

MHRT030015012019 	Presented on : 08/03/2018 Registered on : 08/03/2018 Decided on : 13/04/2026 Duration : 08 : 01 : 05 Y M D
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IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,

COURT NO.2, RATNAGIRI.

(Presided over by Shabnam Yunus Shaikh)

Criminal Misc. Application no.322/2019

Exh.No.25.

1. Avisha Ashok Bawdane

Age: 44 years, Occ: House Maker

2. Alpini Ashok Bawdane

Age: 12 years, Occ: Nothing

Guardian for Applicant no.2 :

Avisha Ashok Bawdane

Both are R/o: U/c of Ziyaji R. Gore

Mauje Warwade Dhangarwadi,

Taluka and Dist- Ratnagiri.

... APPLICANTS.

VERSUS

Ashok Kondiba Bawdane

Age: 49 years, Occ : Colouring

R/O- Murtawde Dhangarwadi,

Taluka- Chiplun and Dist- Ratnagiri.

... RESPONDENT

**Claim: Application under Section 127 of the Code of Criminal
Procedure.**

Shri. K.A. Joshi and Shri. A.A. Mukadam : Ld. Advocates for the
Applicants.

Shri. S.S. Tharwal : Ld. Advocate for the Respondent.

: JUDGMENT :

(Delivered on 13th April, 2026)

The present application is filed under Section 127 of the Code of Criminal Procedure. (for the sake of brevity herein after referred as to be the Cr.P.C.)

The case of Applicants in brief as under :

02. The Applicant No.1, on behalf of herself and Applicant No.2 (minor daughter), had earlier filed Criminal Miscellaneous Application No.49/2009 under Section 125 of the Cr.P.C. before the Hon'ble Court at Ratnagiri, wherein by order dated 30/04/2010, maintenance of Rs.1000/- per month to Applicant No.1 and Rs.500/- per month to Applicant No.2 was granted.

03. It is the case of the Applicants that the Respondent has consistently neglected and avoided payment of the said maintenance amount, due to which the Applicants were constrained to initiate recovery proceedings under Section 125(3) of the Cr.P.C. by filing multiple applications, which are still pending before the Court. The Applicants contend that since the passing of the said order, there has been a substantial change in circumstances, including rise in cost of living and increased educational and day-to-day expenses of Applicant No.2, who is now studying in school. The Applicant No.1

has no independent source of income and is residing at her parental home along with her minor daughter, and both are solely dependent on maintenance for their livelihood.

04. It is further contended that the Respondent has sufficient means, as he is engaged in contract work and agriculture, earning adequate income, and has no other financial liabilities. Despite this, he has failed to discharge his legal and moral obligation. On these grounds, the Applicants have filed the present application under Section 127 of the Cr.PC. seeking enhancement of maintenance.

05. The record reveals that the Respondent appeared before the Court. However, despite sufficient opportunities being granted, he failed to file his Say. Consequently, a “No Say” order came to be passed against the Respondent. Thereafter, the Respondent preferred an application for setting aside the said “No Say” order. However, he failed to comply with the directions issued by this Court in respect of the said application. Hence, the said application came to be rejected, and the present proceedings have been conducted in the absence of the Respondent’s say.

06. In order to substantiate her case, the Applicant No.1 has examined herself as A.W.1 at Exhibit.15 and reiterated the contents of the application in her examination-in-chief. The Applicant has further relied upon the certified copy of the judgment passed in Criminal Miscellaneous Application No. 49/2009, which is produced on record at Exhibit.24. Thereafter, the Applicant closed her evidence by filing pursis at Exhibit.22.

07. On the other hand, the Respondent has failed to adduce any oral or documentary evidence on record. Hence, by order passed at Exhibit.1, the evidence of the Respondent came to be closed.

08. I have heard the learned Advocate for the Applicant. The Respondent, despite sufficient opportunities being granted, failed to advance any arguments. Therefore, the application is proceeded to be decided on merits

09. Upon considering the contentions of applicant and the documents placed on record, the following points for determination arise, and my findings thereon with reasons are recorded in the succeeding paragraphs :

Sr. Nos.	POINTS FOR DETERMINATION	FINDINGS
1.	Whether the Applicants prove that there is a change in circumstances as contemplated under Section 127 of the Code of Criminal Procedure after passing of the order in Criminal Miscellaneous Application No. 49/2009?	...YES
2.	Whether the Applicants are entitled for enhancement of maintenance? If yes, what quantum?	...YES Rs.3000/- to Applicant no.1 and Rs.2000/- to Applicant no.2.
3.	What order?	...APPLICATION IS PARTLY ALLOWED.

