cannot be said to have been fulfilled. Both terms are not separable, as the payment of 1/3 gratuity is reason to restrict maintenance amount.

6. Apart from the fact that there is non compliance of the compromise term by the petitioner, it is necessary to take note of the fact that the amount of maintenance was agreed between the parties for of Rs.300/- per month was in the year 2003. Needless to say that after 20 lapse of 15 years there has to be change in circumstances requiring alteration of the amount of maintenance. Section 127 of Cr.P.C. makes specific provision that on proof of change in circumstance of any person receiving under Section 125 a monthly allowance for interim maintenance the Magistrate may make such alteration as he thinks fit in the said allowance. Learned Magistrate while passing of the impugned order has recorded the

admission of petitioner wherein he has accepted that there is inflation to the extent of 15-20% as compelled year 2001. Thus, there is sufficient reason recorded by the learned Magistrate for the purpose of enhancement of the amount of maintenance. Having regard to the provision of Cr.P.C. and evidence on record, there is no reason or justification for causing interference in the impugned order passed by the learned Magistrate.

7. The learned Addl. Sessions Judge while exercising powers under Section 397 of Cr.P.C. had limited jurisdiction in order to ascertain as to whether there is non exercise of jurisdiction or excessive exercise thereof by the learned Magistrate. On those counts since there was no case is made out for causing interference, the revision is rightly rejected. Hence, there is no merit in the case. Petitions stands dismissed.

8. Fees of the appointed counsel is quantified Rs. 6,000/- and it is to be paid by the High Court Legal Services Authority, Sub Committee, Aurangabad.

(R. M. JOSHI, J.)

ssp