



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.75/2023

Nischal S/o Purushottam Sontakke,
Aged about 51 yrs., Occ. Service,
R/o. 5/55/5, Tulani Chowk, Ambazari,
Ordnance Factory Colony Nagpur,
Dist. Nagpur.

...PETITIONER
(Ori. non-applicant)

VERSUS

Sau. Jyoti W/o. Nischal Sontakke,
Aged about 40 yrs., Occ. Household,
R/o. C/o. Charandas Dayaramji Khobragade,
Laxminagar, Kunawar Layout near Dr.
Jamgade House Dnyaneshwar Ward,
Hinganghat – Dist. Wardha.

...RESPONDENT
(Ori. Complainant)

Mr. Kanak Y. Mandpe, Advocate for petitioner.
Mr. R.R. Hazare, Advocate for respondent.

CORAM : M. M. NERLIKAR, J.
DATE : 23.09.2025

ORAL JUDGMENT :

Heard.

2. Issue Rule, returnable forthwith. Mr. R. D. Hazare, learned counsel waives service for respondent. With consent of learned counsel for the parties, the petition is taken up for final hearing.

3. By way of this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner is challenging the order dated 17.02.2018 passed by the learned Additional Sessions judge, Hinganghat in Cri. (PWDV) Appeal No.6/2017, wherein the appeal under Section 29 of the Protection of Women's from Domestic Violence Act, 2005 ("D.V. Act") was partly allowed. The said Court has enhanced the amount and directed to pay a total amount of Rs.6000/- per month from January, 2015 to the wife.

4. Brief facts:-

The marriage of the petitioner-husband and the respondent-wife took place on 15.04.2021. As there were differences between the couple, the petitioner filed the divorce petition before the Civil Judge, Senior Division at Nagpur.

However, the said petition was rejected by an order dated 02.04.2012. Preceding to same, the respondent-wife filed a complaint under Section 12 of the D.V. Act bearing Misc. Cri. Application No.71/2007. By an order dated 04.09.2009, the learned Judicial Magistrate First Class, at Hinganghat was pleased to allow the said application and directed the petitioner-husband to pay Rs.3000/- per month to the respondent-wife as maintenance. It appears that thereafter the respondent-wife filed an application under Section 127 of the Code of Criminal Procedure (“Code”) for enhancement of maintenance which was awarded in the proceedings of D.V. Act.

5. After hearing the parties, the learned Magistrate at Hinganghat allowed the application of respondent-wife, thereby enhanced the maintenance amount to Rs. 4,000/- per month by an order dated 02.12.2016. However, the respondent-wife again challenged the said order before the learned Sessions Judge, Wardha by filing an appeal bearing No. 01/2016. It appears that as Sessions Court was established in Hinganghat and therefore, appeal of the respondent-wife was transferred

to the Hinganghat and was registered as appeal No. 06/2017. After hearing the parties, the District and Sessions Judge, Hinganghat allowed the appeal of respondent-wife and directed to pay Rs.6000/- per month to the respondent-wife by its judgment and order dated 17.02.2018. Against this order, the petitioner has approached this Court.

6. I have heard both the parties. The learned counsel for the petitioner submits that the institution of application No.122/2011 under Section 127 of the Code for grant of enhancement of maintenance which was passed under the D.V. Act itself is illegal and the said procedure was adopted which is unknown to law. He further submits that if the award is passed under the provisions of the D.V. Act, the same award cannot be enhanced under Section 127 of the Code. Not only that the Judicial Magistrate First Class has committed a mistake, but also the learned Additional Sessions Judge at Hinganghat while passing the order in the appeal, has not taken into consideration this fact rendering the said order illegal, hence

the order dated 17.02.2018 passed in Appeal No. 06/2017 is required to be quashed and set aside.

7. On the other hand, the learned counsel for the respondent-wife submits that this may be considered as an irregularity and not an illegality as the respondent-wife was not aware of the legal procedure. He further submits that both the provisions under the D.V. Act, so also under the Code are beneficial legislation for the benefit of the wife and therefore, merely on this technical ground, the maintenance enhanced by the Appellate Court may not be set aside. Lastly, he prayed that there is no merit in the present petition and therefore, it be rejected.

8. Upon careful perusal of the petition and the document placed before this Court and after hearing oral arguments of the parties at length, it appears that an unknown procedure was adopted by the respondent-wife in order to claim enhanced maintenance amount by filing Misc. Cri. Application No. 122/2011 under Section 127 of the Code. Surprisingly, the learned Magistrate also did not consider this fact, but

proceeded to enhance the amount from Rs.3000/- to 4000/-. Further even the learned Additional Sessions Judge entertained the appeal and enhanced the amount from Rs. 4000/- to 6000/-, thereby committed error in law.

