

(2017) 07 BOM CK 0075
In the Bombay High Court
Case No : 16 of 2015

Shri Surendra s/o Manoharrao Bhele

APPELLANT

Vs

Latika w/o Surendra Bhele & Ors.

RESPONDENT

Date of Decision : 03-07-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 125](#), [Section 127](#) — Order for maintenance of wives, children and parents - Alteration In allowance
[Hindu Marriage Act, 1955](#), [Section 13](#)

Citation : (2017) 07 BOM CK 0075

Hon'ble Judges : V.M. Deshpande

Bench : SINGLE BENCH

Advocate : K.B. Zinjarde, Anand S. Deshpande

Final Decision : Dismissed

Judgement

1. Rule. Rule is made returnable forthwith and heard the petition finally by consent of learned counsel for the parties.
2. I have heard learned counsel Shri K.B. Zinjarde for the petitioner and learned counsel Shri A.S. Deshpande for respondent No.1, in extenso.
3. By the present petition, the petitioner is challenging common judgment and order passed by learned Additional Sessions Judge1, Achalpur, in Criminal Revision No.14 of 2012 and Criminal Revision No.22 of 2012 dated 5.9.2014 arising out of judgment and order passed by learned Judicial Magistrate First Class, AnjangaonSurji in Misc. Criminal Application No.81 of 2009 dated 12.12.2011 whereby learned Magistrate allowed the application under Section127 of the Code of Criminal Procedure, 1973, partly.
4. The petitioner is a husband, respondent No.1 is his wife, and respondent Nos.2 and 3 are their minor sons. They will be referred to as, "husband, wife and sons" for the sake of brevity.

5. The marriage between husband and wife was solemnized on 9.7.1997. They were blessed with two sons. As per the case of wife, though initially she was treated nicely, subsequently husband developed drinking habit. He started pressurizing wife to bring Rs.50,000/from her father. Since wife refused to accept his demand, she was subjected to cruelty at his hands. In order to avoid harassment, ultimately wife procured Rs.30,000/from her parents. After receipt of said amount Rs.30,000/, behavioural pattern of husband changed. However, only for brief period. Thereafter, wife along with sons were dropped by husband in her parental house. All gold ornaments were taken away on the pretext of purchasing an agricultural field. Wife was not having any means of her survival. Husband was working as a teacher at Shriram Vidyalyaya, Harisal, Taluka Dharni, District Amravati and the relevant time, he was drawing Rs.20,000/by way of salary. He was also having 22 acres of land at Mouza Yeoda which yields him Rs.3.00 lacs per year. With these statements of facts, initially, wife and sons filed a criminal application under Section 125 of the Code of Criminal Procedure in the Court of learned Judicial Magistrate First Class at AnjangaonSurji. The said application was registered as Misc. Criminal Application No.101 of 2007.

6. Husband appeared in the said proceedings and filed his written statement. The factum of marriage and paternity were not in dispute. However, all other allegations made by wife were denied. As per the case of husband, wife was not interested in residing at village Harisal on the ground that it is a small village. It is further case of husband that when husband had been to village Yeoda, in his absence, wife left the house along with two sons. It is also stated that a false case for the offence punishable under Section 498A was filed against him. As per husband, wife used to earn Rs.80100/ per day by labour work.

7. The parties entered into the witness box and also examined respective witnesses. Exhibit 38 was salary certificate of husband. After appreciation of evidences, learned Magistrate noticed that apart from his salary, husband was getting a special pay since school is situated in a remote place. It was also observed that there is a yearly increment of Rs.1,000//. Learned Magistrate also recorded a specific finding that husband has willfully neglected wife and sons and is willfully not maintaining them in spite of the fact that he is able to maintain them. It was also a finding of fact, which was recorded by learned Magistrate, that wife was not having any means for survival.

With these observations, learned Magistrate on 13.2.2009 partly allowed the application under Section 125 of the Code of Criminal Procedure. By the said order, husband was directed to pay Rs.1,000/per month by way of maintenance to wife and Rs.500/to each of sons by way of maintenance. The maintenance was ordered to be paid from the date of filing of the application.

