



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

919 CRIMINAL REVISION APPLICATION NO.95 OF 2023

Kisan Sarjerao Gavali
Age-56 years, Occu-Agri,
R/o. Dongaon, Tq. Gangapur,
Dist. Aurangabad

...APPLICANT
[Ori. Respondent]

VERSUS

Chandrakala Kisan Gavali,
Age-50 years, Occu-Business,
R/o. C/o. Anosh Kulkarni,
Plot No. 74, Shreya Nagar, Aurangabad
Dist. Aurangabad

...RESPONDENT
[Ori. Applicant]

Mr. Nitin S. Kadrade, Advocate for the applicant
Mr. Kshitij H. Survey, Advocate for the respondent (through VC)

CORAM : ABHAY J. MANTRI, J.

DATE : 14th OCTOBER, 2025

ORAL JUDGMENT :

1. The applicant-husband being aggrieved by the judgment and order dated 18-02-2023 passed by the learned Judge, Family Court, Aurangabad in Criminal M. A. No. 24/2014, whereby the amount of maintenance was enhanced and he was directed to pay an amount of Rs. 7,000/- per month instead of Rs. 3,000/- pm to the respondent from the date of application.

2. Heard the learned advocate for the applicant and respondent at length.

3. Perused the impugned judgment and record as well as judgments relied upon by the learned advocates for both parties.

4. At the outset, it appears that in the year 1995, the respondent, being the wife of the applicant, filed an application for the grant of maintenance under Section 125 of the Criminal Procedure Code (for short- *Cr. P. C.*), which came to be allowed, and maintenance of Rs. 750/- per month was granted to her. Thereafter, in 2008, she filed an application under Section 127 of the Cr. P. C. The said application was allowed, and the maintenance amount was increased to Rs. 1,000 per month. Thereafter, in the year 2010, she again filed an application for enhancement of the maintenance. The court, after considering the evidence on record, granted maintenance of Rs. 3000/- per month. Thereafter, she filed an application bearing No. 24/2014, under Section 127 of the Cr. P. C. for the grant of enhancement of the maintenance. By order dated 13-10-2020, her application was allowed, and maintenance of Rs. 7,000 per month was granted to her.

5. Being aggrieved by the said order, the applicant had preferred the revision application No. 122/2020 before this court. This court, after considering the submission of learned advocates for both the parties and material on record by order dated 22-08-2022

partly allowed the application and said order was quashed and set aside and matter was remanded to the learned Family Court with direction to decide the said application afresh together with all the pending applications and admissibility and proof of the VCD and photographs produced by the applicant by giving an opportunity to both the sides.

6. Pursuant to the said order, the learned Judge gave an opportunity to both parties and, after considering the evidence on record, held that the applicant had produced the documents on record. Paragraphs 13 to 23 dealt with the evidence on record and held that the respondent had proved the change in circumstances, and therefore, enhanced the maintenance amount from Rs. 3,000/- to Rs. 7,000/- by order dated 18-02-2023, effective from the date of application, i.e., 13-03-2014. Hence, this criminal revision application.

7. The learned advocate for the applicant vehemently contended that the respondent failed to prove the change in circumstances as contemplated under Section 127 of the Cr. P. C. thereby failed to show that she is entitled to the enhanced maintenance. He further contended that the respondent made a false statement before the court, stating that she resided in the rented house, and also attempted to mislead the court by producing a

fabricated rent receipt showing that she had paid Rs. 3,000/- per month. In fact, she was residing with her sister and mother, and these facts were not taken into consideration by the learned judge when reviewing the applicant's case.

8. The learned advocate for the applicant further propounded that the respondent failed to prove the income of the applicant. The respondent has not produced any documents on record to show the applicant's income, and it is a settled position of law that the income of another person is not helpful for the respondent to demonstrate that the applicant's income has increased. Alternatively, he submitted that the respondent has a source of income, and accordingly, the applicant has produced VCD and photographs on record. However, the learned Judge has not considered this and, without taking into account the respondent's income, increased/enhanced the maintenance.

9. It is pertinent to note that he does not dispute that he has 81-R land, but his only contention is that said land is non-irrigated and that he did not get anything from the said land. Therefore, he propounded that the learned Judge has not considered these facts in their proper perspective. Moreover, the respondent did not produce any evidence of a change in circumstances before the court; therefore, the passing of the impugned judgment and order is

contrary to the evidence on record and is liable to be set aside.