9. It is well established principle of law that, if the law requires a particular thing to be done in a particular manner as per the procedure laid down, then the same has to be done in that particular manner as per the procedure provided and there can be no deviation from the aforesaid principle. It would be useful to refer to the judgment in the case of ***Rajnish Vs. Neha and another, (2021) 2 SCC 324***, wherein it is observed while referring to the issue of overlapping of jurisdiction in para 61 as under:-

*“61. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the court would take into consideration the maintenance already awarded in the previous proceeding, and, grant an adjustment or set-off of the said amount. **If the order passed in the previous proceeding requires any***

modification or variation, the party would be required to move the court concerned in the previous proceeding.”

10. It would be further useful to refer to one of the judgment in the case of ***Shivanand s/o Karabasappa Gurannavar Vs. Basavva @ Laxmi w/o Shivanand Gurannavar*** (Criminal Writ Petition No.101378/2019, decided on 17.02.2022), wherein the High Court of Karnataka, Bench at Dharwad dealt and has framed identical issue which falls for consideration, “*Whether the maintenance awarded under the Domestic Violence Act can be sought to be enhanced under the Cr.PC.?*” While answering the said issue, the High Court has dealt with the provisions of the D.V. Act, so also the provisions of the Code i.e. Sections 125 and 127 of the Code and eventually it has observed as under:-

“Section 125 of the Cr.PC. enables the wife to seek maintenance at the hands of the husband inter alia. Invoking this provision, the learned Magistrate can award maintenance. Section 127 of the Cr.PC. deals with alteration in allowance. A maintenance that is awarded under Section 125 of the Cr.PC. can be varied in an application filed under Section 127 of the Cr.PC. What is sine qua non is that an order of maintenance should

precede a petition under Section 127 of the Cr.P.C., failing which, a petition under Section 127 of the Cr.P.C. seeking enhancement of maintenance is not available.

11. It is an undisputed fact that the respondent-wife invoked the provisions of the Act in which maintenance was awarded. It is also an admitted fact that there is no proceeding initiated by the respondent-wife invoking Section 125 of the Cr.P.C. Therefore, without there being any determination of maintenance under Section 125 of the Cr.P.C., petition under Section 127 of the Cr.P.C. is not maintainable.

12. The language employed in Section 127 of the Cr.P.C. is unequivocal as on a proof of change in the circumstances of any person receiving allowance under Section 125 of Cr.P.C. can maintain a petition under Section 127 of the Cr.P.C. A proceeding under Section 125 of the Cr.P.C. therefore should precede a proceeding under Section 127 of the Cr.P.C.

13. The fact that provisions of Act was invoked for grant of maintenance and provisions of Cr.P.C. are invoked seeking enhancement of maintenance cannot be countenanced in law. Therefore, the order passed by the learned Magistrate enhancing maintenance under Section 127 of the Cr.P.C. was without jurisdiction and a nullity in law. The foundation being a nullity in law, a super structure to it affirming the order of the learned Magistrate, by the learned Sessions Judge will have to follow suit - is to be declared a nullity in law."

11. Considering the above observations of the Supreme Court as well as the High Court of Karnataka, it is crystal clear that the petition under Section 127 of the Code is not maintainable unless there is determination of maintenance under Section 125 of the Code. It is also crystal clear that, if the order is passed under a particular Act and if a party wants to seek modification or alteration or cancellation the party would be required to move under the concerned Act. Deviating from such a procedure, amounts to nullity of the entire procedure and therefore considering the facts and circumstances of the case, the very foundation for grant of enhanced maintenance under Section 127 of the Code is illegal and further proceedings of the Appellate Court also amounts to nullity being without jurisdiction. Therefore, in the peculiar facts and circumstances, this Court deems it appropriate to quash the order dated 02.12.2016 passed by learned Judicial Magistrate in Misc. Cri. Appln. No.122/2011 as well as the order dated 17.02.2018 passed by the learned Additional Sessions Judge, Hinganghat in Cri. PWDV Appeal No.06/2017.

12. No doubt, the respondent-wife has adopted the wrong procedure, however in order to protect the interest of the wife-respondent and in the interest of justice, it would be appropriate to direct the petitioner to pay Rs.5000/- continuously from the date of filing of this criminal writ petition. This is an interim arrangement in order to balance the rights of the parties. However, the respondent wife is at liberty to file appropriate proceedings under the appropriate Act for maintenance.

13. Criminal Writ Petition stands allowed of in above terms.

(M. M. NERLIKAR , J.)

Gohane