8. The aforesaid order was not challenged by husband.

9. On 11.8.2009, wife and sons filed an application under Section 127 of the Code of Criminal Procedure for enhancement of maintenance amount. It was

stated in the application that while considering application under Section 125 of the Code of Criminal Procedure, learned Magistrate also considered maintenance, which wife used to get in Hindu marriage petition under Section 24 of the Hindu Marriage Act, 1955. However, from 16.4.2009 wife is not getting the said amount after decision of the Hindu marriage petition. It was also pointed out that at the time of decision of application under Section 125 of the Code of Criminal Procedure, his sons were taking education at village Vihingaon and their educational expenses were less. However, for better future and to give better educational facilities to sons, the sons were admitted to Sitabai Sangai Highschool at AnjangaonSurji. At AnjangaonSurji there was no place for their residence and, therefore, both sons were required to travel daily from Vihingaon to AnjangaonSurji in an autorickshaw. It was also pointed out that both sons were facing difficulty in daytoday travelling and, therefore, wife intends to stay at AnjangaonSurji. It was also pointed out in the application that there is an enormous price hike in essential commodities which are required for daytoday life. It was also pointed out that as per the Sixth Pay Commission, the salary of husband is Rs.30,000/. Therefore, prayer for enhancement of maintenance amount was made that wife be granted Rs.4,000/per month whereas sons should be granted maintenance @ Rs.3,000/per month to each of them. The said application was registered as Misc. Criminal Application No.81 of 2009. The said application was contested by husband.

10. PW1 Yeshwant Mankar, headmaster of a school at Harisal where husband was working as an Assistant Teacher, was examined. He produced salarysheet (Exhibit 13) of husband. As per the said salarysheet, the salary of husband was Rs.28,114/per month. According to husband, there were deductions to the tune of Rs.11,372/. Exhibit 18 was 7/12 extract of the agricultural property owned by husband that shows that he owns agricultural land at village Jogarwadi, Taluka Daryapur, District Amravati.

11. Learned Magistrate, who was considering application under Section 127 of the Code of Criminal Procedure, noticed that wife and sons shifted from village Vihingaon to AnjangaonSurji. The costs of living are increasing. Learned Magistrate also noticed that educational expenses for the sons are also on rise. He also noticed that father of husband was a retired teacher and was getting pension. Therefore, vide judgment and order dated 12.12.2011, learned Magistrate partly allowed application under Section 127 of the Code of Criminal Procedure and enhanced maintenance amount to the tune of Rs.500/to each applicants.

12. Since both, husband and wife, were dissatisfied with such order, husband preferred a Criminal Revision No.14 of 2012 whereas wife and sons preferred a Criminal Revision No.22 of 2012 and questioned the correctness of order passed by learned Magistrate. Both these revisions were decided by common judgment on 5.9.2014.

13. Learned Sessions Judge found, apart from salary, that husband is having

agricultural property to the tune of 5 acres. He also noticed that wife is required to pay Rs.2,500/by way of rent. Learned Sessions Judge noticed that after disposal of the Hindu marriage petition, amount of maintenance, which wife used to get, was stopped. Therefore, by judgment and order dated 5.9.2014 learned Sessions Judge dismissed the criminal revision filed on behalf of husband and allowed the criminal revision filed on behalf of wife thereby enhanced amount of maintenance from Rs.1,000/to Rs.4,000/ for wife and from Rs.500/to Rs.3,000/ for each of sons.

14. According to learned counsel Shri K.B. Zinjarde for the petitioner, the increase is exorbitant. Learned counsel submits that though husband is under an obligation to pay amount of maintenance, learned Sessions Judge ought not to have granted such quantum. He submits that even in original proceedings it was pointed out that yearly increment is Rs.1,000/, therefore, corresponding to such increase, learned Sessions Judge ought to have fixed the quantum. He, therefore, submits that the present criminal writ petition be allowed.

