

(2022) 09 BOM CK 0147

In the Bombay High Court

Case No : Criminal Revision Application No. 66 Of 2019

Vaishnavi

APPELLANT

Vs

Ganpatrao

RESPONDENT

Date of Decision : 28-09-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125, 127, 397

Citation : (2022) 09 BOM CK 0147

Hon'ble Judges : G. A. Sanap, J

Bench : Single Bench

Advocate : Sonali Saware Gadhawe, S. R. Charpe

Final Decision : Disposed Of

Judgement

G. A. Sanap, J

1. Heard Smt. Sonali Saware-Gadhawe learned advocate appointed by High Court Legal Services Sub Committee, Nagpur for the applicant and Shri S.R.Charpe, learned advocate for the non-applicant.

2. ADMIT. Taken up for final disposal by consent of the parties.

3. In this revision application, the applicant has questioned correctness of the judgment and order dated 19.04.2018 passed by learned Principal Judge, Family Court, Nagpur in Misc. Criminal Application No. 21/2017, whereby the learned Judge enhanced the amount of maintenance from Rs.1,500/- per month, already granted, to Rs.3,000/- per month from 1st April, 2018.

4. The initial application, under Section 125 of the Code of Criminal Procedure, filed by the mother for grant of maintenance for her son and daughter (present applicant), registered as Petition No. E-233/2001, was decided vide judgment dated 5th July, 2011 and the applicant was granted maintenance @ of Rs.1,500/- per month from the date of application. Thereafter, the applicant, who was minor, filed an application under Section 127 of the Code of Criminal Procedure before

the Family Court, Nagpur for enhancement of monthly maintenance from Rs.1,500/- per month to Rs.15,000/- per month.

The applicant pleaded relevant facts and particularly, changed circumstances to seek enhancement in the amount of maintenance. It is stated that on the date of the application, the applicant was studying in 11th standard in Science faculty. The amount of maintenance was not sufficient to meet her education and other expenses. According to the applicant, the non-applicant, who is her father, was getting pension of Rs.30,000/- per month. It is stated that the non-applicant is getting income of Rs.2,00,000/- to 3,00,000/- per year from agricultural land. In addition to the above, the non-applicant is having residential house of ground plus two floors and getting rent of Rs.30,000/- per month. The applicant has stated that therefore, she was entitled to get enhanced maintenance @ of Rs.15,000/- per month.

5. The non-applicant opposed the application and denied the material facts. According to him, he is getting pension of Rs.16,475/- per month. His son Pradeep had sustained acid burn injuries. He has spent huge amount on his treatment and in future as well, he is required to spend Rs.5,00,000/- on his medical treatment. According to the non-applicant, there is no change in the circumstances. The maintenance awarded @ Rs.1,500/- month is more than sufficient to satisfy the needs of the applicant. He has denied his income from agricultural land and rent from residential building.

6. The parties adduced evidence. The mother of the applicant was examined as sole witness in support of the claim. The non-applicant also examined himself as sole witness. The learned Judge of the Family Court, Nagpur accepted the case of the applicant on the point of change in circumstances from the date of initial order and accordingly enhanced maintenance from Rs.1,500/- per month to Rs.3,000/- per month. Being aggrieved by this order, the applicant is before this Court in revision.

7. Smt. Sonali Saware-Gadhawe, learned advocate appointed for the applicant submitted that even if the case of the non-applicant is accepted that he was getting pension of Rs.16,475/-, the enhancement in the maintenance granted was unjust and unreasonable. The learned advocate submitted that the Court has failed to take into consideration the income from the agricultural land and the income from ground plus two storied building. The learned advocate submitted that the non-applicant has categorically admitted that he owns three acres agricultural land and a ground plus two storied building having nearabout 9 to 10 rooms. The learned advocate submitted that except the applicant, no other person is dependent on the non-applicant. The learned advocate submitted that despite accepting the case of the applicant vis-a-vis change in the circumstances warranting enhancement, the learned Judge has committed patent illegality by granting meager enhancement. The learned advocate submitted that failure to take the undisputed facts and evidence on record tantamount to illegality apparent on the face of record and making the order perverse.

