

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION (WP) NO.469 OF 2022

Dattatraya S/o. Bhaurao Manekar,

Aged : 58 Yrs., Occ.: Retired,

R/o. Shishak Colony, Darwha

Tah. Darwha, Distt. Yavatmal

.... **PETITIONER**

// VERSUS //

1.Sau. Anupreeta Dattatraya Manekar,

Aged : 47 Yrs., Occ.: Private Service,

R/o. Shishak Colony, Darwha,

Tah. Darwha, Distt. Yavatmal

2. Darshana Dattatraya Manekar,

Aged : 25 Yrs., Occ.: Education,

R/o. Shishak Colony, Darwha,

Tah. Darwha, Distt. Yavatmal

3. Anushka Dattatraya Manekar,

Aged : 23 Yrs., Occ.: Education,

R/o. Shishak Colony, Darwha,

Tah. Darwha, Distt. Yavatmal

4. Abhiram Dattatraya Manekar,

Aged : 12 Yrs., Occ.: Education,

Minor through Gurdian Mother

Sau Anupreeta Dattatraya Manekar,

R/o. Shishak Colony, Darwha

Tah. Darwha, Distt. Yavatmal

.... **RESPONDENTS**

Shri I. M. Ghongade, Advocate for the petitioner

Shri, R. J. Shinde, Advocate for the respondent Nos. 1 to 4

CORAM : G. A. SANAP, J.
DATED : 25th JANUARY, 2023

ORAL JUDGMENT :

- 1) Heard.
- 2) **RULE.** Rule made returnable forthwith. Heard finally by consent of learned Advocates for the parties.
- 3) In this criminal writ petition, challenge is to the order dated 27/04/2022 passed by the learned Additional Sessions Judge, Darwha, District Yavatmal in Criminal Revision Application No. 19 of 2021, whereby the learned Judge dismissed the revision application and confirmed the order passed by the learned Judicial Magistrate First Class, Darwha. Learned Judicial Magistrate First Class, Darwha vide order dated 01/10/2021 had partly allowed the application made by the respondents for enhancement of maintenance under Section 127 (3) of the Code of Criminal Procedure (For short 'Cr.P.C.) and thereby quantified the enhanced maintenance.

4) The facts can be summarized as follows:

The respondent No.1 is the wife of the petitioner. The respondent Nos. 2 and 3 are the daughters and the respondent No.4 is the son of the petitioner. They had filed Misc. Criminal Application No. 133 of 2013 for maintenance from the petitioner under Section 125 of the Cr.P.C. The said application was allowed vide order dated 04/12/2015. The petitioner was ordered to pay maintenance of Rs.4,000/- per month to the respondent No.1 and Rs.2000/- per month each to the respondent Nos. 2 to 4 from the date of the filing of the application i.e. 07/10/2013.

5) The respondents made the application on 25/09/2017 and prayed for enhancement of the maintenance amount, already awarded in their favour, as above. According to the respondents, after granting the maintenance vide order dated 04/12/2015 there were change in the circumstances. The salary of the petitioner was increased. There was considerable rise in the prices of the essential commodities and over all cost of living. According to the respondents, the amount of maintenance awarded vide order dated 04/12/2015 was not sufficient to satisfy their

day to day basic needs. The respondent Nos. 2 and 3 are taking higher education. The amount of maintenance awarded in their favour is not sufficient to meet their educational expenses. The respondent No. 4 is also taking education. The respondent No.1 is suffering from various ailments. In order to meet her medical expenses the maintenance amount is not sufficient. Therefore, the respondent No.1 claimed enhancement in maintenance @ of Rs.8,000/- per month and the respondent Nos. 2 to 4 claimed the enhancement in the monthly maintenance @ of Rs.9,000/- each.

