



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2979 OF 2019

Akilabanu Zahid Ali Ansari
and Others.

...Petitioners.

Versus

Zahid Ali Ansari and Another.

...Respondents.

Mr. Prakash N. Wagh for the petitioner.

Mr. M. R. Tidke, APP for the respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : January 11, 2024.

P. C. :

1. Learned counsel appearing for the petitioner seeks leave to amend the cause title. Leave granted. Amendment to be carried out forthwith.
2. Heard.
3. Challenge in the petition is to the order passed by the learned Sessions Judge, Thane in Revision Application No. 188 of 2016 enhancing the amount of maintenance by Rs.1,500/- per month per applicant.
4. Learned counsel appearing for the petitioner submits that

initially, the petitioners in an application under section 125 of Code of Criminal Procedure, 1973 were granted Rs.5,000/- per month and subsequently an application came to be filed under section 127 of the Code seeking enhancement of monthly maintenance which was increased by the JMFC by Rs.500/- per month per applicant. He submits that learned Sessions Judge has thereafter increased it to Rs.1,500/- per month per applicant. He submits that it is the duty of respondent no.1 to make appropriate provision for the maintenance of petitioners and that total amount of maintenance granted, i.e., Rs.12,500/- to the petitioners is inadequate and required to be enhanced.

5. Considered the submissions.

6. In the proceedings under section 127 of the Code seeking enhancement, the learned JMFC has increased the maintenance by Rs.500/- per month per applicant. Based on the ITRs produced by respondent no.1, the income of respondent no. 1 for the year 2012-13 is assessed at Rs.1,50,000/- to Rs.2,00,000/- and as such the amount was enhanced by Rs.500/-. Learned Sessions Judge considered that there is no proof brought on record as regards source of income of the petitioner herein to maintain herself and 4 children and to bear the expenses of their education. Learned Sessions Judge held that it

is admitted fact that the petitioner is running computer class and also dealing with handloom business and getting handsome income from that source and as such increased the maintenance by Rs. 1,500/- per month per petitioner.

7. Learned counsel appearing for the petitioners has produced on record the advertisement issued by respondent no. 1 as regards the coaching class of respondent no.1 as well as the fact that respondent no. 1 is also in the business of sale of computers. It is well known that income shown in the ITRs do not demonstrate the actual income and the same cannot be relied upon solely for the purpose of assessing the income of a party. It has also come on record that the computer class is run by respondent no.1 in the property owned by him, which is marked as Exhibit-27.

8. Although appearance has been caused on behalf of respondent no. 1, today none appears on behalf of respondent no. 1. There is an affidavit-in-reply filed by respondent no.1 wherein it is stated that petitioner no.2 to 4 have attained majority and therefore the amount of maintenance is required to be reduced. It is also pleaded that as far as the rent amount is concerned, there is no evidence to show that the petitioners have taken any premises on rental basis. Perusal of the reply of respondent no.1 shows that an amount of Rs.6,50,500/- was in

arrears, which learned counsel appearing for the petitioner submits that has been paid. However, as on today there is arrears of Rs.3,56,000/-.

9. Considering that there is no material on record to demonstrate that the petitioners are having residence of their own, the maintenance which is to be granted should include a provision for residence / rent. Even if it is accepted that petitioner nos.2 and 3 have attained majority, there is no application made by respondent no. 1 for modification of the order of maintenance. It is the petitioners who have come before this Court, seeking enhancement of maintenance. In my opinion, the advertisements placed on record indicates that there are various business carried out by respondent no. 1, which fact is not denied in the cross-examination and although there is no cogent evidence brought on record by respondent no. 1, it needs to be noted that income of respondent no.1 would be within the knowledge of respondent no. 1. He has sought to discharge the proof by placing on record the ITRs. However, as indicated above, the ITRs. cannot be actual indicators of the income earned by the party. Considering the cost of living, the sum of Rs.12,500/- for petitioner and the children is inadequate. On the other hand certain business are being carried out by respondent no.1. As such, in my opinion, the maintenance is

required to be enhanced. Accordingly, the maintenance granted by learned Sessions Judge of Rs.1,500/- per month per applicant is further enhanced by Rs.1,500/- per month per applicant.

10. Petition is allowed in the above terms.

11. In view of the disposal of main petition, nothing survives for consideration in the pending applications and the same are disposed of.

[Sharmila U. Deshmukh, J.]