8. Shri S. R. Charpe, learned advocate for the non-applicant submitted that there is no evidence to prove income from the agricultural land and the household property. The learned advocate for the non-applicant submitted that the non-applicant has proved that his son Pradeep needs medical treatment and as such dependent on him. The learned advocate further submitted that considering the proved quantum of monthly pension of the non-applicant, the enhancement granted in the amount of maintenance was just, proper and reasonable. The learned advocate submitted that the entire evidence adduced on record has been taken into consideration and as such, it cannot be said that the learned Judge has committed patent illegality. The learned advocate submitted that unless and until it is proved that the order is either perverse, arbitrary or capricious or has resulted in miscarriage of justice, the same cannot be interfered with while exercising revisional jurisdiction under Section 397 of the Code of Criminal Procedure. The learned advocate further submitted that while sitting in revisional jurisdiction, the Court shall not and cannot re-appreciate and re-appraise the evidence and the findings of fact recorded by the Court below can only be interfered with, if such findings are perverse or based on no evidence or suffer from any error of law. In order to substantiate this submission, the learned advocate has placed reliance on two judgments of this Court in Chandrabhagabai W/o Bapurao Kedar .vs. Bapurao S/o Manikrao Kedar, reported in 2018 DGLS (Bom.) 508 ; and in Dilip Ramchandra Umare .vs. State of Maharashtra, reported in 1997 (Supp.) Bom.C.R. 745.

9. I am conscious of the legal position. Bearing in mind the legal position culled out from the above decisions, it would be necessary to see whether any patent illegality has been committed by the learned Judge while quantifying the enhanced maintenance awarded in favour of the applicant. The learned Judge, as can be seen from the impugned judgment, has categorically held that there was change in circumstances on two counts. The first change is that by the earlier judgment, maintenance was granted @ of Rs.1,500/- per month to the son of the non-applicant by name Sadanand. Sadanand has attained majority on 17.06.2009. The non-applicant is, therefore, not required to pay maintenance to his son Sadanand.

10. The second change in circumstance, which the learned Judge of the Family Court has taken into consideration, is the present position of the applicant. Admittedly, on the date of the application, the applicant was studying in 11th standard (Science faculty). Mother of the applicant was not granted maintenance in the earlier proceeding under Section 125 of the Code of Criminal Procedure on the ground that she was second wife of the non-applicant. The applicant and her brother are residing with mother. The mother is doing household work as maid servant. It is stated that income of the mother is hand to mouth. They are residing in a tenanted premises. It was, therefore, the case of the applicant that the amount of Rs.1,500/- towards maintenance was not sufficient to meet her basic needs.

11. Perusal of the impugned judgment would show that the learned Judge has not at all given any weightage to this change in the circumstances. The learned Judge has observed that the applicant has not produced any evidence to prove income of the non-applicant from agricultural land and household property. It is seen that the learned Judge has not accepted the case of the non-applicant that he is required to repay the loan amount from pension. The learned Judge has taken into consideration the health condition of son of the non-applicant by name Pradeep.

