

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 3091 OF 2022
IN
CRIMINAL REVISION APPLICATION NO. 169 OF 2020
WITH
CRIMINAL REVISION APPLICATION NO. 169 OF 2020**

Hitesh Prakashmalji Mehta	..Applicant
Versus	
Aashika Hitesh Mehta & Anr.	..Respondents

Mr. Kamlesh Mishra for Applicant.

Mr. Abhijit Sarwate a/w. Hardev K. Aidhen a/w. Ajinkya Udane for Respondents and original Applicants in Revn/169/2020.

Smt. M. R. Tidke, APP for State/Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 7 JULY 2023**

PC :

1. Heard both the parties. The main prayer in this application is for re-calling of the order dated 20/09/2021 passed by this Court (Coram: Sandeep K. Shinde, J.) in the Criminal Revision Application No.169 of 2020 and for hearing the revision application afresh.

2. The said Criminal Revision Application No.169 of 2020 was disposed of by the said order. The Respondent No.1 challenged that order before the Hon'ble Supreme Court in Petition for Special Leave to Appeal (Crl.) No. 7077 of 2022, in which the following order was passed:

“ On perusal of the judgment of the High Court, we cannot disagree with the principle propounded but then learned counsel points out that in fact the earlier maintenance order was taken into consideration while determining the maintenance subsequently while the High Court is predicated on a reasoning that the earlier maintenance was not taken into account or considered. This is thus a factual mistake.

In view of the aforesaid we permit the petitioner to move an application before the High Court seeking recall of the order that it is based on incorrect fact to facilitate the High Court to take a view of the matter on the basis of facts existing on record.

The application be moved within two weeks.

The special leave petition is accordingly disposed of with the aforesaid liberty.

Liberty is also granted to challenge in case the petitioner does not succeeds before the High Court.

Pending applications stand disposed of.”

3. Learned counsel for the Applicant invited my attention to the paragraph Nos.32 and 34 of the order dated 24/07/2019 passed by the Judicial Magistrate, First Class, Court No.4, Pune, and in particular, paragraph-32 itself recorded that the written arguments of both counsel reveal that the applicant was granted Rs.21000/- as maintenance by the Family Court. Therefore, it is quite clear that, learned Magistrate had taken into account the fact that the Applicant was granted Rs.21000/- as maintenance.

4. The order dated 20/09/2021, in the operative part, in paragraph-13 directs the Magistrate to modify the order dated 24/07/2019 by taking into consideration the maintenance which was already awarded by the Family Court. Since, the learned Magistrate has already taken into account the maintenance awarded by the Family Court, this operative part was not factually correct. Since the Hon'ble Judge has retired and since the matter is placed before me today, I am recalling the order dated 20/09/2021.

5. The Criminal Revision Application No.169 of 2020 is

restored to its file; to be decided afresh.

6. By consent, the Criminal Revision Application No.169 of 2020 be listed on the admission board on 23/08/2023.

7. The Interim Application No.3091 of 2022 is disposed of.

(SARANG V. KOTWAL, J.)