

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 125-126 of 2017
(Special Leave Petition (Crl.) No(s). 6025-6026/2013)

SHAILJA & ANR.

Appellant(s)

VERSUS

KHOBBANNA

Respondent(s)

O R D E R

Leave granted.

The matters have been called out twice but there is no appearance on behalf of the respondent.

We have gone through the impugned judgment and order dated 17.04.2013 passed by the High Court and order dated 22.11.2012 passed by the Family Court.

The Family Court had directed payment of maintenance for an amount of Rs.15,000/- per month to the appellant - wife and Rs.10,000/- per month to the son.

The High Court while considering the correctness of the order passed by the Family Court did not accept the contention of the respondent - husband that the appellant - wife was working. All that was held was that the appellant - wife was capable of earning and therefore maintenance was reduced to an amount of Rs.6000/- from Rs.15,000/- for her and Rs.6000/- from Rs.10,000/- for the son.

In other words, out of an amount of Rs.25,000/- (total) awarded by the Family Court for the appellant No.1 and the son,

the High Court has reduced the amount to Rs.12,000/- (total).

We are not satisfied with the order passed by the High Court considering the income of the respondent - husband, which we have been told, is more than Rs.80,000/- per month since the respondent - husband is a Senior Lecturer in a college. It is stated by learned counsel for the appellants that the respondent - husband is also the owner of 26 acres of irrigated land.

That apart, we find that the High Court has proceeded on the basis that the appellant No.1 was capable of earning and that is one of the reasons for reducing the maintenance granted to her by the Family Court. Whether the appellant No.1 is capable of earning or whether she is actually earning are two different requirements. Merely because the appellant No.1 is capable of earning is not, in our opinion, sufficient reason to reduce the maintenance awarded by the Family Court.

Under the circumstances, we set aside the order passed by the High Court and restore the order passed by the Family Court.

It appears that the son has now attained the age of majority. If that is so, the son will be entitled to maintenance only till the age of reaching majority.

Subject to the above, the order passed by the Family Court is affirmed.

The appeals are accordingly allowed.

.....J.
[MADAN B. LOKUR]

.....J.
[PRAFULLA C. PANT]

NEW DELHI;
JANUARY 18, 2017.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s).
6025-6026/2013

(Arising out of impugned final judgment and order dated 17/04/2013
in RPFC No. 501/2013 and RPFC No. 542/2013 passed by the High Court
of Karnataka at Gulbarga)

SHAILJA & ANR.

Petitioner(s)

VERSUS

KHOBANNA

Respondent(s)

(With appln. (s) for stay and office report)

Date : 18/01/2017 These petitions were called on for hearing
today.

CORAM : HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Petitioner(s) Ms. Rekha Patil, Adv.
Mr. H. Chandra Sekhar, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

(Meenakshi Kohli)
Court Master

(Jaswinder Kaur)
Court Master

[Signed order is placed on the file]