10. To buttress his submissions, he has relied upon the judgment in Jyoti @ Gayatri Vs Rohit Sharma @ Santosh Sharma, Shri Bhagwan Dutt Vs Smt Kamladevi And another reported in (1975) 2 SCC 386 and Rajnesh Vs Neha and others. He pointed out paragraphs 21, 22, 26, and 27 of the judgment in Jyoti (Supra) and paragraphs 9, 11, 19 & 20 of the judgment in Bhagwan Dutt (supra), as well as the observations made in the judgment of Rajnesh (supra). As such, he submitted that in view of the law laid down in the above-cited judgments, the respondent has to prove the change in circumstances of the parties at the time of the application for alteration of the original order of maintenance. Similarly, Section 488 of the Cr. P. C. does not confer an absolute right on a neglected wife to get an order of maintenance against the husband, nor absolute liability on the husband to support her in all circumstances. He also drew my attention to Section 127 of the Cr. P. C. and therefore, he argued that the learned Judge has not considered the law laid down in the above judgments as well as the mandate in section 127 and as such, the findings of the impugned judgment are contrary to the settled position of law, and hence, the revision application is liable to be allowed by setting aside the impugned judgment and order.

11. On the other hand, the learned advocate for the respondent strenuously argued that the impugned judgment and order passed by the learned Judge is just and proper. He drew my attention to paragraphs 4 to 10 of the revision application, as well as the evidence, and submitted that the respondent has stated in the application and deposed about the change in circumstances and source of income of the applicant. He has pointed out license in the name of second wife (page No.44), 7/12 extract in the name of his son (page No.45), he also drew my attention to the crop taken by the applicant from the said land i.e. cotton from 8 Acre land, the property purchased in the name of second wife by deed of assignment dated 22-05-2008 (Page No.47) and submitted that the applicant performed the second marriage and able to maintain the second wife and also purchased the property in her name and also allotted the property to his son Parmeshwar. The said evidence itself is sufficient to show that the applicant has sufficient means of income. Alternatively, he has argued that the applicant is an able-bodied person and therefore liable to pay maintenance to his first wife also.

12. Alternatively, he submitted that there is inflation of the cost of living and therefore, the respondent is also entitled to an enhancement of maintenance. The learned Judge has rightly considered the said facts in paragraphs 13, 16, 22, 23 of the

Judgment and held that the applicant has sufficient means and the respondent proved that there is a change in circumstances. Although she filed an application in 2014, it was not allowed until 2023, i.e., after a period of 9 years. Therefore, after a long lapse, it is also a ground for enhancement of maintenance due to the rise in prices of essential commodities necessary for her. Consequently, he submitted that no interference is required in the impugned judgment in the revisional jurisdiction. Thus, he urged for dismissal of the criminal revision application with heavy costs.

13. It is pertinent to note that the applicant does not dispute that the respondent is his wife. He is also not disputing that since 1995, she has been residing separately, and except for the court order, he has not provided her with maintenance.

14. Before considering the evidence on record and judgments relied upon by the learned advocate for the applicants, it would be appropriate to reproduce the settled position of law, i.e. it is the obligation of the husband to maintain his wife. He cannot plead that he is unable to maintain her due to financial constraints as long as he is capable of earning.

15. Similarly, Section 125 of the Code of Criminal Procedure is a social welfare provision, which must be subjected to an extensive beneficial concern, and this understanding has been extended to

maintenance. Likewise, it must be borne in mind that the right to maintenance under Section 125 of the Code of Criminal Procedure is not a benefit received by the wife but rather a legal and moral duty owed by the husband to maintain his wife. In view of the above settled legal position, it is necessary to scrutinise the evidence on record.

16. The learned advocate for the applicant emphasised that the respondent failed to prove the change in circumstances to get the enhanced maintenance. While dealing with the submission, I have perused the application filed by the respondent before the learned Family Court. In paragraph 4 of the application, she categorically stated that during the existence of the first marriage, the applicant performed the second marriage illegally with one Parighabai and refused to maintain her. Similarly, in paragraphs 5 and 6, she has stated about the grant of maintenance and enhanced the maintenance by respective orders. It appears that, by order dated 16-11-2011, the learned court granted an enhanced maintenance of Rs. 3,000 per month. Therefore, in paragraph 7, she has categorically stated that she resides in Aurangabad, and on a day-to-day basis, there is a hike in the prices of essential commodities and medical treatments. Consequently, the maintenance awarded of Rs. 3,000 per month is too meagre. Similarly, in paragraphs 8 and 9, she

categorically stated that the husband is receiving Rs. 40 to 50 thousand incomes from the grocery shop, which was in the name of the second wife and from the agricultural land, he is getting Rs. 8 to 10 lakhs per annum and also receives rent of Rs. 25,000/- and also averred that due to inflation in the cost of living she is entitled for enhanced maintenance.

