

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

REVISION APPLICATION NO. 233 OF 2014

Mr.Ramesh Prakash Yadavi

Petitioner

Vs

1.Mrs Meera Ramesh Yadav and
Anr.

.. Respondents

Mr. Sunil R. More Advocate for Petitioner.

Mr. Santosh G. Shirsat, Advocate for Respondent no.1.

CORAM : R.G.KETKAR,J.
DATE : 18/02/2015

PC:

1. Heard Mr. Sunil More, learned counsel for the petitioner and Mr. Santosh Shirsat, learned counsel for respondents no. 1 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-husband has challenged the Judgment and order dated 7.5.2014 passed by the learned Judge, Family Court No.3, Mumbai in Petition No. E-62 of 2009. That petition was filed by respondent no.1 herein under section 125 of Cr.P.C claiming maintenance at the rate of Rs. 40,000/- per month.

3. In support of this Application, Mr. More reiterated the submissions that were advanced before the Family Court. He submitted that the Family Court, without any material on record,

blindly accepted the case made out by the first respondent and awarded maintenance of Rs. 7000/- per month. Though respondent no.1 claimed that the petitioner is running two shops and has also rented out premises and is earning Rs. 70,000/- per month, respondent no.1 did not substantiate this fact. The Family Court disbelieved income tax returns produced by the petitioner on the ground that they do not reveal the true picture of income of the petitioner. In other words, Mr. More submitted that the findings recorded by the Family Court are either contrary to evidence on record or based on no evidence at all. He further submitted that initially by interim order, the petitioner was directed to pay maintenance at the rate of Rs.5000/- per month. However, without assigning any valid reason, the maintenance is increased to Rs.7000/- per month. He further submitted that the petitioner has come across document which will substantiate his case that respondent no.1 is not entitled to any maintenance. In fact, respondent no.1 was gainfully employed in 2011. In other words, by the interim order the petitioner was directed to pay maintenance at the rate of Rs.5000/- per month from the date of application of 2009. Between 2009 and 2011 respondent no.1 was gainfully employed and for this period she is not entitled to claim any maintenance.

4. On the other hand, Mr. Sirsat supported the impugned order. He submitted that initially the petitioner had challenged

the order granting interim maintenance by filing petition in this Court. However, he has withdrawn that petition unconditionally. The petitioner, therefore, cannot agitate the ground of interim maintenance from the date of application of 2009.

5. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, respondent no.1 has filed Petition No.E.62 of 2009 for grant of maintenance at the rate of Rs.40,000/- per month. During the pendency of this petition she filed application for interim maintenance. The Family Court allowed that application on 18.1.2010 and directed the petitioner herein to pay maintenance at the rate of Rs.5000/- per month. It is also not in dispute that the petitioner has challenged that order. During the pendency of the application, interim relief was operating in favour of the petitioner and subsequently the petition was withdrawn. The submission made by Mr More that the Family Court was not justified in directing the petitioner to pay maintenance from the date of application of interim maintenance, cannot be accepted as the petitioner withdrew the petition against the order dated 18.1.2010.

6. As far as enhancement of maintenance from Rs.5000/- to Rs.7000/- is concerned, the Family Court has considered that the interim order was passed four years back and for the reasons stated in paragraph 38 awarded maintenance at the rate of

Rs.7000/- per month. While awarding maintenance of Rs.7000/- per month, the Court also considered the evidence of the petitioner and all admissions given during cross examination as is evident from paragraphs 36 and 37. In view thereof, I do not find that the Family Court committed any error in passing the impugned order. Hence, the Application fails and the same is dismissed.

7. It is however, made clear that in case the petitioner takes out appropriate application for modification of the order based on subsequent developments, same may be decided on its own merits and in accordance with law. All contentions of the parties in that regard are kept open. Order accordingly.

(R.G.KETKAR, J.)