15. The original order granting maintenance amount, in favour of wife and sons, was never questioned by husband. Thus, a finding recorded in the said order, that it is husband who has neglected his wife and sons and is not maintaining them, has attained finality. It is also not in dispute that though at the time of decision of the original proceedings learned Magistrate noticed that yearly increment is Rs.1,000/, it is also an admitted position brought on record that subsequently the Sixth Pay Commission was made applicable and husband was getting amount of Rs.28,114/per month. Thus, there was a manifold increase in salary of husband after implementation of the Sixth Pay Commission.

16. Section 127 of the Code of Criminal Procedure allows the recipient of maintenance amount to approach to the Court for alteration of maintenance amount. Such applicant is required to prove the change in circumstance for alteration of maintenance amount.

17. While determining initial amount of maintenance under Section 125 of the Code of Criminal Procedure, wife and sons were also getting maintenance amount under order passed by the Civil Court in hindu marriage petition under Section 24 of the Hindu Marriage Act, 1955. Therefore, while deciding quantum of maintenance at initial stage, in my view, learned Magistrate has rightly considered the amount of said maintenance so also while fixing quantum of maintenance which wife and sons were entitled to receive under Section 125 of the Code of Criminal Procedure.

18. It is also not in dispute that subsequently from 16.4.2009 amount of maintenance, which wife and sons were receiving under the orders of the Civil Court, was stopped due to culmination of the Hindu marriage petition. This particular aspect was not considered in its correct perspective by learned Magistrate while deciding application under Section 127 of the Code of Criminal Procedure. The factor for deciding initial quantum of maintenance got changed

after culmination of the Hindu marriage petition. Learned Magistrate was under an obligation to bestow thought while refixing amount of maintenance under Section 127 of the Code of Criminal Procedure which was not done by learned Magistrate. Therefore, the said order is not clearly sustainable.

19. It does not lie in the mouth of husband that he is getting salary in hand to the tune of Rs.10,000/due to deductions. Deductions made are voluntarily apart from statutory deductions. It is the duty of the Court while fixing quantum of maintenance to give proper weightage to voluntary deductions made by an employee while determining quantum of amount of maintenance. The salary sheets, which are not denied rather admitted by husband, show that he has obtained G.P.F. loan to the tune of Rs.8,000/and his other voluntary deductions are to the tune of Rs.7,000/. Learned Magistrate, in my view, has not considered this aspect in its correct perspective while determining maintenance amount under Section 127 of the Code of Criminal Procedure.

20. It is also not in dispute that husband owns an agricultural property. Once that position is fixed, the burden was on husband to point out to the Court as to what income he is deriving from agricultural land. The record shows that husband has completely failed to discharge his burden. Especially, when it is not the case of husband that he is not getting any agricultural income, it is always a guesswork.

21. Learned Sessions Judge has correctly found that wife was required to pay Rs.2,500/by way of rent since she has shifted from parental house Vihingaon to AnjangaonSurji for betterment of education of the sons. Shifting from Vihingaon to AnjangaonSurji, which is a better city, cannot be faulted. Nobody can accept that sons, who are neglected by their father, should always remain in a remote village and should not get accessed to better education. Better education is a right of an every child and for giving their right, if the mother is shifting to a better place like AnjangaonSurji, expenses which she would require to incur for their stay at AnjangaonSurji by way of house rent cannot be denied.

22. The facts, which were asserted by wife that school at AnjangaonSurji is having that better facility, are not disputed at all. Husband could not point out that school expenses at Vihingaon and AnjangaonSurji are more or less same. Therefore, the version of wife has to be given more weightage that she required maintenance at higher rate for meeting expenses of sons. Further, looking to the rate of inflation and growing prices of essential commodities, the amount of maintenance, that was fixed by learned Sessions Judge, in my view, cannot be said to be an exorbitant one.

As per orders passed by this Court, the petitioner, who is husband and father of the respondents, has deposited Rs.44,000/before this Court. The respondents are permitted to withdraw the said amount since it is an amount of maintenance. With this direction, the criminal writ petition is dismissed. Rule is discharged.