

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 188 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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KUMUDBEN D/O NARANBHAI

CHUNTHABHAI VAGHELA

Versus

JAYESHBHAI SHAMJIBHAI VAGHELA

Appearance:

1. Criminal Revision Application No. 188 of 2001
MR TS NANAVATI for Petitioner No. 1
MR VB GHARANIYA for Respondent No. 1
Mr.SS PATEL, A.P.P. for Respondent No. 2
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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 31/07/2001

ORAL JUDGEMENT

1. An order dated 30.11.2000 passed by Principal Judge, Family Court, Ahmedabad in a proceeding under Section 125 Cr.P.C. is under challenge in this Revision.

2. Brief facts giving rise to this Revision are as under :

The revisionist moved an application u/s.125 Cr.P.C. against the husband - respondent on 11.4.1997, in which she claimed maintenance at the rate of Rs.500/-per month from the date of application. Despite serious efforts made by the Magistrate the respondent did not appear and contest the application u/s.125 Cr.P.C. On 23.11.2000 purshis Ex.10 was filed by the respondent before the Magistrate in which he made written request and admission that he is ready and willing to pay Rs.500/- per month to the applicant towards her maintenance. It was also mentioned in this purshis that the opponent has voluntarily agreed to pay this amount of Rs.500/- p.m. to the applicant. Beyond this, there was no condition in the purshis. The purshis was recorded by the Magistrate on the same date and order was proposed to be passed on the same date, but because the Advocate of the respondent was not present on that date the order was proposed to be passed on 30.11.2000. The impugned order was passed on 30.11.2000 in which it is mentioned that it appears proper to award this amount, viz. Rs.500/- p.m. from 1.1.2000. Accordingly the impugned order was passed which is under challenge in this Revision.

3. Shri T.S.Nanavati, learned Counsel for the revisionist, Shri V.B.Gharania for the respondent No.1 and Shri S.S.Patel, learned A.P.P. for the respondent No.2 have been heard.

4. Shri Gharania points out that the order is perfectly legal hence it requires no interference. As against this Shri Nanavati points out that the order is patently illegal and is not in accordance with Section 125(2) Cr.P.C.

5. Section 125(2) of the Code of Criminal Procedure provides that such allowance shall be payable from the date of the order, or, if so ordered, from the date of application for maintenance. Thus, under this section two options are given to the Magistrate, one to allow the application and grant maintenance allowance from the date of the order. The second option is if the Magistrate so orders he may grant maintenance allowance from the date of the application. The discretion has to be exercised by the Magistrate judiciously and not arbitrarily. It is true that it is open to a Magistrate to grant maintenance allowance from the date of the order and it is also open to him to grant maintenance from the date of application, but not from any other date or intervening date. What

happened in this case is that the application for maintenance was filed on 11.4.1997 and there was specific prayer in Para : 4(A) of this application that the maintenance at the rate of Rs.500/- be allowed from the date of this application, meaning thereby the maintenance was claimed by the revisionist from 11.4.1997. Purshis Ex.10 was filed by the respondent on 23.11.2000. No condition is imposed or indicated in this purshis that the respondent opponent was to pay maintenance either from the date of order or from some other date and not from the date of the application. It was a blanket purshis and the Magistrate should have ascertained from the respondent from which date he was willing to pay the maintenance amount. Final order could not be passed because the Advocate of the respondent before the Magistrate was not present upto 5.20 p.m. hence order was postponed and it was to be passed on 30.11.2000. In the impugned order the learned Magistrate has chosen to award maintenance allowance from 1.1.2000. This date is arbitrary. It is neither from the date of the application nor from the date of the order, viz. 30.11.2000. Thus, this order is patently illegal and not in accordance with Section 125(2) Cr.P.C.

6. No reason has been given by the Magistrate why this date of 1.1.2000 was chosen by him and why he was not inclined to grant maintenance from the date of the application, more particularly when there was no contest to the application from the respondent nor he indicated in his purshis that maintenance allowance be fixed from the date of the order.

7. For the aforesaid reasons the order being patently illegal cannot be sustained. The revision, therefore, succeeds and is allowed. The impugned order is modified to the extent that the maintenance allowance at the rate of Rs.500/- per month granted by the Magistrate shall be payable with effect from 11.4.1997 i.e. from the date of the application.

sd/-

Date : July 31, 2001 (D. C. Srivastava, J.)

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