

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI.REVISION APPLICATION NO. 3 OF 2015

Shamshuddin Shaikh

Petitioner

Vs

1. Ms. Nasreen Bi Shamshuddin
Shaikh;

.. Respondents

1(a) Miss Needa, aged 17 Yrs.,

1(b) Miss Sana, aged 14 yrs,

1(c) Master Salimuddeen, aged
12 years.

Mr. Jaydev Trivedi, Advocate for Petitioner.

Ms. Nasreen Bi Shamshuddin Shaikh, respondent no.1-in person
present.

Mr.A.R.Patil, A.P.P. for respondent no.2.

CORAM : R.G.KETKAR,J.

DATE : 26/02/2015

PC:

1. Heard Mr. Jaydev Trivedi, learned counsel for the petitioner,
respondent no.1-in-person and Mr. A.R.Patili, learned A.P.P for
respondent no.2 at length.

2. By this petition under sections 397 read with 401 of the
Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), the
petitioner-husband has challenged the Judgment and order dated
14.11.2014 passed by the learned Judge, Family Court No.2,
Mumbai in Petition No. E-51 of 2012. By that order, the Family
Court partly allowed the petition instituted by respondent no.1
under section 125 of Cr.P.C for maintenance for herself and her

three minor children. The Family Court directed the petitioner to pay maintenance at the rate of Rs.5000/- per month to respondent no.1(a) Needa aged about 17 years, at the rate of Rs.3500/- per month to respondent no.1(b) Sana aged about 14 years, at the rate of Rs.2500/- to respondent no.1(c) Salimuddeen aged 12 years, with effect from the date of filing of the petition, i.e. 1.2.2012 till their attaining respective age of majority, ie. 18 years, on or before 10th day of every English month by depositing it in respondent no.1's Bank Account. The interim maintenance already paid to the respondent no.1 was ordered to be adjusted towards the arrears.

3. In support of this petition, Mr Trivedi strenuously contended that respondent no.1 is in possession of prime properties located in Andheri, Jogeshwari and Goregaon. She is owner of entire building comprising of ground plus first floor at Rampur (U.P). She has let out Flats no.107 and 108 on rent. She is getting rent from these properties. He invited my attention to cross examination of the first respondent wherein she admitted that presently she is residing in flat No.109, Monarch and Qureshi Building at Jogeshwari. She is in occupation of shop bearing no.12B in Monarch & Qureshi Buildings at Jogeshwari. She is in occupation of a shop and a residential room above the said shop in Bhagart Singh Nagar No.2, Stable Cross Road, Goregaon (W), Mumbai. Though she denied that she was getting income from Flats 107

and 108 at the rate of Rs.9000/- each as also Rs.6000/- per month for room no.107 and Rs.5000/- per month from room no.108 and that Rs.4000/- per month from shop no.12B, Mr Trivedi submitted that respondent no.1 is getting monthly rent of Rs.50,000/-. He further submitted that respondent no.1 admitted in cross examination that the petitioner is educated only upto 7th standard and he used to work as labourer in a Three Star Bakery. Though she deposed that in the year 1997 she had constructed Famous Bakery in Ujala Nagar, Behrum Bag, Jogeshwari and that it was transferred in the name of his brother, she admitted that she does not have any documentary proof in that regard. He submitted that the properties shown at Sr. Nos. 2 to 9 at Annexure A are not in existence. Respondent no.1 further admitted in cross examination that the Famous Bakery at Jogeshwari was standing in the name of petitioner's brother Nizamudin. She also admitted that the petitioner is not getting any rent from the landed property mentioned in Annexure A.

4. Mr. Trivedi submitted that the Family Court awarded maintenance on the ground that if at all the petitioner is having monthly income of Rs. 6000/- per month, he would not have been a polygamous husband and have 5 + 3 children from both the wives. The Family Court also held that the properties set out in Annexure A are in fact existing and these properties are not imaginary. He submitted that these findings are contrary to

evidence on record. Having regard to the fact that the petitioner has monthly income of Rs.6000/-, the Family Court committed serious error in awarding maintenance of Rs.11000/- in all to the children.

5. I have considered the submissions advanced by Mr.Trivedi. I have also perused the material on record. Perusal of the material on record clearly shows that the petitioner has first wife and from that marriage he has five children. The petitioner has remarried respondent no.1 and they have three children from the second marriage. It is also material to note that the petitioner did not enter into witness box to substantiate that he is earning Rs.6000/- per month. Mr. Trivedi submitted that the petitioner has purchased immovable properties and those properties have been grabbed by first respondent. Respondent no.1 is also facing 10 different case in Andheri Court. If at all, the petitioner is in fact really working as labourer in the Bakery, it is inconceivable that he could purchase immovable properties which can be grabbed by respondent no.1. During the course of arguments, Mr Trivedi conceded that in the past the petitioner was running a Bakery. He has, however, stopped running that Bakery now. Perusal of the material on record and cross examination of respondent no.1 shows that in the year 1997 she had constructed Famous Bakery in Ujala Nagar, Behrum Bag, Jogeshwari. The petitioner transferred that Bakery in the name of his brother. It is no doubt

true that she admitted that she does not have any documentary proof in that regard. The moot question is why the petitioner did not enter into witness box and did not face cross examination. Mr Trivedi could not give any satisfactory reply to this query. That apart, Mr Trivedi also could not explain in what circumstances the petitioner, who is working as labourer having first wife and five children, had remarried to respondent no.1. The petitioner claims that his monthly income is Rs.6000/- and has five children from the first wife and remarries respondent no.1 and has three children from the second wife. By no stretch of imagination, this claim can be accepted. The petitioner deliberately did not enter into the witness box to bring on record his real income. Considering the material on record as also having regard to the fact that the Family Court has awarded maintenance to the children and denied maintenance to the first respondent, I do not find that any case is made out for invocation of powers under sections 397 read with section 401 of Cr.P.C. This is more so, when the petitioner has not disputed the paternity of the children. The petitioner is under legal and moral obligation to maintain his children. Having regard to the growing needs of respondent no.1(a) Needa aged about 17 years, respondent no.1(b) Sana aged about 14 years and respondent no.1(c) Salimuddeen aged about 12 years, the award of Rs.5000/-, Rs.3500/- and Rs.2500/- per month respectively to them, cannot

be said to be excessive or exorbitant. In view of this, the Petition fails and the same is dismissed.

(R.G.Ketkar,J.)