
(2011) 07 BOM CK 0089
In the Bombay High Court
Case No : Criminal Writ Petition No. 35 of 2010

Sk. Chand

APPELLANT

Vs

Ku. Rukaya and State of Maharashtra

RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 127

Citation : (2012) BomCR(Cri) 560 : (2012) 1 MhLj 815

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : V.G. Wankhede, for the Appellant; R.J. Mirza and M.K. Pathan, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.

1 Rule. Rule is made returnable forthwith. Heard by the consent of the learned Counsel appearing for the respective parties.

2 By this petition, the Petitioner questions the impugned judgment delivered by the learned Sessions Judge, Akola in Criminal Revision Application No. 133 of 2009 along with Criminal Revision No. 156 of 2009 decided on 31.8.2009. The Revision Application arose from the order dt.30.4.2009 passed in Misc. Criminal Case No. 763 of 2008 by the learned Judicial Magistrate, First Class, Akola.

3 It appears that the dispute between the parties has a checkered history since the year 1992 when the application for maintenance was preferred for the first time. It appears that, in Criminal Revision No. 108 of 1993, which was preferred by Respondent No. 1 herein along with her mother Meharunnissa, the learned Sessions Judge, Akola, by an order dt.31.3.1995, had directed the Petitioner herein to pay maintenance in the sum of Rs. 250/- p.m. to Meharunnissa and Rs. 250/- p.m. to Respondent No. 1 herein along with costs of the proceedings in the sum of Rs. 300/- p.m. It appears that Respondent No. 1 had moved an

application u/s 127 of the Code of Criminal Procedure with a prayer for enhancement in the quantum of maintenance. The learned J.M.F.C. Court No. 2, Akola by a reasoned judgment and order dt.30.4.2009, upon proof of change in the circumstances to the effect that the Petitioner is working as a teacher in Zilla Parishad Marathi Purva Madhyamik Shala, Satgaon (Bhusari), Tq. Chikhali, District Buldana and earning salary in the sum of Rs. 11,500/- p.m. and also considering the submissions in detail, enhanced maintenance amount in the sum of Rs. 1,500/- w.e.f. 12.9.2008 with costs of the proceedings in the sum of Rs. 2,000/- to Respondent No. 1. Respondent No. 1 had also relied upon the 7/12 extract in respect of the agricultural land belonging to the joint family of the Petitioner herein earning income from the agricultural land. The said order was challenged before the Sessions Court, Akola by the Petitioner as well as Respondent No. 1 separately by filing Criminal Revision No. 156 of 2009 and Criminal Revision No. 133 of 2009 respectively. The Criminal Revision Application filed by the Petitioner was dismissed and the Criminal Revision Application preferred by Respondent No. 1 was allowed and the amount of maintenance was enhanced to the sum of Rs. 2,000/- p.m. with effect from 31.8.2009 and costs of the proceedings in the sum of Rs. 750/- was awarded. The Petitioner was also ordered to pay costs of Rs. 500/- to his daughter Rukaya.

4. The Petitioner has challenged enhancement of the maintenance amount by this petition on the ground that it is on higher side and the Petitioner is required to maintain his second wife and other members of the family and that he has also incurred housing loan which he is bound to repay by installments.

5. The learned Advocate for the Petitioner submitted that the maintenance amount is harsh and excessive as ordered by the learned Sessions Judge, Akola and therefore, it should be set aside. The learned Advocate for Respondent No. 1 opposed the revision application on the ground that the learned Judicial Magistrate, First Class, Akola, before whom the Application u/s 127 of the Code of Criminal Procedure was moved by Respondent No. 1, considered the financial ability of the Petitioner to pay the amount of maintenance by reason of his employment as teacher in Zilla Parishad. Furthermore, it was also brought to the notice of the learned Magistrate that the Petitioner do possess agricultural land and income from the agricultural land is available to his family. It is also contended that Respondent No. 1 is intending to move another 5 application because of heart ailment which she is suffering from and continuous medical treatment for heart ailment required by her. She is also advised heart surgery. Under these circumstances, it is submitted that the amount of maintenance though enhanced by the learned Sessions Judge, it is still inadequately low to meet the expenses of the Respondent No. 1 and therefore, she will have to move before the learned Judicial Magistrate, First Class concerned with appropriate prayer u/s 127 of the Code of Criminal Procedure.

6. After considering the contentions canvassed before me as also considering the impugned judgment and order, I think that the amount awarded by way of

maintenance and enhancement granted to the sum of Rs. 2,000/- p.m. from the date of order by the learned Sessions Judge, Akola cannot be considered as excessive or harsh bearing in mind availability of income to the Petitioner as a teacher in Zilla Parishad as also the agricultural income available for his family. According to the learned Advocate, mere production of 7/12 extract of the agricultural land cannot lead to the inference that the Petitioner is earning agricultural income out of it. I cannot agree with this submission because from the 7/12 extract produced for perusal of the Court, reasonable inference may be drawn as to agricultural income on the basis of possession and crop column from 6 the 7/12 extract. If at all the Petitioner is interested to prove that there is no income at all from the agricultural land, he is at liberty to apply u/s 127 of the Code of Criminal Procedure leading to change in circumstances, if any.

With these observations, the petition is dismissed with costs.