

**Gowramma Vs. Laxmikanthiah**

**Gowramma Vs. Laxmikanthiah**

**SooperKanoon Citation :** [sooperkanoon.com/1177785](http://sooperkanoon.com/1177785)

**Court :** Karnataka

**Decided On :** Jul-07-2015

**Judge :** A.N. Venugopala Gowda

**Appeal No. :** Criminal Petition No.1308 of 2012

**Appellant :** Gowramma

**Respondent :** Laxmikanthiah

**Judgement :**

(Prayer: This Crl.P. is filed under S.482 Cr.P.C., praying to set aside the order dated 30.10.2010 passed by the FTC-V at Madhugiri in Crl.R.P.No.47/2009.)

1. Challenge in this petition is to an order passed by the learned Sessions Judge, allowing in part, a revision petition filed by the respondent, under S.397 Cr.P.C. The Magistrate at Koratagere had directed the respondent to pay maintenance to the petitioner, at the rate of Rs.3,000/- p.m. from 02.02.2009. Assailing the said order, the criminal revision petition was filed.

2. The material facts to be stated for deciding of this petition are, that the petitioner and her son had filed C.Mis.No.23/1994 against the respondent. After contest, the petition was allowed on 04.11.1995 and each of the petitioners therein was held entitled to the payment of maintenance at Rs.300/- p.m. *f*

3. After a lapse of about ten years, alleging change in circumstances, C.Mis.No.55/2006 was filed by the petitioner, under S.127(1) of Cr.P.C. to enhance the maintenance amount to Rs.3,000/- p.m. and direct the respondent to pay the same. The petition having been stoutly contested, during the proceedings before the learned Magistrate, the wife - petitioner examined herself and the respondent - husband examined himself. Learned Magistrate finding that the salary income of the respondent as gone up and that the cost of living has also escalated in the intervening period i.e., after the order in C.Mis.No.23/1994 was passed, further finding that there is no other dependent on the income of the respondent, passed an order dated 02.02.2009, allowing the petition and directing the respondent to pay maintenance amount at the rate of Rs.3,000/- p.m.

4. Said order was questioned before the Sessions Judge by filing Criminal Revision Petition. The points raised for consideration and answered are; (i) Whether the petitioner made out grounds to enhance monthly maintenance of Rs.300/- to 13,000/- per month? and (ii) What order? The revision petition was allowed in part, by accepting the written arguments filed by the learned advocate for the revision petitioner and the monthly maintenance payable was reduced to Rs.1,000/- p.m.

5. Sri K.N. Nitish, learned advocate, contended that the Sessions Judge has fallen into error in reducing the maintenance to ₹1,000A p.m. He submitted that the Sessions Judge failed to appreciate the plight of the petitioner and by virtue of an unreasoned order, has allowed the revision petition in part and the said order being illegal, is liable to be quashed.

6. Sri A.V. Gangadharappa, learned advocate, on the other hand, submitted that the petitioner being living with her son, who is now employed and is earning, is not in need of any support from the respondent. He submitted that the respondent is not keeping good health and is due to retire from service by the end of this month and would suffer great hardship, if the impugned order is interfered with. Learned counsel further submitted that no injustice as such having occasioned to the petitioner, this petition filed under S.482 Cr.P.C. may not be entertained.

7. From the perusal of the order passed by the learned Magistrate, it is manifest that he has taken note of the fact that the salary income of the husband has increased substantially after the passing of Order dated 04.11.1995 in C Mis.No.23/1994 and that the respondent has agricultural income also and that there is no other dependent to maintain. The cost of living having escalated has also been taken note of. However, the Sessions Judge, by showing sympathy to the husband and without any justification has reduced the maintenance amount to Rs.1,000/-, despite noticing that there is substantial rise in the salary income of the husband.

8. Looking to the cost of living, it will be impossible to conceive that a woman of the petitioner's status, being the wife of a School Teacher, who is earning salary of more than Rs.11,000/- p.m., can manage with manage sum of Rs.1,000/- p.m. The object of S.125 r/w S.127 of Cr.P.C., has not been kept in view by the Sessions Judge. The petitioner's right to claim maintenance and the enhancement having been recognized, the enhancement has to be adequate, keeping in view the proportionate rise in the salary income of the respondent, so that the petitioner can live with dignity, as she would have lived, had she been in her matrimonial home. The petitioner cannot be compelled to live like a destitute, despite the respondent being employed as a teacher and having sufficient income to pay the maintenance.

9. It is trite that, if the husband is healthy, able bodied and is in a position to support, he has the legal obligation to support his wife, unless, she is disqualified to receive the same.

10. In the matter of determining the quantum of maintenance, in JASBIR KAUR SEHGAL VS. DISTRICT JUDGE DEHRADUN AND OTHERS, (1977) 7 SCC 7, Apex Court, has held as follows:

"The Court has to consider the statue: of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of chose he is obliged under the law and statutory but involuntary payments or deductions. The Amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and

the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate."

(emphasis supplied)

11. The husband cannot be permitted to plead that he is unable to maintain his wife due to financial constraints as long as he is earning or capable of earning. In **CHANDER PARKASH BODHRAJ Vs. SHILA RANI CHANDER PRAKASH**, AIR 1968 DELHI 174, High Court of Delhi, has held as follows:

"An able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable to reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption would be easily permissible against him."

12. The Magistrate having passed the order on proper appreciation of evidence on record, the Sessions Judge, in revisional jurisdiction, could not have interfered with the order awarding maintenance, unless, it was shown that the impugned order is perverse. It is not the case of the respondent that the order passed by the Magistrate is perverse. The very approach of the Sessions Judge to the matter is wholly erroneous, which becomes apparent from the points raised by him for consideration, extracted supra, The Sessions Judge has treated the matter before him as an appeal. Even then also, without appreciation of the record of the case and pointing out the error, if any, committed by the Magistrate, has arbitrarily modified the order and reduced the maintenance amount. The order of the Sessions Judge is based more on surmises and conjectures than on any appreciation of evidence. An Appellate Court must be wary, circumspect and slow to interfere with reasonable and proper findings based on appreciation of evidence as recorded by the Trial Court, before interfering with the same.

13. The revisional jurisdiction is one of supervisory jurisdiction exercised for correcting miscarriage of justice when a glaring feature is brought to the noticed of the Court. No such feature having been brought to the notice of the Sessions Judge, the order passed reducing the maintenance being illegal, cannot be sustained.

14. There being no dispute that the petitioner is a teacher, having salary income of more than Rs.11,000/- p.m., apart from the income from agricultural property, which has not been disclosed and no other dependent to maintain, there being change in the circumstances, after the order in C. Misc. No. 23/1994 was passed on 04.11.1995, learned Magistrate is justified in enhancing the maintenance amount to Rs.3,000/- p.m. *f*

In the result, petition is allowed and the order dated 30.10.2010 passed in Crl.R.P. No.47/2009 by the Presiding Officer, FTC-V, Madhugiri, is quashed. As a consequence, the order passed by the learned Magistrate in C.Mis.No.55/2006 dated 02.02.2009 being justified is restored.

Three months' time is allowed for payment of the arrears in equal instalments.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**