: REASONING :AS TO POINT NO.1 :

First and foremost I would like to refer to the provision of Section 127 of the Cr.P.C. which states as follows :

***“127: Alteration in allowances :** (1) On proof of a change in the circumstances of any person, receiving under Section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for may be.*

10. The Applicants are required to establish that there is a material change in circumstances warranting exercise of powers under Section 127 of the Code of Criminal Procedure. It is an admitted position on record that in Criminal Miscellaneous Application No.49/2009, by judgment dated 30/04/2010, maintenance of Rs.1000/- per month was awarded to Applicant No.1 and Rs.500/- per month to Applicant No.2. The Applicant No.1 has entered into the witness box at Exhibit.15 and reiterated the contents of the application. She has categorically deposed that after passing of the said order, there has been a substantial increase in the cost of living, and expenses towards food, clothing, education and other basic necessities have increased manifold. She has further deposed that Applicant No.2 is now of school-going age and her educational expenses have considerably increased.

11. The said oral evidence of the Applicant has remained unchallenged and unrebutted. The record further indicates that though the Respondent appeared before the Court, he failed to comply with the directions and consequently a “No Say” order came to be passed against him. Thus, there is no cross-examination or rebuttal evidence on behalf of the Respondent. At this juncture, it is relevant to note that under Section 127 of Cr.PC., the Court is empowered to alter the maintenance upon proof of change in circumstances. The expression “change in circumstances” is of wide amplitude and includes increase in cost of living and inflation.

12. This Court can take judicial notice under Section 57 of the Indian Evidence Act of the continuous rise in prices and inflation over the years. The maintenance amount fixed in the year 2010 has, therefore, lost its real value and has become inadequate.

13. In view of the unrebutted evidence of the Applicant and the settled legal position, I am satisfied that there is a substantial change in circumstances, rise in cost of living and passage of time constitute valid grounds for enhancement of maintenance under Section 127 of Cr.PC.. Hence, Point No. 1 is answered in the Affirmative.

AS TO POINT NO.2 :

14. As discussed in Point no.1 there is a change in circumstances, therefore the next question is regarding entitlement and quantum of enhancement. The Applicant No.1 has deposed that she has no independent source of income and that both the Applicants are dependent upon the maintenance amount. She has

further stated that the Respondent is earning through work and has sufficient means. Though no documentary evidence is produced regarding exact income, the Respondent has failed to place any material on record to disprove the same. In such circumstances, an adverse inference is liable to be drawn against the Respondent as per settled principles of evidence.

15. It is well settled that proceedings under Sections 125 and 127 of Cr.P.C. are summary in nature and strict proof of income is not always possible. The Court has to adopt a pragmatic and realistic approach. The Hon'ble Supreme Court in Rajnesh V/S Neha & Anr. Cited in (2021) 2 SCC, 324 has laid down comprehensive guidelines emphasizing that maintenance must be just, fair and realistic, considering the needs of the claimant and the standard of living.

16. In the present case, the earlier maintenance of Rs.1500/- per month in total, fixed more than a decade ago, is grossly insufficient to meet even basic necessities in present times. The growing educational needs of Applicant No.2 and day-to-day expenses justify enhancement. Moreover, In view of the findings recorded on Point No.1 in the affirmative, I am of the considered opinion that the Applicants are entitled to the enhancement of maintenance.

17. It is also to be noted that the Applicant has not brought on record any definite or reliable evidence regarding the exact present income of the Respondent. In such circumstances, the Court is required to determine a reasonable amount of enhance maintenance on the basis of the material available on record, keeping

in view the status of the parties, their needs, and the earning capacity of the Respondent. I find it just, proper, and reasonable to award maintenance at the rate of Rs.3,000/- per month to Applicant no.1 and Rs.2,000/- per month to Applicant no.2. Hence, Point No.2 is answered in the Affirmative.

AS TO POINT NO.3 :

What order?

18. In view of the findings recorded on Point Nos.1 and 2 in the affirmative, I am of the considered opinion that the Applicants are entitled to maintenance. However, as discussed under Point No.2, the applicant has failed to prove the exact current income of the respondent as well as the precise expenses of the Applicants. Therefore, the Applicants are not entitled to the full amount of maintenance as prayed for in the application. Nevertheless, in the interest of justice, Applicant No.1 is held entitled to maintenance of Rs.3,000/- per month, and Applicant No.2 is entitled to maintenance of Rs.2,000/- per month. Hence, the present application deserves to be partly allowed.

19. The evidence on record clearly establishes that the respondent has not filed his Say on record. Consequently, the applicant has been constrained to initiate the present proceedings and has contested the same for a considerable period of approximately 07 years in order to secure her and her daughter's lawful rights. In these circumstances, it would be just and proper to award the costs of the proceedings to the Applicants. Hence, in answer to Point No.3, I proceed to pass the following order :

: O R D E R :

1. The application is hereby partly allowed.
2. The Respondent is directed to pay enhanced maintenance of:
Rs.3000/- per month to Applicant No.1, and Rs.2000/- per month to Applicant No.2.
3. The enhanced maintenance shall be payable from the date of filing of the present application.
4. The Respondent shall clear the arrears, if any, within a reasonable period.
5. A copy of this judgment be furnished to the Applicant free of cost as per the provisions of Section 127 of the Code of Criminal Procedure.

(The judgment is Dictated and pronounced in open Court.)

Date: 13/04/2026
Place: Ratnagiri.

(Shabnam Yunus Shaikh)
Judicial Magistrate First Class,
Court no.2, Ratnagiri.