

HIGH COURT OF BOMBAY**Bench: Justice Sanjay A. Deshmukh****Date of Decision: 10th May 2024**

CRIMINAL REVISION APPLICATION NO. 175 OF 2023

PRAKASH S/O EKNATH DHEPLE ...APPLICANT**VERSUS****VITHABAI W/O PRAKASH DHEPLE & ANR. ...RESPONDENTS****Legislation:**

Section 125 of the Code of Criminal Procedure (Cr.P.C.)

Section 127 of the Cr.P.C.

Section 340 of the Cr.P.C.

Indian Evidence Act, 1872

Subject: Criminal revision application challenging the Family Court's order on maintenance. The applicant sought the cancellation of maintenance granted to his wife and son, while the respondents sought enhancement of maintenance.

Headnotes:

Family Law – Maintenance – Enhancement and Cancellation – Criminal Revision against Family Court order –

Maintenance to Wife and Son – Section 125 of Cr.P.C. – Challenge by Husband – Allegation of Suppression of Employment – Wife employed in private service earning Rs. 12,000 to Rs. 15,000 per month – Family Court rejected husband's application for cancellation of maintenance – Held: Mere employment of wife does not disentitle her to maintenance – Maintenance awarded earlier was insufficient considering current cost of living – Trial court's order enhancing maintenance justified – No perversity in impugned judgment – Revision application dismissed. [Paras 1-15]

Maintenance – Enhancement under Section 127 of Cr.P.C. – Application by Wife – Increase in Cost of Living – Wife and son required more funds for sustenance and education – Trial Court enhanced maintenance – Contention that wife suppressed income rejected – Employment and earnings of wife do not bar her right to maintenance – Husband's financial capacity considered – Enhanced maintenance amount of Rs. 3,500 per month justified – Revision dismissed with costs of Rs. 5,000. [Paras 2-13]

Income and Employment – Relevance in Maintenance Claims – Evidence Act – Consideration of Financial Status – Court's Role – Income of parties assessed – Evidence of employment and salary considered – Applicant husband's claim of being economically poor not substantiated – Respondent wife's financial need and son's educational expenses recognized – Maintenance amount fixed considering all circumstances. [Paras 9-12]

Decision – Maintenance Enhanced – Revision Application Dismissed – Costs Imposed – The Court found no merit in the revision application – Upheld Family Court’s decision – Directed payment of Rs. 5,000 as costs to respondents – Imposition of 9% p.a. interest on arrears justified to expedite maintenance payments. [Para 13]

Referred Cases:

- Rajnesh Vs. Neha and another (2021) 2 SCC 324
- Ashfak s/o Jafar Shaikh Vs. The State of Maharashtra and Another, Bail Application No. 2151 of 2023, decided on 22nd February, 2024

Representing Advocates:

Prakash Eknath Dheple-party-in-person for Applicant

Mr. Jadhav Madhav K. for Respondents

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J U D G M E N T :

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1. The applicant has challenged the judgment and order passed by the learned Family Court, Aurangabad in Criminal M.A. No. 47 of 2019 and the Criminal M.A. No. 1 of 2021, dated 28.4.2023. It was application for cancellation of maintenance. It was rejected. The respondents' application bearing Criminal Application No.1 of 2021 was simultaneously decided by common judgment. It was allowed.

2. Brief facts giving rise to this revision application are as under:-

a) The applicant and respondent no.1 married on 21.5.1998.

Respondent no.2 is their son viz. Kailas, who is student. Thereafter, the respondents filed an application for granting maintenance under Section 125 of Cr.P.C. The respondent No. 1 wife got Rs.1500/- per month and the respondent No. 2 son got Rs.2000/- as maintenance.

b) The applicant contended that the respondent wife is in private employment and is earning an amount of Rs.12,000/- to Rs.15,000/- p.m.. She had obtained that order of maintenance by suppressing the fact that she is serving in private company and earning that amount. The applicant, therefore, prayed to cancel that order granting maintenance.

c) The respondents by filing their reply objected the application and denied all the material contentions raised by the applicant. The father of the applicant

was a Government servant and after his death, his mother is getting the pension. Her son is studying in 12 th class in the Science stream. He requires more amount for his educational expenses. She has no alternative than to claim enhanced maintenance. It is lastly prayed to reject the application for cancellation of maintenance.

- d) In criminal M.A. No.1 of 2021, the respondents have claimed crivn175.23 enhancement of maintenance under Section 127 of the Cr.P.C. on the ground of hike in the prices of all things and the costs of livelihood has increased. She is getting a salary of Rs.3500/- p.m. Her son is taking education. She has to pay Rs.4000/- p.m. towards house rent. Huge amount is required for the education fees, tuition fees, auto rickshaw, purchase of uniform etc. She further submitted that the applicant is serving in Reliance Company and earning Rs.50,000/- p.m. He is having two photo studios and earning Rs.30,000/- to Rs.35,000/- p.m. from the said business. He is having two storied building at Sawangi. He is getting rent of Rs.1,20,000/- per month from it. His house is constructed in R.C.C. and from its two rooms, he is getting Rs.4000/- p.m. as rent. It was prayed to enhance the amount of maintenance upto Rs.20,000/-.
- e) The applicant husband objected the application by filing his reply and submitted that he is economically poor. The respondent wife is serving in a Private Company and earning handsome salary. By suppressing the material fact, respondents obtained enhanced maintenance in Petition No. E-285 of 2022. An amount of maintenance of Rs.1500/- p.m. was granted to her and Rs.2000/p.m. was granted to her son. He prayed to reject the application.
- f) Learned trial court held that the applicant failed to prove change in the circumstances for allowing his application for alteration/cancellation of maintenance awarded to the respondents.

