



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2995 OF 2016

Chhaya Madhukar Patil and Another. ...Petitioners.

Versus

Madhukar Hindurao Patil and Another. ...Respondents.

Mr. Bhushan Walimbe for the petitioner.
Mr. Shridhar A. Patil for respondent no.1.
Ms. Shilpa Gajare, APP for the respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : March 18, 2024.

P. C. :

1. Heard.

2. By this petition, challenge is to the order dated 11th March 2015 passed by the Sessions Court in Revision Application Nos. 32 of 2011 and 35 of 2011 dismissing both the revision applications. Criminal Revision Application No. 32 of 2011 was preferred by the husband and Criminal Revision Application No. 35 of 2011 was preferred by the wife. Criminal Miscellaneous Application No. 22 of 2004 was filed by the wife and minor daughter under section 125 of the Code of Criminal Procedure 1973, which came to be allowed and maintenance of ₹1200/- per month was granted to each of them.

Subsequently, Criminal Application No. 82 of 2009 was filed for enhancement of maintenance, in which the trial Court enhanced the maintenance granted, from ₹1,200/- to ₹3,000/- to each of the applicants. As against this, both the parties filed separate revision applications before the Sessions Court.

3. The case of petitioner is that monthly maintenance of ₹3,000/- is meager considering the income of respondent no.1-husband. It was contended that respondent no.1 is working in the Police Department and he is in receipt of frequent increments as well as increase in the salary and dearness allowance. It is contended that, in addition to income from salary, the respondent no.1 has source income from agricultural land. Amount of ₹10,000/- per month towards the monthly maintenance of each of the petitioners was claimed.

4. On the other hand, the contention of respondent no. 1 was that he was suffering from various ailments and was taking treatment in private hospital. It was further contended that he had undergone angiography and to tide over the medical expenses he has taken financial assistance from cooperative society and after the payment of loan installments of the said society, his take home salary is meager. It was further contended that the cost of living in Mumbai

is very high. As regards the dependents, it was contended that mother of respondent no. 1 is dependent on him as such he had challenged the enhancement of maintenance.

5. The revisional Court on a comparative assessment of positions of the parties including the incomes, had noted that as far as the daughter is concerned, there is a need for making a provision for educational expenses and as such she was entitled to the enhancement of maintenance. In the present case, as the daughter is stated to be already married, there is no submission made on her behalf and the contention is restricted only as far as petitioner no.1- wife is concerned.

6. Learned counsel appearing for the petitioner has pointed out that at present the salary of respondent no.1 is in the range of ₹90,000/- per month and considering the said amount, the grant of maintenance at ₹3,000/- per month is meager. He further points out that an application has already been filed under section 127 of the Cr.P.C which is still pending. He submits that even if the salary for the relevant period, i.e., of the year 2012 is taken into consideration, the gross salary of respondent no.1 was in the range of ₹30,000/- per month and considering the same, monthly maintenance of ₹3,000/- each granted to the petitioner is meager. He would further contend

that respondent no.1 had not produced his salary certificate on record before the appellate Court and has thus suppressed his income and as such the income which has been stated by the petitioner should be taken into consideration as uncontroverted. He submits that petitioner no.1 is, therefore, entitled to maintenance in the sum of ₹10,000/- per month.

7. *Per contra* learned counsel appearing for respondent no.1 firstly submits that in exercise of powers under Article 227 of the Constitution, no interference is warranted. He submits that in the year 2012 although the income of respondent no.1 was in the range of ₹30,000/-, there were other expenses required to be met by respondent no. 1 out of the said income and after all the expenses are met, the income was not sufficient for respondent no. 1 for his own sustenance. He submits that for his medical ailment he was required to undergo medical treatment at private hospital and there is no facility of reimbursement of medical expenses incurred at private hospitals.

