

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4664 OF 2015
WITH
CRIMINAL WRIT PETITION NO. 4281 OF 2018

Ishwar Girjappa Mane

.. Petitioner

Versus

Surekha Ishwar Mane and ors

.. Respondents

...

Mr. A.S. Boddul for the petitioner.

Mr.Suhas S. Inamdar for respondent nos.1 and 2 in WP 4664/2015.

Mr.S.R. Agarkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 22nd AUGUST, 2023

P.C:-

1 Two petitions filed by the petitioner, the husband raise a challenge to two distinct orders arising out of the proceedings filed u/s.125 of the Code of Criminal Procedure, instituted by the wife, claiming maintenance for herself and her daughter.

2 The first petition i.e. WP 4664/2015 raise a challenge to the judgment dated 23/9/2015, of the Family Court at Solapur on the application filed u/s.127 of the Cr.P.C by the wife seeking enhancement/modification of the maintenance amount.

The wife had filed an application for maintenance and orders came to be passed thereupon, and almost after expiry

of period of nine years, she sought modification in the wake of the rise in the cost of living and claiming the enhanced amount of maintenance of herself and her daughter. Worth it to mention that by order dated 6/1/2006, the respondent was directed to pay a sum of Rs.1200/- to the wife and Rs.1,000/- to the daughter.

3 Defending the said application, the respondent took a stand that his earning from salary is Rs.13,790/- and he placed on record his salary slip for the month of January 2013.

On perusal of the same, the learned Judge, Family Court took note of his gross salary as 'Rs.46,291/-' for the month of February, March and April, it was noted to be Rs.46,368/-.

4 The learned Judge recorded that there is a deduction of amount of Rs.27,000/- from his salary and the major deduction is towards the Staff Society i.e. to the tune of Rs.15,289/-. Since the respondent husband was unable to demonstrate that the said loan for the purpose of family, the learned Judge did not deem it appropriate to discount the said deductions and therefore, his earnings were calculated toward his income and it was assumed that the net receivables in his hand are to the tune of Rs.20,000/-.

As a consequence, the impugned judgment directed the husband to pay a sum of Rs.8,000/- per month to the wife and Rs.7,000/- per month to his daughter, who by this time, had become major but was unmarried.

The impugned judgment passed on 23/9/2015 is under implementation, as it is informed by the learned counsel for the wife that he has filed appropriate proceedings for executing the same.

5 I do not find any legal infirmity in the impugned judgment which has enhanced the amount of maintenance after a lapse of almost 10 years and it cannot be said that the amount of maintenance awarded under the impugned judgment is exorbitant, considering the earnings of the husband based on the salary certificate.

Since he has failed to offer any explanation as to on what count the deductions were made by the *Pat Sanstha* to the tune of Rs.16,027/-, the learned Judge has rightly not permitted deductions to be excluded from his earning and accounted it in his income and since it was specifically pleaded and proved that the wife and daughter who were unable to maintain themselves, he awarded the amount of maintenance.

Finding no legality or perversity in the said judgment, by upholding the same, Writ Petition No. 4664/2015 is dismissed.

6 WP No. 4281/2015 is filed by the petitioner, being aggrieved by order passed by the Family Court, Solapur on 16/3/2017, on the petition filed by him in form of Criminal

Miscellaneous Application No.5/2016, seeking recall of the order enhancing maintenance amount.

7 Learned counsel for the petitioner has not placed on record the said petition, however the counsel for the respondent during the course of hearing has placed before me, the copy of the application/petition filed under Section 127 of the Cr.P.C.

On perusal of the petition, it is evident that the petitioner husband took a specific stand that the respondent is his second wife and she abandoned his Company and started residing at her parental house and therefore, she is not entitled for maintenance. Apart from this, he also specifically pleaded that no defence was taken by him while defending the application for maintenance by the wife, to the effect that she being the second wife, but now he want to press the point of law, which would dis-entitle her for maintenance.

He also raised a plea that his daughter i.e. applicant no.2 is major and therefore, she is not entitled for maintenance. Apart from this, it is also pleaded that his earnings are only to the tune of Rs.13,790/- p.m, whereas his wife and daughter are earning a sum of Rs.2,50,000/- to Rs.3,00,000/- from the agricultural avocation and their daily earning is between Rs.200/- to Rs.250/-.

In these above circumstances, the enhancement which was granted, is sought to be recalled.

8 The application/petition was considered by the Judge, Family Court, and as far as the first plea about, the wife being the second wife and not entitled for maintenance, is promptly rejected by recording that the husband continued to pay her maintenance for 17 years and now, the plea of second marriage is nothing but an after-thought.

The Court recorded that the petitioner husband had admitted that he was receiving net salary of Rs.13,790/- and during the course of arguments, he submitted that he had retired, but no document to that effect was placed on record. The learned Judge, therefore, considered that on retirement, he must be enjoying the pensionary benefits and therefore, in absence of the document, either establishing retirement or reduction in the earnings pursuant thereto, the Court refused to entertain the plea of recalling the order of enhanced maintenance.

9 Another important ground raised by the petitioner u/s.127 is about the non-entitlement of his daughter who had attained majority and it is sought to be argued that in terms of clause (b) of sub-section (1) of Section 125 of Cr.P.C, the maintenance can only be claimed by a legitimate or illegitimate minor child who is unable to maintain himself.

The said argument appear to be misconceived in the wake of the decision of this Court in case of *Agnes Lily Irudaya*

Vs. Irudaya Kani Arsan, 2018, SCC online Bom 617, where it has been specifically held that a daughter, who has attained majority, but is unable to maintain herself, is entitled to claim maintenance u/s.125 of Cr.P.C.

Since it is not proved by the husband that the girl on attaining majority was earning on her own and is capable of maintaining herself, it is nonetheless the duty of her father to maintain her and since it is now informed that the daughter i.e. applicant no.2 who had claimed maintenance, is married in the year 2021, from the date of marriage, the petitioner is absolved of the responsibility to maintain her.

In the wake of the above, there is no infirmity in the impugned order dated 16/3/2017 and upholding the same, Writ Petition No. 4281/2018 stand dismissed.

(SMT. BHARATI DANGRE, J.)