

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 894 OF 2022

Swarna w/o Sheshrao Jadhav

Petitioner

Versus

Sheshrao s/o Limbaji Jadhav

Respondent

Mr. S. P. Katneshwarkar, Advocate for the petitioner.

Mr. H. H. Jaju, Advocate holding for Mr. Y. G. Somni, Advocate for the respondent.

CORAM : R. M. JOSHI, J.

DATE : 18th AUGUST, 2023.

PER COURT :

1. Heard learned counsel for both sides. Petition is decided finally by their consent.

2. This petition takes exception to the order dated 23rd February, 2022 passed in Criminal Revision Application No. 7/2019 passed by learned Additional Sessions Judge, Basmatnagar. The said revision was preferred by the present petitioner for enhancement of maintenance granted by learned Judicial Magistrate First Class, Basmatnagar, in Criminal M.A. No. 462/2016 by order dated 25th March, 2019.

3. Learned counsel for petitioner submits that the order passed by the learned Judicial Magistrate First Class granting maintenance to the petitioner herein was never challenged by the respondent-husband. In such circumstances, it was not open for the learned Additional Sessions Judge to set aside the said order to the extent of petitioner. It is his further contention that the learned Magistrate has recorded finding to the extent that petitioner is unable to maintain herself for want of source of income. In absence of any challenge to the said finding, the revisional Court has no right or authority to interfere in the said findings.

4. Learned counsel for the respondent submitted that in view of Section 397 of Code of Criminal Procedure, a revisional Court has ample powers to suo moto take cognizance of any order and to ascertain its correctness, legality and propriety. Since the revision application was filed by the present petitioner, it cannot be said that they were not heard while passing the impugned order. To support impugned order, he placed reliance on the judgment of Hon'ble Apex Court in case of Nadir Khan vs. The State (Delhi Administration), AIR 1976 SCC 2205. In alternative and without prejudice to his submission, learned counsel for the respondent has sought prayer to

relegate the revision application to the learned Additional Sessions Judge for decision afresh.

5. This Court finds substance in the contention of learned counsel for the petitioner that in absence of challenge to the findings recorded by the Magistrate to the extent that petitioner herein is unable to maintain herself for want of adequate source of income, the revisional Court had no right to interfere in the said finding. No doubt, it is even open for the Additional Sessions Judge to suo motu call for record and test legality and validity of any order which is interlocutory in nature. However, that does not mean to say that it is open for the learned revisional Court to substitute his finding by recording contrary finding to the one recorded by learned Magistrate. Section 397 of the Code of Criminal Procedure empowers the revisional Court to satisfy as to the correctness, legality and propriety of any finding, sentence or order. What is expected from the revisional Court is to consider as to whether there is excessive exercise of jurisdiction or non-exercise of jurisdiction by the Trial Court. Revisional Court cannot assume powers of appellate Court in order to over turn the findings of fact recorded by the learned Magistrate. In such circumstances, there is absolutely no

justification for the learned revisional Court to record findings that the petitioner is able bodied person and therefore she can maintain herself.

6. Apart from this, perusal of the impugned order does not show that any notice was given to the petitioner herein about the intention of the Court to reduce the quantum of maintenance granted by the learned Judicial Magistrate First Class. Even accepting the powers of revision Court to suo moto pass order, it can never be justified that without giving any hearing and opportunity to support order of maintenance passed by Trial Court, the said amount could not have been reduced. In judgment relied upon in case of Nadir Khan vs. The State (Delhi Administration) (supra), reference is made to the power of High Court to suo moto enhance the maintenance. There is no denial about the fact that such enhancement can be done however for reduction of the amount of maintenance, rule of *audi alterm partem* ought to have been complied with by the revisional Court.

7. As far as the contention of the learned counsel for the respondent of relegating the petition to the Additional Sessions Judge

for reconsideration is concerned, the respondent herein has never challenged the order passed by the Judicial Magistrate First Class and revision was preferred by the present petitioner for enhancement of the maintenance amount. In such circumstances, there is propriety in sending back the application for reconsideration.

8. In view of this, the impugned order dated 23rd February, 2022 passed in Criminal Revision Application No. 07/2019 cannot sustain. Hence, petition is allowed. Impugned order is set aside. Order passed by the learned Magistrate is restored to the extent of petitioner. Petition stands disposed of.

(R. M. JOSHI)
Judge

dyb