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

CRIMINAL REVISION APPLICATION NO.593 OF 2019

Nita Sonwadia Maiden

Mrs. Neeta Vipul Saraiya

... Applicant

V/s.

The State of Maharashtra & Anr.

... Respondents

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Ms. Megha S. Bajoria for the applicant.

Ms. M.R. Tidke, APP for respondent no.1/State.

Mr. Anand Mishra with Mr. Shivkumar S. Mishra for
respondent no.2.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 12, 2023

P.C.:

1. The challenge in the criminal revision application is to the validity of order dated 28th August 2014 passed by the learned Judge, Family Court No.5, Mumbai in criminal Miscellaneous Application No.11 of 2019, thereby allowing application under section 127 of the Criminal Procedure Code, 1908 (hereafter “Code”, for short).

2. On 14th June 2012 the marriage between applicant and respondent no.2 took place. Initially the applicant filed proceedings under section 12 of the Domestic Violence Act, 2005 bearing Domestic Violence Proceeding No.544 of 2013. In an

application filed in the said proceedings seeking maintenance, the learned Judicial Magistrate First Class, Vasai rejected the application for interim maintenance by order dated 17th April 2014 on the ground that the applicant was earning Rs.7,000/- per month.

3. The petition bearing No.A-2250 of 2012 filed by respondent No.2 under section 12(1)(a) of the Hindu Marriage Act, 1955 had been dismissed and an appeal against the said judgment is pending in this Court.

4. The applicant on 5th October 2016 filed an application under section 125 of the Code. Learned Judge, Family Court No.5, Mumbai by order dated 5th December 2018 granted maintenance of Rs.10,000/- per month to the applicant.

5. The respondent, therefore, filed Criminal Miscellaneous Application No.11 of 2019 under section 127 of the Code for modification or order dated 5th December 2018. The learned Judge, Family Court No.5, Mumbai by the impugned order reduced the amount of maintenance from Rs.10,000/- per month to Rs.3,000/- per month, mainly on the ground that the applicant failed to disclose the fact that she had resigned on 30th January 2016. It is also observed by the Family Court that the applicant has failed to disclose her job while filing Petition No.E-331 of 2016. Based on the aforesaid facts, the Family Court recorded a finding that the wife was at least earning Rs.7,000/- per month and the net salary of the husband was around Rs.16,000/- per month and, therefore, thought it fit to reduce the amount to Rs.3,000/-.

6. Learned advocate for the applicant invited my attention to the order granting maintenance under section 125 of the Code wherein the learned Family Court granted maintenance based on business profile of the husband which discloses his annual income to be between Rs.4 to Rs.5 lakh. The said business profile was put on the matrimonial site in the year 2012. Considering the said fact, the Judge, Family Court recorded a finding that the net income of the husband is between Rs.33,300/- to Rs.41,666/- and, therefore, directed the husband to pay amount of Rs.10,000/- per month from the date of the petition. She invited my attention to paragraph 3 of the petition wherein she has disclosed as under:

“3. ... I state that I was working in private firm but has resigned due to the mental torture I was suffering each day from the very thought of acts of the Respondent and his family and the rumours spread by the Respondent about me. (Annexed hereto and marked “Ex. E” is the copy of my Resignation letter and “Ex. F” is the copy of my Relieving Letter).”

Therefore, according to her the observations made in the impugned order by the learned Family Court are factually incorrect.

7. Per contra, learned advocate for the husband submitted that there is suppression of material fact. The wife has not disclosed amount of salary earned by her. She failed to disclose the fact that earlier application for maintenance was rejected by the learned Magistrate. The fact of filing application for maintenance was also not disclosed. Relying on the judgment of the Apex Court in **S.P. Chengalvaraya Naidu (dead) by L.Rs v. Jagannath**

(dead) by L.Rs. & others reported in AIR 1994 SC 853, he submitted that the party who suppressed material facts from the Court is not entitled to any relief and, therefore, neither the application under section 125 of the Code nor the present criminal revision application is maintainable and such conduct disentitles her from claiming any relief in the Court of law.

8. Having considered the submissions made on behalf of both the sides, in my opinion, the Trial Court was not justified in modifying the order under section 125 of the Code. The reasons assigned in the impugned order are concealment of filing of Petition No.E-331 of 2016 and the order dated 5th December 2018 being obtained by suppression of material facts. It needs to be noted that the wife had not only disclosed her employment in paragraph 3 of the application but it annexed copy of her resignation letter along with relieving letter.

9. The learned Magistrate in the impugned order refers to the date of resignation to be 30th January 2016. The application under section 125 has been filed on 5th October 2016. On the date of filing of application, the wife was not working.

10. It is well settled that the expression “material facts” are those facts which, if disclosed, would have led to opposite conclusion or would have material bearing on the merits of the matter. Disclosure of such material facts would have adverse consequence on the rights of the parties to get a relief from the Court of law. Therefore, in my opinion, non-disclosure of filing of Petition No.E-331 of 2016 has no relevance to the relief sought by the wife,

namely to get maintenance. The parameters to be taken into consideration by the Court while considering application for maintenance have been laid down by the Apex Court in **Rajnish v. Neha** reported in (2021) 2 SCC 324. In paragraphs 77 to 86 the Apex Court has laid down parameters to be considered by the Court while considering an application for interim maintenance.

11. In the facts of the present case, the learned Magistrate while passing impugned order has not dealt with the main reason which weighed with the Court while passing order under section 125 of the Code that the income of the husband in the year 2012 was around Rs.4 to Rs. 5 lakh per year. It is well settled that while considering application under section 127 of the Code, the Court needs to consider proof of change in circumstances. Change in circumstance is the jurisdictional fact which confers power on the Magistrate to grant relief under section 127 of the Code. Without recording such finding in relation to change in circumstance, the learned Magistrate cannot alter order under section 125 of the Code. In the order dated 28th August 2019 neither the factum of change in circumstance was considered nor finding was recorded to that effect. In absence of such finding, the Court could not have altered order under section 125 of the Code.

12. In so far as the submission in relation to suppression of material fact is concerned, in my opinion, non-disclosure of all facts would not entitle the Court to refuse to grant relief in favour of a party. It is only those material facts which has the bearing with the relief claimed that the Court would take into consideration while adjudicating rights between the parties. In the facts of the

judgment in **S.P. Chengalvaraya Naidu** (supra), the Court was concerned with passing of preliminary decree in a partition suit when the party applying for decree had executed registered release deed in favour of the defendants, which fact had material bearing on the relief claimed by the parties and, therefore, the judgment in **S.P. Chengalvaraya Naidu** (supra) has no application to the facts of the present case.

13. In view of the above reasons, in my opinion, the impugned judgment dated 28th August 2019 is not sustainable.

14. The criminal revision application is accordingly allowed. The impugned order dated 28th August 2019 passed by learned Judge Family Court No.5, Mumbai below Exhibit 1 in Criminal Miscellaneous Application No.11 of 2019 is set aside.

15. No costs.

(AMIT BORKAR, J.)