
(2016) 09 BOM CK 0204

In the Bombay High Court

Case No : Criminal Revision Application No. 108 of 2004

Anna s/o Asaram Pakhare

APPELLANT

Vs

Alkabai w/o Anna Pakhare

RESPONDENT

Date of Decision : 01-09-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 127

Citation : (2017) ALLMRCri 651

Hon'ble Judges : N.W. Sambre, J.

Bench : Single Bench

Advocate : Mr. Ganesh Patnurkar, h/f Mr. S.M. Vibhute, Advocates, for the Applicant; Mr. P.M. Gaikwad, Advocate, for the Respondent No.1; Mr. N.T. Bhagat, A.P.P, for the Respondent No.2

Final Decision : Dismissed

Judgement

N.W. Sambre, J. (Oral) - Present criminal revision application is by the applicant-husband questioning the order of enhancement in exercise of powers under Section 127 of the Code of Criminal Procedure from Rs.350/- per month to Rs. 600/- per month.

2. Learned Counsel for the applicant would urge that initially the petition being Petition No. E-306 of 1997 was filed on 31st January, 1997 claiming the maintenance under Section 125 of the Code of Criminal Procedure before learned Family Court, Aurangabad, which came to be allowed, by an order dated 22nd January, 1998 granting maintenance of Rs.300/- per month. While doing so, learned Family Court considered the source of income of present applicant as that of income from agricultural source i.e. to the tune of four acres of land.

3. The petition under Section 127 of the Code of Criminal Procedure being Petition No. 170 of 2000 was filed on 31st January, 2000, which came to be allowed by learned Family Court, vide an order dated 31st August, 2000 enhancing maintenance of Rs.350/- per month from Rs.300/- per month i.e.

enhancement of Rs.50/- per month. Thereafter, again the respondent-wife moved Criminal Misc. Application No. 57 of 2003 before learned Family Court, Aurangabad seeking enhancement. The enhancement was ordered by the Family Court, on 10th November, 2003, enhancing the maintenance by Rs.250/- per month and as such, awarded total maintenance of Rs.600/- per month. The entitlement of maintenance by respondent-wife is not questioned. What is questioned is, without any change in the circumstances, the enhancement is granted, which is contrary to the scheme of Section 127 of the Code of Criminal Procedure.

4. Learned Counsel for the applicant would urge that the source of income of the applicant is at all not taken account and other financial liabilities.

5. In my opinion, the fact remains that the enhancement under Section 127 of the Code of Criminal Procedure was sought after three years from the date of last enhancement granted under Section 127 of the Code of Criminal Procedure. The source of income of the present applicant qua agricultural land, which has irrigation potentiality is very much taken account. This change in the circumstances as could be inferred as provided under Section 127 of the Code of Criminal Procedure in the present case is rise in living index i.e. increase in the cost of living.

6. In view thereof and having regard to the fact that the order of enhancement is holding the field since 2003 and there was no interim order operating so as to grant benefit to the applicant to pay maintenance of enhancement, in my opinion, no case for interference after period of 13 years, in revisional jurisdiction, is made out. As such, criminal revision application fails and stands rejected.