crivn175.23 The respondents succeeded in proving change in circumstances for enhancement of maintenance amount. The trial court enhanced the maintenance amount by Rs.1000/- and Rs. 1500/- p.m. respectively i.e. total amount amount of Rs.3500/- p.m. The grounds of objections of this revision application are that the learned trial court failed to consider that respondent No.1 wife is having a private job and she has fabricated false evidence by changing her name as Shalini, even though her name is Vithabai. She had fabricated false document i.e. to show that she is Shalini. It is lastly prayed to allow this revision.

3. Heard the applicant party in person and learned advocate for the respondents. The applicant filed written notes of arguments. I have perused the said notes.
4. The applicant-party-in-person pointed out the written notes of arguments submitted in the trial Court and this Court. The main objections of this applicant is that respondent no.1 Vithabai fabricated false documents. She

is working in Amoli Services, Aurangabad by using the false name as Shalini Prakash Dheple and getting a salary.

5. The learned advocate for the respondents on the request of this Court produced the election identity card of respondent no.1, crivn175.23 which was drawn up when she was residing with the applicant wherein, her name is mentioned as Shalini. It is submitted that her name was changed immediately after the marriage when she was cohabiting with applicant as per custom prevailing in the society. The said copy of the election commission's identity card is marked as "X- 1", for identification. It shows the name of respondent no.1 as 'Shalini Prakash Dheple', resident of Chikalthana, Bramhan Galli, Aurangabad. It is a copy of public document. The name of respondent no.1 is changed after marriage when she was residing there with her husband after marriage. Therefore, considering the objections of the applicant that respondent no.1 is using different names and that she fabricated the false documents is not acceptable as held by the trial Court in the impugned judgment. One revision against two judgments and order is not maintainable. It is lastly prayed to reject the application.
6. Perused the record and proceedings.
7. This revision against two impugned judgments is not maintainable.
8. The learned trial Court observed in the impugned judgment that the applicant Prakash has also stated in his affidavit that he is getting Rs.1500/- monthly but he is depositing Rs.3,000/- per month maintenance in the Court. Therefore, prayer of this applicant that the crivn175.23 respondent-wife is deposing false and that she fabricated false evidence and therefore, her claim for maintenance shall be declined is not acceptable.
9. No doubt there is an evidence of income of respondent no.1 that she is getting salary of Rs.3,500/- from that job, but when an amount of maintenance, which was granted earlier to the respondents is considered. It is meager amount of Rs. 1500/- and Rs. 2000/- p.m. It was not possible for them to maintain themselves out of it. Therefore, merely because she is doing a job in private Company the applicant who is able bodied husband and father cannot be exonerated from the liability to pay the maintenance. The proceeding under section 125 of the Cr.P.C. is a summary proceeding. On this ground suppressing material fact does not extinguish right of maintenance. It is not an equitable relief which dis- entitles the persons who are not coming before the Court with clean hands. The learned trial Court has considered the earlier maintenance amount. The learned trial Court has considered the facts situation of both the sides, their status and needs. The learned trial Court has also considered the prices of the essential commodities which have gone high. Even though respondent no.1 is earning some amount, it is not shown that it is more than sufficient amount to her. Further merely because the wife is earning the husband cannot be

exonerated from the liability to pay the maintenance amount. Therefore, in view of the judgment of the crivn175.23 Hon'ble Supreme Court in the case of Rajnesh Vs. Neha and another reported in (2021) 2 SCC 324, though the respondent no.1 has not disclosed the fact that she is earning some amount by doing such a job, she cannot be held liable for giving a false evidence under section 340 of the Cr.P.C. If such course is adopted then it has to be adopted against applicant/husband and wife in each and every case, who are concealing such fact and showing that they are not having source of income.

10. This Court (Corum : Sanjay A. Deshmukh) in the case of Ashfak s/o Jafar Shaikh Vs. The State of Maharashtra and Another in Bail Application No. 2151 of 2023 decided on 22 nd February, 2024 observed regarding truth as under :

"10. There are catena of judgments of this Court and the Hon'ble Supreme Court that the truth must prevail and the Court has to find out the truth. The 'Satyamev Jayate' is the title of the emblem of our Court. However, as per the definition of words 'proved' and 'disproved', as defined in the Indian Evidence Act, 1872, importance is not given to the word 'truth' but importance is given to the truth of 'existence' or 'non existence' of the fact. The Indian Evidence Act is most rational law and it takes cognizance of human psychology and particularly conducts showing immoralities an morality etc., of human beings. It is because proved facts must be considered in the context of background facts and circumstances of each case. Sometimes the bitter crivn175.23 truth causes heavy loss and it defeats justice. Therefore, the consequences intended by law are to give justice and care must be taken that no injustice should be caused by giving justice to the other side.