17. The applicant filed his say and denied the contents of paragraphs 1 to 4 being false. However, admits the contents of paragraphs 5 and 6. However, he contended that the respondent filed the application with a view to harassing him mentally and financially. Alternatively, he claimed that she is an able-bodied person and earns approximately Rs. 55,000 to 60,000 per month from the Shri Krishna Bhojnalaya, thereby having an established income source. Therefore, he urged allowing the application by setting aside the impugned judgment and order.

18. The applicant, during his evidence, reiterated the contents of the application and produced the documents on record. During her cross-examination, nothing has been brought on record to discard her testimony. On the other hand, the applicant, during his cross-examination, admitted that he has 2 acres of land. Furthermore, he denied the rest of the suggestion.

19. On perusal of section 127 (1) of the Cr. P. C. indicates that the provision is made for alteration of allowance consequent to a change in the circumstances of the parties at the time of application. The Hon'ble Apex Court in Bhagwan Dutt interprets the word '*circumstance*' appearing in section 127 by observing that "*circumstance as contemplated under Section 127(1) of the Cr. P. C., include financial circumstances, and in that view, the inquiry as to the change in the circumstances must extend to a change in the financial circumstances*".

20. Notably, the respondent, in support of her case, has produced a registration certificate [Article-A] issued by the Food Safety Officer in the name of the second wife, 7/12 extract [Exh. 19] of Gut No. 150 and Deed of Assignment [Article-B] and medical documents [Article-C]. It is worth noting that during her cross-examination, none of the documents were produced by her. No suggestion was given to her that the certificates were bogus, nor did he express any concern about them; therefore, there is no reason to disbelieve those documents.

21. On careful perusal of article A, i.e. registration certificate, it appears that the same was issued by the competent authority, i.e. Food Security Officer and Registration Authority, Food and Drugs Administration, Aurangabad, in the name of Parighabai

Kisan Gawali. The certificate in question was issued on December 15, 2011. The name mentioned in the certificate is Parighabai Kisan Gawali. Kisan is the applicant, and her residence is shown as Dongaon. The applicant has not denied or disputed the said certificate. Therefore, there is no reason to disbelieve the same. On the contrary, it appears that the competent authority issued said certificate. The certificate itself indicates that the applicant is married to Parighabai. Upon perusal of Exh. 19, i.e., the 7/12 extract of Gut No. 150, it is revealed that the applicant owns 81-R land, and Parmeshwar Kisan Gawali appears to be the son of the applicant. His guardian is shown as Parigabai Kisan Gawali, and 4 acres of land are shown in his name as the owner. In the cultivation column, it appears that on the 6-acre land, he has planted a crop of cotton, as indicated in the said documents. He neither disputed nor challenged the same. Therefore, there is no reason to discard the said documents also. Article-B is the deed of Assignment, which is executed in the name of P. K. Gawali, i.e. Parighabai, on 22-05-2008, which shows that tenement No. 105/01, plot area adm. 40.00 sq. mts., situated at N-1 4/E (11th Scheme LIG Tupe), was purchased in the name of Parighabai.

22. The respondent in her evidence categorically reiterated the contents of the application as stated above. However, during her cross-examination, no suggestion was put to her, nor was her testimony denied, on that point. In fact, the applicant's evidence regarding their income from the grocery shop and agricultural land has neither been challenged nor denied. Therefore, there is no reason to discard the testimony of the respondent in that regard. The evidence itself shows that there has been a change in the applicant's financial circumstances. Therefore, it cannot be said that the respondent failed to prove the change in circumstances at the time of filing the application.

23. Apart from that, it emerges that by order dated 16-11-2011, the maintenance of Rs. 3,000/ has been granted to the respondent-wife. However, although the application was filed in 2014, it was allowed on 18-02-2023, i.e., after a lapse of nine years and after twelve years of the earlier order of enhancement. A judicial note can be taken that there are rises in the prices of essential commodities or there is inflation of the cost of living over the period, and therefore, said ground can also be termed as a change in circumstance. As such, I do not find substance in the argument of the learned advocate for the applicant in that regard.

24. It is pertinent to note that, as discussed above, the

respondent has categorically proved that there is a change in circumstances and therefore, the law laid down in Jyoti (Supra) and Bhagwan (Supra) is hardly any assistance to him. On the contrary, it helps the respondent as she led cogent evidence and proved that there has been a change in the financial circumstances of the applicant, as well as rises in essential commodities over time. As such, I do not find substance in the contention of the learned advocate for the applicant in that regard.

