

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 392 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

- =====
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

ASHVINKUMAR JETHALAL JOSHI

Versus

JOGI DHARA ASHWINKUMAR C/O MEENAXIBEN ASHVINKUMAR

Appearance:

1. Criminal Revision Application No. 392 of 2001
MR JM BUDDHBHATTI for Petitioner No. 1
MR HL JANI, PUBLIC PROSECUTOR for Respondent No. 2
Respondent no.1 in person
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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 29/11/2001

ORAL JUDGEMENT

#. Heard the learned advocates and the party in person.

#. This Revision Application under Section 397 read with Section 401 of the Code of Criminal Procedure has been preferred against the judgment and order dated 10th August 2001 passed by the learned Additional Sessions Judge, Rajkot in Criminal Revision Application No.152/2000.

#. The petitioner herein is the father of the respondent no.1, a minor girl. The petitioner and the mother of the respondent no.1 have been divorced. At the time of divorce, the petitioner had agreed to pay a sum of Rs.15,000=00 for maintenance of the minor girl, which he did pay. However, since then, the mother of the respondent no.1 applied for maintenance under Section 125 of the Code of Criminal Procedure. The said application was allowed and the minor girl was awarded a monthly maintenance of Rs.375=00. Since then, the mother of the minor girl had applied for enhancement of the said amount of maintenance, which were rejected. Once again, the mother of the minor girl made Criminal Misc. Application No.1123/1998 for enhancement of maintenance awarded to the minor girl in the Court of Judicial Magistrate First Class, Rajkot. The said application was rejected by the learned Magistrate under his order and judgment dated 12th September, 2000. Feeling aggrieved, the respondent no.1 through her guardian, the mother, preferred Criminal Revision Application No.152/2000 before the learned Additional Sessions Judge, Rajkot. The said Application has been allowed on 10th August 2001. The amount of monthly maintenance awarded to the respondent no.1 has been increased by Rs.75=00 per month to that of Rs.450=00 per month. Feeling aggrieved, the petitioner father has preferred the present petition.

#. The gravamen of the argument is that at the time of divorce the petitioner had agreed to pay a sum of Rs.15,000=00 for maintenance of the minor child. The guardian of the minor child, the mother, accepted the said sum of Rs.15,000=00. Thus, the respondent no.1 is precluded from claiming any further maintenance from the petitioner. It is further argued that earlier several applications were made for enhancement of the monthly maintenance awarded to the respondent no.1. However, the same were rejected. The present application, therefore, could not have been allowed. The principle of res judicata can not be invoked in the claim of enhancement of maintenance awarded under Section 125 of the Code of Criminal Procedure. I also agree with the learned Judge below that payment of Rs.15,000=00 as maintenance to the minor child can not absolve the petitioner from the liability to pay maintenance, keeping in view the rising

cost of living.

#. For the aforesaid reasons, the Revision Application is dismissed. Rule is discharged.

29th November, 2001. (Ms. R.M.Doshit, J.)

/sakkaf