6) The petitioner opposed this application. He denied his monthly income. According to him, the maintenance awarded in favour of the respondents vide order dated 04/12/2015 was sufficient to satisfy their basic needs. The respondents are residing in a separate room in the house of the petitioner. They are not required to spend any amount for rent. It is his case that he is bearing the expenses for the education of the respondent Nos. 2 & 3. There is no change in the circumstances, as stated by the respondents. He has borrowed a loan of Rs.11,81,768/- for construction of the house. The EMI of the loan is deducted from his

salary. It is further stated that after filing the application, he retired on 31/12/2020. He is getting Rs.35,334/- per month as a pension. He, therefore, opposed the application for enhancement.

7) Learned Magistrate on appreciation of evidence of the respondent No.1 accepted the case of the respondents for awarding the enhanced maintenance. Learned Magistrate granted enhancement in the maintenance of respondent No.1 @ of Rs.2500/- per month and Rs.2000/- per month for the respondent No.2, Rs.1000/- per month for respondent No.3 and Rs.500/- per month for respondent No.4 from the date of the application i.e. 25/09/2017.

8) The applicant preferred revision against this order before the Court of Additional Sessions Judge, Darwha. Learned Additional Sessions Judge vide order dated 27/04/2022 dismissed the revision and confirmed the order passed by the learned Judicial Magistrate First Class, Darwha awarding enhancement in the maintenance, as above. The petitioner has questioned the said order in this petition.

9) I have heard the learned Advocate for the petitioner and learned Advocate for the respondents. Perused the record and proceedings.

10) Learned Advocate for the petitioner at the out set submitted that though the respondent Nos. 2 and 3 have attained the majority, he is not denying his responsibility to maintain them. Learned Advocate for the petitioner, however, submitted that the enhancement of the maintenance granted in favour of the respondent Nos. 2 and 3 is not justified, inasmuch as, he has been paying for their education. Learned Advocate for the respondents submitted that even if the correctness of the order is questioned *vis-a-vis* the respondent Nos. 2 and 3. on the ground of attainment of the majority by them, the same could not have been sustained in view of the law laid down by the Apex Court in the case of *Jagdish Jugtawat .v/s. Manju Lata and others*.¹. In this case, the order granting maintenance to the unmarried daughter after attaining the majority, by considering the provision of Section 125 of the Cr.P.C. and the provision of Section 20(3) of the Hindu Adoption and Maintenance Act, 1956, was challenged. The same was upheld by the High Court.

1 (2002)5 SCC 422

The Hon'ble Apex Court has held that on combine reading of the two provisions, the High Court was justified in upholding the order of the Family Court granting maintenance under Section 125 of the Cr.P.C. to the daughter even after her attaining majority but till her marriage. It is to be noted that the petitioner-father has not denied his liability to pay maintenance to the daughters in terms of the order, even though the daughters-respondent Nos. 2 and 3 have attained the majority. It is his case that till their marriage he cannot avoid his responsibility to maintain them. In my view, therefore, this aspect is not required to be taken into consideration while appreciating the submissions on merits touching the grievance with regard to the quantum of the enhanced maintenance.

11) This would take me to the two important aspects. One is the proof of the change in the circumstances and second is the proof of insufficiency of the maintenance already awarded in favour of the respondents. According to the respondents, after passing the order in initial maintenance proceedings the salary of the petitioner was increased from Rs.35,408/- to Rs.70,720/-. The respondents relied upon the document at Exh. 27 to prove this fact. It is the case of the petitioner

that during the pendency of this application for enhancement of maintenance, he retired from service on 31/12/2020. He is getting monthly pension of Rs.35,334/-. It is therefore submission of the learned Advocate that there is no change in the circumstances, on this count. Learned Advocate for the respondents submitted that even after his retirement the monthly pension as well as the retiral benefit received by him would be sufficient to maintain the order passed by the learned Magistrate and confirmed by the learned Additional Sessions Judge with regard to the enhancement in the maintenance. It has come on record that on his retirement the petitioner has received Rs.7,70,100/- as a gratuity and Rs.12,13,460/- towards the leave encashment. The petitioner is silent about utilization of this amount. The Courts below have taken all these aspect into consideration and accepted the case of the respondents that on this count namely the enhancement in the income of the petitioner there were change in the circumstances. On going through the material on record, I do not find any reason to discard the contention of the respondents on this point. It is further pertinent to mention at this stage that the petitioner has not examined himself to rebut the oral evidence of the respondent No.1. It appears that in order

to avoid the cross examination on certain relevant and uncomfortable aspects the petitioner might have chosen not to step into the witness box. In the fact situation, this is the only possible inference that can be drawn.

