

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL REVISION APPLICATION No.330 of 2007****For Approval and Signature:****HONOURABLE MR. JUSTICE BANKIM N. MEHTA**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy
of the judgment?

4 Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950 or any order made
thereunder?

5 Whether it is to be circulated to the Civil
Judge?

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IRFAN AKBARBHAI DAVDA - Petitioner
Versus
STATE OF GUJARAT & ORS. - Respondents

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Appearance :

MR HIMANSU M PADHYA for Petitioner.

MS FALGUNI PATEL, APP for Respondent No.1.

MR MEHUL H RATHOD for Respondent Nos.2 & 3.

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CORAM : HONOURABLE MR. JUSTICE BANKIM N. MEHTA**Date : 29/02/2008****ORAL JUDGMENT**

Rule. Ms.Falguni Patel, learned Additional Public
Prosecutor, waives service of rule on behalf of the

respondent No.1-State. Mr.Mehul Rathod, learned advocate, states that he also represents the respondent No.3 and waives services of rule on behalf of the respondent Nos.2 and 3. At the joint request of learned advocates for the parties, the matter is taken up for final disposal today.

2. The petitioner-husband has invoked revisional jurisdiction of this Court under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 ["the Code" for short] and has challenged the judgment and order dated 04.04.2007 rendered by the learned Sessions Judge, Banaskantha at Palanpur, in Criminal Revision Application No.67 of 2005 whereby the order of maintenance under Section 125 of the Code passed by the learned 5th Additional Senior Civil Judge & J.M.F.C., Palanpur, on 21.09.2005 in Criminal Misc. Application No.149 of 2004 has been quashed and increased the maintenance awarded to the respondent Nos.2 and 3 herein.
3. The respondent Nos.2 and 3 preferred an application under Section 125 of the Code in the Court of learned Judicial Magistrate First Class, Palanpur, and claimed maintenance from the petitioner on the grounds that the petitioner was married to the

respondent No.1 and the respondent No.2 was born out of the said marriage; that the petitioner started harassing her after sometime of the marriage and pressurized to bring property from her father; that on account of cruelty, the respondent-wife was constrained to go to her parental house at the time of her pregnancy and after birth of daughter, the petitioner did not come to take her to matrimonial house and also did not make any arrangement for their maintenance; that the petitioner contracted another marriage with one Ms.Hina Kaushar and refused and neglected to maintain the respondent-wife and her daughter; that she has no source of income; that the petitioner has a garage and has agriculture land and has income of more than Rs.2 Lakhs per year. The application was resisted by the petitioner-husband by filing written statement denying the averments made in the application.

4. After hearing, the trial Court awarded Rs.800=00 per month to the respondent-wife and Rs.500/- per month to respondent-daughter towards the maintenance and also awarded cost of Rs.500/-. Therefore, the respondent Nos.2 and 3 preferred Criminal Revision Application No.67 of 2005 in the Sessions Court,

Banaskantha at Palanpur. The learned Sessions Judge, Banaskantha at Palanpur, by his impugned judgment and order, enhanced the amount of maintenance from Rs.800=00 to Rs.1500=00 per month for respondent-wife and from Rs.500=00 to Rs.600=00 per month for respondent-daughter as well as awarded cost of Rs.1000=00.

Being aggrieved by the said decision, the petitioner-husband has filed present Revision Application.

5. I have heard Mr.Padhya, learned advocate for the petitioner, Ms.Falguni Patel, learned Additional Public Prosecutor for the respondent No.1-State, and Mr.Mehul Rathod, learned advocate for the respondent Nos.2 and 3, at length and in great detail.
6. It appears from the judgment of the trial Court that the petitioner-husband raised defence that he is serving in a garage, but did not produce any evidence with regard to his income. It also appears that in order to prove that the petitioner is working in the garage, he has examined his uncle as a witness. However, no evidence with regard to ownership of the garage was produced in the trial

Court. It is settled proposition that in maintenance proceedings, burden to prove income is on the husband as he would be the best person to know about the same. However, no evidence with regard to income was produced by him. It also appears from the judgment of the trial Court that it came to conclusion that the minimum income of the petitioner was Rs.3000/- to Rs.3500/- per month and that the petitioner had no other liability. Thereafter, it awarded the amount of maintenance. It appears that the trial Court did not consider the social status of the parties, other income of the petitioner and bare requirements of the respondents. The learned Sessions Judge in his impugned judgment came to conclusion that the minimum income of the petitioner would be Rs.5000/- per month and also considered the bare requirements and other income of the agricultural land. It is settled proposition of law that this Court while exercising revisional powers cannot reappreciate the evidence unless the appreciation of the evidence by the trial Court has resulted into grave injustice to a party. In the present case, it appears from the impugned judgment that the trial Court committed error in appreciating the evidence while awarding maintenance, which

resulted into grave injustice to the respondents, but the first revisional Court reappreciated the evidence and enhanced the amount of maintenance. The petitioner has not been able to show that the first revisional Court has committed any error in passing the impugned order. The learned advocate for the petitioner has also failed to point out that the impugned order is erroneous and perverse and, therefore, this application is required to be dismissed.

7. In the result, this Revision Application fails and is dismissed. Rule is discharged. Interim relief, if any, stands vacated.

[Bankim N. Mehta, J.]

Rajendra