

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3228 OF 2014

Vivek Madhukar Salvi	... Petitioner
Vs.	
Anjali Vivek Salvi & Ors.	... Respondents

Ms. Savita A. Prabhune, Advocate for the petitioner.
Mr. Ashok Toraskar, Advocate for the respondents.
Mr. Arfan Sait, APP for the State.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **AUGUST 6, 2015**

P.C.:

Report of the mediator dated 29th April, 2015 is taken on record. It shows that there is no possibility of mediation. Hence the matter to proceed.

2. Rule. Rule made returnable forthwith. By consent, the matter is heard finally at the stage of admission.

3. This Writ Petition is directed against the order dated 10th February, 2014 by which the learned Judge of the Family Court, Pune has directed the respondent to pay enhanced maintenance of Rs. 5,000/- p.m. instead of Rs.1,000/- p.m. to respondent/wife and Rs.3,000/- p.m. instead of Rs.2,000/- p.m. to respondent/minor son till his attaining the age of majority, since the date of filing of the petition, i.e. 2nd July, 2012.

4. In this case, the parties got married on 13th April, 1999. The Application for maintenance under section 125 of Cr. P.C. was filed. Divorce Petition was also filed. Subsequently, divorce was taken by mutual consent and as per the terms and conditions dated 6th April, 2003 an amount agreed by both the parties was Rs.800/- to wife and Rs.800/- to son. Thereafter, the respondent/wife filed an application under section 127 of Cr. P.C. for enhancement of maintenance. Irrespective of the earlier mutual consent, the husband and wife again entered into an agreement dated 26th March, 2009 and the husband agreed to pay Rs.1,000/- to wife and Rs.2,000/- to son. Thereafter, again the respondent/wife filed Miscellaneous Criminal Application No. 53 of 2012 for enhancement of maintenance before the Family Court Judge, Pune. The said Application was decided and by an order dated 10th February, 2014 the husband was directed to pay Rs. 5,000/- p.m. to respondent/wife and Rs.3,000/- p.m. to respondent/minor son till he attains the age of majority, since the date of filing of the petition. The said order of the Family Court is challenged.

5. It is made clear that the son attained majority on 26th March, 2013 and therefore, the petitioner/husband was supposed to pay maintenance to respondent/son till 26th March, 2013. The learned counsel for the petitioner/husband submitted that the petitioner/husband is not challenging the amount which is to be paid to son.

6. In this Petition, the order is challenged only about the enhanced amount of maintenance of Rs.5,000/- to be paid to the wife. It is also made clear by the learned counsel for the petitioner/husband that petitioner is not challenging the amount of Rs.1,000/- as agreed by the husband in the second agreement dated 26th March, 2009 which is entered into after the mutual consent terms dated 6th March, 2003.

7. In this Petition, some valid issues are raised as follows:

- (i) When the parties have resolved their disputes and divorce by mutual consent was filed wherein monthly maintenance amount was agreed as Rs.800/-, then the subsequent application under section 127 of Cr. P.C. on the background of mutual consent agreement is maintainable or not?
- (ii) The petitioner/husband though appeared filed written statement and arguments were also advanced in Miscellaneous Criminal Application No. 53 of 2012, however, it is submitted that the petitioner did not lead any evidence and therefore, the learned Judge of the Family Court could not appreciate a fact of his income properly.

8. On hearing the submissions of both the parties and on perusal of impugned order, it is found that the learned Judge of the Family Court could not decide the exact income of the petitioner/husband which he is

supposed to earn out of his transport business and thus, the total income of the husband is not fixed. On the contrary, there is observation made that the respondent/wife did not file any documentary evidence on record to show that husband is earning Rs.50,000/-p.m.

8. Thus, it appears that the learned Judge of the Family Court in view of proper assistance could not fix the income of husband and so also the issue regarding the subsequent application under section 127. If the parties have mutually agreed in the agreement before the mutual consent divorce, it appears that this point is not raised and so this point is also not considered by the learned Judge of the Family Court. Therefore, on the point of enhancement of maintenance to the wife of Rs.5,000/-, this matter is remanded to the learned Judge of the Family Court. The order passed by the learned Judge of the Family Court directing the respondent to pay Rs.5,000/- maintenance to wife is hereby set aside. After giving opportunity to both the parties to lead evidence only on the point of income of husband, the learned Judge of Family Court is directed to decide the matter on or before 30th November, 2015.

9. Writ Petition is disposed of.

(MRS.MRIDULA BHATKAR, J.)