12. Certified copy of the judgment in earlier petition bearing No. E-233/2001 was produced before the trial Court. It is at Exh.17. A reference to the said order has been made in the impugned judgment. It is to be noted that while deciding the first application under Section 125 of the Code of Criminal Procedure, the income of the non-aplicant from agricultural land and some income from household property was taken into consideration to quantify the monthly maintenance to be awarded to the applicant and her brother. In my view, there is no change in this situation so far. The non-applicant has stated that he is drawing monthly pension of Rs.16,457/-. In his cross-examination, he has admitted that he has not produced on record the documents in respect of medical treatment of his son Pradeep. He has admitted that his house consists of ground plus two floors. While deciding the earlier application, this aspect was prominently taken into consideration. In further cross-examination, the non-applicant has admitted that he is having three acres agricultural land at Mandgaon. He has made voluntary statement that it is lying fallow. In my view, this statement cannot be accepted in absence of evidence. He could have produced on record 7/12 extract to justify this contention. It is the specific contention of the applicant that the non-applicant is getting annual income of Rs.2,00,000/- to 3,00,000/- from agricultural land. In view of these vital admissions, it is apparent on the face of record that the learned Judge has not taken income from the agricultural land and from household property into consideration. If it is assumed for the sake of argument that Pradeep is the liability of the non-applicant, it could not be said that he can completely neglect the applicant. Failure on the part of the learned Judge to take this important fact and evidence into consideration is patent illegality. This aspect has not been specifically dealt with in the impugned judgment. It is seen that the learned Judge has taken into consideration change in the circumstances on first count. The enhancement in maintenance was granted in favour of the applicant. In my view, this was not consistent with the law.

13. It is to be noted that the provisions under Sections 125 and 127 of the Code of Criminal Procedure are enacted with the salutary object of preventing destitution and vagrancy. It is a piece of social welfare legislation. It needs to be stated that while deciding the application under Section 125 of the Cr.P.C. and also the application under Section 127 of the Cr.P.C., the Court cannot overlook this salutary object behind this provision. It is further pertinent to note that the learned Judge has enhanced the amount of maintenance from the date of the

order and not from the date of the application. I am not venturing into this aspect inasmuch as a specific ground has not been pleaded in the revision application by the applicant. If such a ground has been pleaded, then this Court would have pondered over it and explored the possibility of considering enhancement from the date of application. Perusal of the judgment would show that the Court has accepted the change in the circumstances as on the date of the application. In view of this position, the law laid down in the judgments relied upon by the learned advocate for the non-applicant is not applicable to this case. Be that as it may, the said issue cannot be gone into in absence of specific ground. However, in the facts and circumstances, I am of the view that enhancement in the amount of maintenance as quantified, is not just, proper and reasonable. The enhanced maintenance has been quantified ignoring the fact situation and evidence on record. The non-applicant owns 3 acres agricultural land and according to him, it is fallow land. In absence of any evidence to show that the land is fallow land, it has to be presumed that he is getting some income from it. The non-applicant, as can be seen from his evidence, is residing in his ground plus two storied building with his son Pradeep. The applicant and her mother are residing in a tenanted premises. The non-applicant did not show mercy to her daughter to accommodate her in one of the rooms. The statement of the non-applicant that all the rooms are lying vacant, therefore, appears to be unbelievable. The reasonable judicial inference in the facts and circumstances would be that he must be getting some income from the household property. It is further pertinent to note that his monthly pension was Rs.16,457/-. Even if his monthly income has been taken into consideration in the backdrop of his other liability, in my view, enhancement in the maintenance ought to have been to the tune of Rs.5,000/- per month. I, therefore, conclude that the learned Judge has committed patent illegality while quantifying the maintenance. The applicant, in my view, would be entitled to get the enhancement of Rs.3,500/- per month, plus original maintenance of Rs.1,500/-, total Rs.5,000/- per month, from the date of order. The revision application, therefore, deserves to be allowed in the above terms.

14. In view of above, the revision application is partly allowed. The impugned judgment and order dated 19.04.2018 in Misc. Criminal Application No. 21/2017, passed by learned Principal Judge, Family Court, Nagpur, is modified to the extent of quantum of enhanced maintenance. The non-applicant is ordered and directed to pay enhanced maintenance @ of Rs. 5,000/- per month to the applicant from the date of the order.

15. Learned advocate Smt. Sonali Saware-Gadhawe, appointed for the applicant is entitled to receive her professional fees from the High Court Legal Services Sub Committee, Nagpur, which is quantified at Rs.7,000/-.

The revision application stands disposed of accordingly.