12) The next important limb of the changed circumstances is with regard to the ill health of the respondent No.1, the higher education of the daughters-respondent Nos. 2 and 3 and over all increase in the prices of essential commodities and increase in the over all cost of living. The respondent No.1 by placing the evidence on record has established that she has been suffering from various ailments. She has stated that she is required to spent considerable amount on her medical treatment. In order to substantiate this contention, the documentary evidence has been placed on record. The said evidence has been taken into consideration. It is true that the respondents are staying in a room provided to them in the house of the petitioner. However, that does not mean that there is no increase in their expenses towards their daily basic needs. It is further pertinent to note that the petitioner in his reply has stated that he is bearing the educational expenses of the respondent Nos. 3 to 4. Learned Judicial Magistrate First class did not believe this statement on the

ground that no documentary evidence was produced on record by the petitioner to substantiate this contention. The children/respondent Nos. 2 to 4 are staying with the respondent No.1. It is not the case of the petitioner that apart from the monthly maintenance awarded to them he is paying some amount to them to meet their day to day basic needs. The petitioner though stated in the reply that the respondent No.1 is doing service at private firm, has failed to substantiate the same. On consideration of the material on record, I am satisfied that the change in the circumstances put forth by the respondents has been proved. The Courts below have considered the entire material touching this aspect. The concurrent finding of fact on the point of change in the circumstances does not warrant interference.

13) This would take me to the next important aspect as to the just and reasonable nature of the quantum of the enhanced maintenance awarded by the learned Judicial Magistrate First Class, Darwha and confirmed by the learned Additional Sessions Judge, Darwha. It is to be noted that the parties are residing at Darwha which is a taluka place. As per the original order, together they are getting maintenance of

Rs.10,000/- per month. Learned Judge while granting the enhancement has observed that the family of four persons cannot be maintained with sum of Rs.10,000/- per month. In my view, on going through the orders passed by the Courts below, I do not see any mistake has been committed on this count, as well. It is, therefore, pertinent to mention that the respondents are expected to lead the life which they are accustomed to being the family member of retired teacher. The provision for maintenance contained in Section 125 of the Cr.P.C. is a part of social beneficial legislation. The provision is enacted to provide help to the wife and children who are living in destitution and facing the vagrancy of life. On perusal of record, I am fully satisfied that the enhancement granted in the amount of maintenance by the learned Magistrate is after taking all the above facts into consideration. After granting the enhancement, the monthly maintenance of Rs.10,000/- granted in favour of the respondents would be Rs.16,000/- per month. Considering the monthly pension of the petitioner and the retiral benefit received by him it cannot be said that it would be beyond his financial capacity to pay Rs.16,000/- per month to the respondents together. It has come on record that the respondents are the only persons dependent on the

income of the petitioner. His parents have source of income. His father is getting pension. In my view, therefore, the submissions advanced by the learned Advocate that the quantum of the enhanced maintenance is excessive and exorbitant cannot be accepted. In the totality of the facts and material on record, I am fully convinced that the enhancement granted by the learned Judicial Magistrate and affirmed by the learned Additional Sessions Judge is just, proper and reasonable. The enhancement granted for the respective respondents indicates the application of mind. I am of the view that, therefore, no interference is warranted in the order.

14) The criminal writ petition stands **dismissed**.

15) Rule stands discharged.

(G. A. SANAP, J.)

Namrata