

(2015) 09 BOM CK 0233
In the Bombay High Court
Case No : Criminal Revision No. 64 of 2014

Kailash Ramrao Thorat

APPELLANT

Vs

Sau. Shobha Kailash Thorat and Others

RESPONDENT

Date of Decision : 11-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 127

Citation : (2015) ALLMR(Cri) 4035

Hon'ble Judges : V.M. Deshpande, J.

Bench : Single Bench

Advocate : D.K. Sonone, Advocate, for the Appellant; S.M. Agrawal, Advocate holding for U.J. Deshpande, Advocates, for the Respondent

Judgement

V.M. Deshpande, J.—Rule. Rule is made returnable forthwith. Learned Adv. Mr. S.M. Agrawal holding for Mr. U.J. Deshpande, Adv., waives service for respondent No. 1. None for respondent No. 2, though served. Heard learned counsel for the rival parties at length. By consent of rival parties, this Criminal Revision is taken up for final hearing and disposed of by this Judgment and Order. By the present Revision, an exception is taken to the Judgment and Order dated 20th September, 2013, passed by the learned Judge, Family Court, Akola, in E.P. No. 14 of 2013, by which the learned Judge of the Family Court allowed the application under Section 127, Criminal Procedure Code, and thereby ruled that the present respondents are entitled to get enhanced maintenance. The Court below directed that the respondent No. 1 shall be entitled to receive maintenance at the rate of Rs. 1500/- per month, whereas respondent No. 2 will be entitled to the maintenance at the rate of Rs. 2,000/-.

2. Heard Mr. D.K. Sonone, learned counsel for the applicant, who strenuously urged before this Court that the learned Judge of the Court below has committed wrong in enhancing the rate of the maintenance from its original. According to him, the applicant is a mere labour and his daily income is Rs. 100/- and, therefore, he is unable to pay maintenance. Except this, no other submission was

advanced before this Court.

3. It is not in dispute that the respondent Nos. 1 and 2 are the wife and son respectively of the present applicant. Respondents initially preferred an application under Section 125, Criminal Procedure Code, in the year 2002. The said application was registered as Misc. Criminal Case No. 1195 of 2002 and the learned Judicial Magistrate First Class [Court No. 4], Akola, on 30th April, 2004, allowed the said application and granted maintenance at the rate of Rs. 500/- per month to the present respondent No. 1 and Rs. 300/- to the respondent No. 2.

4. While deciding the said summary proceedings, the learned Magistrate observed that the present applicant has neglected and he has refused, for no cogent reasons, to maintain the present respondents. It was also ruled by the learned Magistrate on the basis of the available material and evidence on record that the present respondents were unable to maintain themselves. Not only that on the basis of evaluation of the material in the said proceedings, the learned Magistrate reached to the conclusion that the present applicant is having sufficient means. Ultimately, the order granting maintenance in favour of respondents was passed.

The aforesaid order granting maintenance in favour of present respondents was not questioned by the present applicant before any superior court. Thus, the order attained finality.

5. In the year 2013, present respondents preferred an application under Section 127, Criminal Procedure Code, for enhancement of the maintenance amount. The said application was registered as E.P. No. 14 of 2013, and it was taken up by the Family Court at Akola. By the same, it was claimed by the respondents that at the time of decision of original application, the respondent No. 2 was aged about seven years and now he has attained the age of thirteen and, therefore, he requires more money to meet his educational expenses. It is also pleaded that in view of rising prices of essential commodities from the year 2004 till 2013, the year in which application for enhancement was moved, the amount of maintenance be enhanced.

6. It is also pointed out that the present applicant has engaged himself in the business of snacks and catering and his monthly income is in between Rs. 25,000/- to 30,000/-.

7. The application was contested by the applicant mainly on the ground that the applicant has closed his shop of "Pani Puri" and he is working as a labour. The application was also opposed on the ground that the respondent-wife is having a Beauty Parlour. It is also pointed out that he is suffering from Asthama and he has to take care of his aged father.

8. In order to substantiate their claims, parties entered the witness box. By filing the document on record, which was duly proved, the respondent No. 1 pointed out that the present applicant has performed second marriage during the

subsistence of the marriage with respondent No. 1. The learned Judge of the Family Court, after considering the pleadings and evidence, reached to the conclusion that the respondents have carved a case in their favour for enhancement and has passed the impugned order.

9. The contention as put forth on behalf of the applicant before this Court that the applicant is a labour, is contrary to his own affidavit. In the present Revision, the Applicant has shown his occupation as "Business." Further, an affidavit is filed in support of the present Criminal Revision in which also, he has stated his occupation to be "business". Therefore, it does not lie in the mouth of the applicant that the applicant is only a labour and is not having a business. Further, it is worth to note that when the initial proceedings under Section 125, Criminal Procedure Code, were decided by the learned Magistrate, it was established on record that the present applicant is having a business. Before the learned Judge of the Family Court, nothing was filed on record by the present applicant to show that he has closed his business. It was his case that he is a labour and he works with one Narayan Dayaram Bhagwat. However, the said Narayan Dayaram Bhagwat was not examined by the applicant before the Family Court to show his employment as a labour with said Bhagwat. Thus, in my view, the learned Family Court has correctly reached to the conclusion that the best possible evidence which is available with the applicant was withheld by him. Therefore, this is a fit case wherein an adverse inference can be drawn against the present applicant.

10. In so far as running of a Beauty Parlour by the respondent No. 1 is concerned, merely because the wife is toiling for herself and for the betterment of her child by engaging herself in a contingent business, cannot be taken to her disadvantage. The initial maintenance granted by the learned Magistrate was only Rs. 500/-. Nobody can expect that a wife along with her minor son will be able to pull with the day-today life with such meagre amount and, therefore, if she is engaging herself to gain something, cannot be used against her. Therefore, that aspect as canvassed by the learned counsel before this Court has to be rejected.

11. Further, the learned Family Court has considered the wife's engagement in a Beauty Parlour while reaching to the quantum. The Family Court has granted maintenance at the rate of Rs. 1500/- to the wife. In my view, such quantum as reached by the learned Judge of the Family Court is just and cannot be said to be excessive one.

12. In so far as maintenance to the son is concerned, it is directed that the applicant should pay maintenance at the rate of Rs. 2,000/-. It is not the case of the applicant that his son is not taking any education. He is thirteen years of age. Thus, he is of a growing age. He requires a good facility for his education to shape his life. The amount of Rs. 2,000/- in his favour, in my view, is not excessive. The order does not depict that the learned Family Court has exceeded its jurisdiction and/or an approach of the court below is perverse one. Hence Criminal Revision No. 64 of 2014 is dismissed. No costs.