



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL REVISION APPLICATION NO.99 OF 2020**

**ABHINAV S/O. DEEPAK DAHIWAL U/G. OF HIS MOTHER
KALPANA W/O. DEEPAK DAHIWAL
VERSUS
DEEPAK S/O. ANANTRAO DAHIWAL**

...

Mr. Gopal D. Kale, Advocate for the Applicant.

Mr. Shaikh Ashraf Patel, Advocate for Respondent.

...

**WITH
CRIMINAL REVISION APPLICATION NO.125 OF 2021**

**DEEPAK ANANTRAO DAHIWAL
VS
ABHINAV DEEPAK DAHIWAL MINOR THROUGH
GUARDIANSHIP KALPANA W/O. DEEPAK DAHIWAL**

...

Mr. Shaikh Ashraf Patel, Advocate for the Applicant.

Mr. Gopal D. Kale, Advocate for Respondent.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 04th DECEMBER, 2023.**

PER COURT:-

1. Both these Criminal Revision Applications take exception to the order dated 05.03.2020 passed by the Family Court at Nanded in Petition No.E 110/2018, thereby granting maintenance of Rs.2000/- per month to the applicant/minor son.

2. The proceeding was instituted by Abhinav Deepak Dahiwal aged about 11 years under Section 125 of the Criminal Procedure Code against his father for grant of maintenance Rs.10,000/- per month against his father. (Hereinafter parties are referred as per original status before Family Court). It is contended that applicant Abhinav is born out of wedlock of respondent and his mother-Kalpana on 02.10.2009. The Kalpana is a disabled lady. Her right hand is not functional. There was dispute between the parents of the applicant. Consequently, the

applicant is residing separately alongwith his mother and presently persuing education at Pune. It is contended that the respondent-father neglected and failed to maintain the applicant or make arrangement for his livelihood and education expenses. Therefore, the proceeding has been instituted under Section 125 of the Criminal Procedure Code. The respondent-father opposed the prayer for grant of maintenance on the ground that he is already paying maintenance of Rs.8000/- per month to applicant's mother, which includes maintenance for the applicant and there is no necessity to pass separate order granting maintenance in favour of the applicant.

3. The Family Court at Nanded after considering material on record and rival submissions, concluded that the salary of the respondent-father is in the bracket of Rs.45,000/- per month. There is no evidence regarding independent income of the wife. She herself is depending upon the maintenance amount of Rs.8000/- provided by the respondent-husband. Therefore while allowing application Family Court granted maintenance at the rate of Rs.2000/- per month in favour of the applicant.

4. The applicant filed Criminal Revision Application No.99/2020 seeking enhancement of the maintenance amount, whereas respondent-father challenged the grant of separate maintenance to the son.

5. Mr. Kale, learned Advocate appearing for the applicant submits that the applicant is taking education in 10th standard at Pune and requires educational expenses apart from the expenses required for his livelihood. The respondent-husband failed to make arrangement for such expenses. The respondent-husband is in the Government service and earning salary of

Rs.45,000/- per month. The amount of maintenance at the rate of Rs.2000/- per month is grossly inadequate in the facts of the case.

6. The learned Advocate appearing for the respondent-husband would submit that wife is already granted maintenance at the rate of Rs.8000/- per month, which is deducted from his salary. He would point out that while confirming the order granting maintenance in favour of the wife, this Court has taken into consideration that son is residing with her and accordingly the maintenance amount of Rs.8000/- is affirmed in favour of the wife. He would submit that maintenance granted to the wife is inclusive of the cost of maintenance towards son and no separate maintenance could have been awarded in the petition filed by the son. He would further point out that respondent-husband is burdened with the maintenance amount to be paid to the wife as well as installment of home loan which is more than 20,000/- per month. Even respondent-husband himself requires medical expenditure, which is around Rs.3000/-. Therefore, considering the various deductions, it would be harsh to direct respondent to bear separate maintenance for the son.

7. Having considered submissions advanced, apparently the respondent is in a Government service having monthly salary more than Rs.47,000/-. Although it is contended on behalf of the husband that he is repaying home loans with montly installment of more than Rs.20,000/-, supporting documents are not tendered into service. It is, therefore, evident that respondent-father is having sufficient means to pay the maintenance to son and wife.

8. It is a matter of record that wife is getting maintenance of Rs.8000/- per month as per order dated 15.07.2017 passed by the Family Court in Petition No.C-5/2015 under Section 18 of the Hindu Adoption and Maintenance Act. The said order is

confirmed by this Court in Family Court Appeal No.29/2017. While confirming the said order, this Court observed that the maintenance of Rs.8000/- per month granted by the Trial Court is just and proper considering the fact that son is also residing with the wife.

9. Pertinently, the said order is passed in the proceeding, which was instituted in the year 2015, when the son was hardly 7 to 8 years of age. The wife had exercised her right under Section 18 of the Hindu Adoption and Maintenance Act. The Trial Court as well as this Court has considered her claim while quantifying the maintenance of Rs.8000/- per month. However, the present proceeding is independently instituted under Section 125 of the Criminal Procedure Code seeking maintenance for son, who was aged about 11 years at the time of filing of the petition. The Family Court fixed maintenance amount at the rate of Rs.2000/- per month. Unfortunately, no reasons are supplied for such quantification. Although, Family Court rightly observed that the husband is earning salary of Rs.45,000/- per month, the maintenance for son is quantified merely at the rate of Rs.2000/-. As indicated in the affidavit filed by the wife before this Court, it can be seen that the applicant is taking education in Adv. P. V. Paranjape Vidya Mandir at Talegaon Dabhade, Tq. Maval, Dist. Pune in 10th standard. If the educational expenses are taken into account which includes transportation, private tuition and other basic requirements, the assessment of the maintenance amount appears to be harshly inadequate. In that view of the matter, considering the minimum expenses for education of 10th standard student and the salary i.e. received by the respondent-husband, it would be just and proper to allow the maintenance at the rate of Rs.5000/- per month to the applicant. This quantification is made

considering the income of the respondent at the time of institution of the proceeding and independent of the maintenance amount i.e. payable/receivable by the mother. Hence, the following order:

ORDER

- a. Criminal Revision Application No.99/2020 is partly allowed.
- b. The order dated 05.03.2020 passed by the Family Court at Nanded in Petition No.E 110/2018 is modified.
- c. The respondent shall pay the maintenance amount of Rs.5000/- per month from the date of filing of Petition No.E 110/2018.
- d. Criminal Revision Application No.125/2021 is accordingly dismissed at the cost of Rs.10,000/-.

(S. G. CHAPALGAONKAR)
JUDGE