

(1995) 12 BOM CK 0019

In the Bombay High Court

Case No : Criminal Writ Petition No. 637 of 1995

Prakash Shankar Shinde

APPELLANT

Vs

Rekha Prakash Shinde and another

RESPONDENT

Date of Decision : 06-12-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 127, 127(1)

Citation : (1996) 2 CivCC 629 : (1996) CriLJ 800 : (1996) 2 DMC 381 : (1996) 2 MhLj 624

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : A.A. Kumbhakoni, for the Appellant; P.M. Palshikar, Addl. P.P., for the Respondent

Judgement

1. The petitioner, Prakash Shankar Shinde, has challenged order dated March 2, 1995 passed in Petition No. E 1421/94, in this criminal writ petition.

2. Rekha Prakash Shinde, wife of the petitioner, was awarded maintenance allowance at the rate of Rs. 45/- per mensem in a petition filed u/s 125 of the Criminal Procedure Code, for short "the Code" on October 13, 1992 by the concerned Magistrate. The wife made an application u/s 127 of the Code of August 7, 1994 for enhancing the maintenance allowance. It was stated in the application that the husband was earning more than Rs. 3,000/- and the maintenance awarded to her was inadequate and she was unable to maintain herself with that meagre amount. The learned trial Judge after recording the evidence came to the conclusion that the gross and carry home salary of the husband is Rs. 2282/- and Rs. 1808/- respectively. He further observed that the amount of maintenance granted was inadequate and he accordingly enhanced the monthly maintenance allowance to Rs. 400/- per mensem payable from the date of presentation of the petition.

3. Learned counsel appearing for the husband has raised two fold submissions. He submitted that the learned Judge was in error in enhancing the maintenance

allowance from the date of the application u/s 127 of the Code. He submitted that even if the maintenance was to be increased that should have been allowed from the date of the order and not from the date of the filing of the petition. The order under challenge is ex parte. Section 127(1) of the Code reads thus :

"127(1). On proof of a change in the circumstances of any person, receiving u/s 125 a monthly allowance, or ordered under the same Section to pay a monthly allowance to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration in the allowance as he thinks fit;

Provided that if he increases the allowance, the monthly rate of five hundred rupees in the whole shall not be exceeded."

The Section provides that where an order of maintenance is passed u/s 125 of the Code, the amount can be increased or decreased on proof of change of circumstances of the person receiving or of the person paying the amount. The wife has proved that she was allowed monthly maintenance allowance at the rate of Rs. 45/- in the year 1982 and she is unable to maintain herself with this meagre allowance as the prices of essential items have increased manifold and there is substantial increase in the salary of her husband. The learned trial Judge upheld the wife's plea. It is true that it is not specifically stated in Section 127 of the Code that order thereunder can relate back to the date of the application. There is no embargo in the section that the order under that section cannot relate back to the application. This Court in *Hiralal Valavdas Vs. Bai Amba*, , has laid down that an order passed u/s 127 of the Code can relate back to the date of the application. This Court rejected similar contention observing thus :

"This is an application in revision against the order of a Magistrate increasing the maintenance allowance of the applicant Bai Amba, u/S. 488 of the Criminal Procedure Code, from Rs. 840 to Rs. 18 per mensem, the order to take effect retrospectively from the date of the application.

It has been argued that the Magistrate had no jurisdiction to make the order. Under S. 488, the Magistrate has power to make the maintenance payable from the date of the application. We cannot see why he should not have the same power to direct, if he thinks fit, when an application is made to vary the order as regards the maintenance payable, that maintenance at the increased rate should be paid from the date of the application."

Learned counsel for the petitioner could not bring to my notice any judgment of this Court taking the contrary view. The first submission of the learned counsel is thus devoid of merit.

4. Before the learned trial Judge the salary slip of the husband was produced and its correctness was not disputed by the husband and on its basis the learned trial Judge observed that the gross salary and carry home salary is Rs. 2282/- and Rs. 1808/- respectively. It is not stated in the petition that the statement made by the learned trial Judge in his order under challenge with regard to the gross

carry home salary is incorrect. The learned trial Judge was right in awarding a monthly maintenance of Rupees 400/- per mensem to the wife keeping in view the totality of circumstances viz. salary and the prices index. The second submission is not borne out from the record. The order was passed after hearing the husband. However, it is open to him to move the learned trial Judge for reconsidering the order on the alleged ground that it was ex parte and the ex parte evidence produced on record did not justify the order.

5. With these observations this petition is disposed of.

6. Order accordingly.