8. Considered the submissions and perused the record. As far as the first submission of non interference under Article 227 of the Constitution is concerned, it is well settled that although the power under Article 227 of the Constitution is power of superintendence,

the power is required to be exercised especially where gross injustice is shown to have been caused. In the present case, what is under consideration is the grant of maintenance to a wife who is unable to maintain herself. In such cases, this Court cannot restrain itself and refuse to exercise jurisdiction vested in it, particularly if it is noticed that by grant of meager maintenance of ₹3,000/- per month an injustice is caused to the wife as the said amount cannot be said to be sufficient to keep the body and soul together. The decision in the case of ***Dalmia Jain Airways v. Sukumar Mukherjee [A.I.R. (38) 1951 Calcutta 193]*** will not assist the case of respondent no.1 particularly in view of the observation of the Apex Court that where the error of law does not result in injustice, the same should not be corrected in exercise of powers under Article 227. The thrust is on the words “not resulting in injustice”. In case where this Court finds that injustice has been caused, in exercise of powers under Article 227 of the Constitution, this Court is bound to interfere.

9. Now, coming to the quantum of maintenance which should be granted to the petitioner, the relevant period for consideration is the year 2011-2012. At page no. 96 of petition is the salary slip of respondent no.1 for the month of November 2012. The designation of respondent no.1 is shown as Police Naik and total emoluments per

month are shown as ₹27,282/-. Thereafter there are certain non governmental recoveries of cooperative society to the tune of ₹6,706/-. The net pay/salary shown is ₹19,000/-.

10. The appellate Court has considered the evidence of respondent no.1 wherein he has admitted that he has agricultural land to the extent of 1 & ½ acre. He has further admitted that initially he was getting salary of ₹15,000/- to 16,000/- per month and as per 6th Pay Commission, it has increased. The appellate Court has also considered evidence of the mother of respondent no.1 who is examined as witness, wherein she has admitted that she is residing separately and maintaining herself. However, the appellate Court on consideration of the fact that no share has been allotted to her, has held that respondent no.1 has to maintain her. As such, the mother can be considered as dependent on respondent no.1.

11. Admittedly, respondent no.1 is entitled to medical reimbursement facility. Nothing is brought on record to show the expenses incurred by respondent no.1 for his ailments at private hospital especially when it is admitted that respondent no.1 has the facility of reimbursement of medical expenses. The judgment of appellate Court does not indicate that any such evidence has been brought on record. The judgment of appellate Court also shows that

an agricultural land has been allotted to the share of respondent no.1 which is under cultivation and produce is obtained from that land.

12. Respondent no.1 had not produced his salary certificate on record before the appellate Court and for the first time before this Court the salary certificate has been produced. The appellate Court was therefore not benefited from the document which is now produced before this Court.

13. As the document of salary was produced before this Court for the first time, I have considered the salary slip of respondent no.1. For the relevant period, the net salary of respondent no.1 is ₹19,012/-. Even if the expenses are considered it is not the case of respondent no.1 that there are continuous medical expenses on monthly basis. It appears that in the year 2009-2011 there were certain medical expenses incurred by respondent no.1. However, it is not demonstrated that there are expenses which are required to be incurred by respondent no.1 on monthly basis which are not reimbursable. As such, it appears that from the salary of ₹19,000/-, only dependent of respondent no.1 is his mother. The personal expenses of respondent no.1 are stated to be in the range of ₹7,000/- to ₹8,000/-. Even if that is considered, there is surplus

income of ₹9,000/- with respondent no.1 after meeting the expenses as well as paying the loan amount.

14. Considering that it is impossible to survive on a meager maintenance of ₹3,000/- per month and taking into consideration the relevant factors, I am of the opinion that the monthly maintenance is of petitioner no.1-wife can be enhanced to ₹7,500/- per month.

15. Having regard to the discussion above, order of the appellate Court is modified to read as under:

(1) Both the revision applications are hereby dismissed, however, it is made clear that Applicant No.2 Mayuri Madhukar Patil is entitled to get enhanced maintenance, i.e., Rs.3,000/- p.m. till she attains majority, i.e., till 10th August 2013.

(2) Applicant no.1 is entitled to a sum of ₹7,500/- per month towards the monthly maintenance from the date of filing of application, that is, from 13th November 2009.

16. Petition is allowed in above terms.

[Sharmila U. Deshmukh, J.]