11. The morality and faithfulness of people of our Indian psychology can be seen from their conduct that they are not adhering to the truth except the exceptions. Our country is not developed but it is developing. There is no such special educational policy and facility to develop dedication, truthfulness, faithfulness, moralities etc. in the minds of people. The general moralities and values in our country are to be considered while expecting truth from them as per their back grounds i.e. status, strata, education, social and economic conditions etc. The truthfulness and faithfulness are best virtues. But those do not come by birth. Those can be developed through the surrounding atmosphere, specially by teaching, compelling circumstances etc. Now a days, decreasing value and morality is serious question for our society. It increases various mischiefs. Therefore, crime rate is increasing. It is possible by effective education policy and methods of teaching and strict laws etc. Therefore, truthfulness, moral values etc. are to be taught as well as get implemented from new generation continuously.

12. In India, the principle that 'in' falsus in uno, falsus in omnibus', is not considered as a sound law of appreciation of evidence. It is because psychology of truthfulness, faithfulness, dedication, values and morality of Indians are different than that of European and American Society. Thus, if a part of evidence is found reliable and its existence is proved or its existence is so probable, then the unreliable, exaggerated or false evidence mixed with truth shall be ignored and part of evidence which is reliable and truthful can be relied upon. Therefore, in the definition of 'proved' and 'disproved', no such importance is given to the 'truth' but the importance is given to the proving of existence and non existence of disputed fact i.e. fact in issue and relevant fact even on probability standard. Thus, the Court is not expected to search or reveal the truth of that particular case. The duty of the Court is to decide rights, liabilities etc., and given justice to the legal mischief affected parties. Thus, truth is not always decisive for giving justice. Justice is more important than truth. It does not mean that truth has no importance at all. It has importance if total false evidence is given certainly it cannot be relied upon. Therefore, in such fact situation truth has importance, but not in each and every case strictly.
13. The object of the law is to give justice and no importance is given to the revealing of truth. In case of conflict between truth and justice, certainly justice will prevail. If the Court insists for the truth and if consequences of it are causing injustice, it is better truth which is not intended by statutes. It may cause injustice. It does not mean that falsity is always justifiable. But for reaching to the object of justice, some falsity mixed with truth must be considered in the peculiar set of fact situation i.e. context of each case. However, only in civil cases if equitable relief is claimed, it is expected that, the person who seeks equity, should come before Court with clean hands (with truth) and not in case of statutory reliefs. Thus, telling lies is not punishable. But giving false evidence and fabricating false evidence is punishable. One cannot tell truth, if others are not telling truth. It is natural human tendency and selfishness. In cases like this case in hand full truth and sterling quality evidence cannot be expected because victim is child and she hails from rural area."
11. Considering all the facts and circumstances of this case, the learned trial Court has rightly concluded and enhanced a just and reasonable amount of maintenance to the respondents. The reasons of the trial Court in paragraph No. 15 are convincing and no interference is warranted in it. No any perversity and impropriety is found in the impugned judgments to interfere in it. Therefore, oral as well as written argument of applicant is not acceptable.
12. The applicant has challenged two proceedings of maintenance in this Revision Application. Therefore, also revision is also not maintainable. Revision Application, therefore, sans merit and it deserves to be dismissed with costs of Rs.5,000/- (Rs. Five Thousand Only) with @ 9% p.m. interest. It is because respondents must have incurred some amount for contesting

this revision. The trial Courts are not awarding interest on maintenance amount. There is no any legal ban to award interest on that amount of maintenance. The husbands or fathers are many a times are not depositing the arrears of maintenance for years together. They have no fear or burden to payment of interest on that amount of maintenance. It is a serious legal mischief in mischief. Section 125 of the CrPC does not prohibit to wards maintenance. Therefore, Courts of District Judiciary are expected to award interest on the amount of maintenance, so that these weaker sections of the society will get their maintenance amount expeditiously. It will serve the purpose of speed justice. Thus, in order to secure their rights fully, effectively and speedily which is an object of justice interest must be awarded which is rationally expected. Their amount of maintenance shall not remain in the hands of the other side which deprives them for maximum period from it. Thus, it is now mandatory to award interest on the amount of maintenance for that this judgment shall be circulated to the District Judiciary of Maharashtra.

13. The revision deserves to be dismissed. Hence the following order :-

ORDER

- (a) The Criminal Revision Application is dismissed with directions to the applicant to pay the costs of Rs.5,000/- (Rs. Five Thousand Only) to be deposited in the trial Court/Executing Court on or before 01.07.2024. If it is not deposited the trial Court/Executing Court may proceed further as per law for recovery of that amount with 9% p.a. interest from 1st July, 2024.
- (b) Record and Proceeding be sent back to the trial Court.
- (c) This judgment be circulated to the judges of the District Judiciary of Maharashtra. The Registrar (Judicial) of this Court is directed accordingly.

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