

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

CRI.REVISION APPLICATION NO. 19 OF 2015

Mr. Sayyed Hasan Mehdi

Petitioner

Vs

1.Mrs Sabiha Banu Sayyed
Hassan Mehdi and Anr.

.. Respondents

Mr. A.A.Siddiqui, Advocate for Petitioner.

Mr. S.K.Chaturvedi, Advocate for Respondents no.1 & 2 .

CORAM : R.G.KETKAR,J.

DATE : 17/02/2015

PC:

1. Heard Mr. A.A.Siddiqui, learned counsel for the petitioner and Mr. S.K.Chaturvedi, learned counsel for respondents no. 1 and 2 at length.

2. By this petition under section 397 read with 401 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), the petitioner has challenged the Judgment and order dated 31.10.2014 passed by the learned Judge, Family Court No.3, Mumbai in Petition No. E-165 of 2009. By that order, the Family Court allowed the petition filed by respondents no.1 and 2 under section 125 of Cr.P.C. and directed the petitioner to pay an amount of Rs.3500/- per month each to respondents no.1 and 2 from the date of the order. Respondent no.2 is entitled to recover the amount of maintenance till he attains the age of majority. The petitioner was further directed to deposit the amount of

maintenance in the Bank Account of respondent no.1 on or before 10th day of each month subject to respondent no.1 informing her Bank Account details to the petitioner within 15 days. The petitioner was also ordered to pay litigation cost of Rs.2000/- to the first respondent.

3. In support of this petition, Mr Siddiqui strenuously contended that the Family Court committed several errors of law apparent on the face of record. He submitted that the petitioner left the job because of litigation initiated by the first respondent in the Family Court as also Thane Court. The petitioner is presently jobless and is in search of new job. He submitted that while working with Saaz Electricals as an Electrician during the period from 2010 to 2011, his monthly salary was Rs.3750/- and last drawn salary was to the tune of Rs.4500/-. Prior thereto, he joined Khataw Electricals and worked there as an Electrician during the period from 2008 to 2010 and was earning monthly salary of Rs.3000/-. The petitioner has produced salary slips of Khataw Electricals on record.

4. Mr. Siddiqui further submitted that without any just cause, respondent no.1 was residing separately. He had issued notices to respondent no.1 to resume cohabitation. In such circumstances, respondents no.1 and 2 are not entitled to any maintenance. He submitted that without there being any evidence on record as regards income of the petitioner, the

Family Court has directed the petitioner to pay maintenance amount of Rs.3500/- each to respondents no.1 and 2.

5. Mr.Siddiqui further submitted that the petitioner has remarried and has two children. He has to look after his second wife as also his children. That apart, respondent no.1 is a commerce graduate and she is earning Rs. 25000/- to 30,000/- per month by giving tuitions. For all these reasons, he submitted that the impugned order is liable to be set aside.

6. Mr. Chaturvedi supported the impugned order. He submitted that on one hand the petitioner claims to be earning between Rs.3750 and Rs.4,500/- per month and on the other he admitted in cross examination that he is paying Rs.3500/- as rent in respect of premises at Kurla. He submitted that the petitioner is a diploma holder in Electrical Engineering. The Family Court has observed in paragraph 38 that the petitioner is an able bodied person. He has capacity to earn. He has sufficient experience of his job and it cannot be believed that such a skilled and experienced person will remain jobless when he is having responsibility of maintaining his wife, second wife and children. The Family Court, after considering Section 106 of the Indian Evidence Act, 1872, held that the petitioner is hiding his income and the said fact is within his exclusive and special knowledge. Having regard to parameters for grant of maintenance, he submitted that no case is made out for interfering with the

impugned order.

7. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the first respondent married to the petitioner. The petitioner claims that he had given divorce to her and married to Ijjat Fatma on 30.7.2009. It is not in dispute that respondent no.2 is born out of wedlock of the petitioner and the first respondent. From the second wife the petitioner has two children. It is in that context, one has to consider the income of the petitioner. It is the case of respondents no.1 and 2 that the petitioner is earning Rs.40,000/- per month. According to respondents 1 and 2, the petitioner takes contracts of electrical wiring and fitting of newly constructed buildings. He is getting contracts in his firm's name, known as 'Johar Electrical Contractors'. As against this, the petitioner claims that he is presently jobless and is searching job. After considering the material on record, the Family Court disbelieved the case made out by the petitioner in paragraph 38 and observed that the petitioner is hiding his income from the Court. Having regard to the factors which are required to be considered while granting maintenance, I do not find that the Family Court committed any error. In view thereof, no case is made out for invocation of powers under section 397 read with 401 of Cr. P.C. The Application fails and is dismissed.

8. Before parting, it is necessary to record that the petitioner has handed over Pay Order of Rs. 43,500/- to Mr Chaturvedi which he acknowledges.

9. In view of disposal of the Application, Criminal Application No. 20 of 2015 does not survive and the same is disposed of.

(R.G.KETKAR, J.)