25. The contention of the learned advocate for the applicant that the respondent has an income source and she earns an amount of Rs. 55 to 60 thousand from the Shri Krishna Bhojnalaya. In his reply, as well as in the evidence in paragraph 5, he deposed that the respondent earns approximately Rs. 50 to 60 thousand per month from the Bhojnalaya. However, he has not produced any documentary evidence or cogent oral evidence in that regard before the court. During his cross-examination, he categorically admitted that he had not filed any license or other evidence that Bhojnalay, allegedly run by the respondent, was operating. Although during the argument, he submitted that he had produced a VCD and photographs. However, during his testimony, he did not disclose any information about the recording of the VCD and photographs. Therefore, I do not find substance in the learned advocate's

contention on behalf of the applicant that no opportunity was given to him. Consequently, I do not find any substance in the contention that the learned Family Court did not consider the evidence of the VCD and photographs while determining the claim of the respondent.

26. Thirdly, he canvassed that the respondent had made a false statement that she had paid rent of Rs. 3000/-, and during her evidence, she deposed that she is residing in Aurangabad and used to pay rent of Rs. 2500/-. Further, it does not appear from her evidence that she produced any receipt on record. Similarly, during her cross-examination, it does not appear that the applicant put any suggestion to her in that regard. Thus, I do not find substance in the learned advocate's contention on behalf of the applicant that she made a false statement or produced a false receipt before the court. On the contrary, it does not appear from the evidence that she has produced any rent receipt before the court during her evidence. Therefore, I do not find any substance in his contention in that regard.

27. Similarly, I have gone through the judgment in Rajnes (Supra), which deals with section 125 of the Cr. P. C. However, it does not deal with section 127 of the Cr. P. C. Moreover, having considered the above discussion, in my view, the mandate laid down in Rajnes (supra) is hardly of any assistance to the applicant in support of his contention.

28. Perused the judgment and record, it appears that the learned Judge has dealt with the contention of the applicant in detail and discussed the same. The learned Judge in paragraphs 14 to 18 has held that the learned Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872. However, the applicant has produced the certificates, photographs, and VCD/CD. The same were exhibited, and after minutely going through the photographs and CD, the learned Judge held that although the photographs and CD were exhibited and read in evidence, it was not established that the respondent earns Rs. 55,000 per month by running the Bhojanalaya. Therefore, the applicant failed to prove the income of the respondent.

29. In paragraph 19, the learned Judge discussed the applicant's income source and observed that the respondent has properly brought the evidence regarding the applicant's income and expenses on record. In paragraphs 22 and 23, which dealt with the issue of change in circumstances and entitlement of the enhanced amount of Rs. 7,000 instead of Rs. 3,000/- and accordingly allowed the application.

30. Thus, on perusal of the impugned judgment and record, it appears that the applicant has sufficient means of income to maintain the respondent and accordingly enhanced the maintenance from Rs. 3,000/- to Rs. 7,000/-. However, the applicant failed to point out that he does not have sufficient means of income to maintain the respondent, or that the findings recorded by the learned Judge are perverse, illegal, or a sanctuary of error of law, thereby interfering with the revisional jurisdiction. On the contrary, the order passed by the learned Judge is just and proper and therefore, I do not find any substance in the contention of the learned advocate for the applicant in that regard. It further prima facie reveals, as shown in Articles A to C and Exhibit 19, that the applicant has performed a second marriage with Parighabai. As the applicant neither denied nor challenged the said documents during the respondent's cross-examination, there is no reason to disbelieve the applicant's testimony in that regard. The said conduct of the applicant itself denotes that the applicant, with a view to defeating the object and the intention of the legislature or depriving the respondent of getting maintenance, has preferred this application. Besides, by preferring this application and issuance of notice to the respondent, she spent money to engage an advocate, and therefore, also in my view, it would be appropriate to impose the cost on the applicant.

31. As a result, the criminal revision application being devoid of merits, stands dismissed with a cost of Rs. 10,000/-.

32. The applicant is directed to deposit the entire arrears of amount and cost in the learned Family Court within eight weeks from today, failing which, the learned Judge is requested to take appropriate steps for getting compliance with this order.

33. At this stage, the learned advocate for the applicant has prayed for a stay of this order for a period of 4 weeks. However, having considered the above discussion and the applicant's conduct in depriving the respondent of maintenance, I am not inclined to stay this order. As such, a prayer for staying this order is rejected.

[ABHAY J. MANTRI, J.]

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