

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.287 OF 2014

Mohd. Rais Jannat Ali ... Applicant
Vs.
Masoom Fazal Khan and another ... Respondents

Mr. Uday P. Warunjikar for Applicant.
Mr. Sunil Shukla for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 29, 2015

P.C. :

Heard Mr. Warunjikar, learned Counsel for petitioner and Mr. Shukla, learned Counsel for respondent No.1 at length.

2. By this Petition under Section 401 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), the petitioner-husband has challenged the judgment and order dated 13.06.2014 passed by the learned Judge, Family Court No.7, Mumbai in Petition No.E-144 of 2009. By that order, the Family Court partly allowed the Petition filed by the respondent No.1-wife and directed the petitioner to pay monthly maintenance @Rs.5,000/- to respondent No.1 from the date of the Petition. The Family Court further held that the respondent No.1 is entitled to maintenance either as per the order of the Metropolitan Magistrate, Borivali Court or as per the order of the Family Court. Respondent No.1 is not entitled to recover maintenance as per both the orders. The petitioner was also directed to pay costs of Rs.5,000/- to the respondent No.1.

3. In support of this Petition, Mr. Warunjikar submitted that the Family Court committed error in awarding maintenance to the respondent No.1. He submitted that he had given Talaq to her and after giving Talaq, she remarried. Respondent No.1 is, therefore, not entitled

to maintenance. He submitted that respondent No.1 admitted her signature over the Nikahnama below exhibit-43. If her signature on the Naikahnama is compared with the signatures on the admitted documents as per Section 73 of the Indian Evidence Act, 1872 (for short 'Act'), it would be evident that the petitioner had given divorce to the respondent No.1. He invited my attention to the additional affidavit made by the petitioner as also the opinion of Ms Anuja Kaushal, Forensic Consultant dated 02.07.2014 and submitted that the said opinion supports the case of the petitioner. He also invited my attention to the oral evidence of R.W.3- Shah Alam Ahamad Husain and R.W.4-Abdul Rahim Abdul Karim Shekh examined by the petitioner in support of his case. He submitted that as far as evidence of R.W.4 is concerned, in paragraph 2, he deposed that his wife's name is Masoom Fasal Khan. Respondent No.1 herein is also Ms Masoom Fasal Khan. He submitted that the statement made by R.W.4 in paragraph 2 supports the case of the petitioner that after giving Talaq to respondent No.1, she re-married Abdul Rahim Abdul Karim Shekh.

4. On the other hand, Mr. Shukla supported the impugned order. He submitted that the petitioner did not establish factum of Talaq as also re-marriage of the respondent No.1. He submitted that perusal of paragraph 24 of the impugned order shows that the petitioner called upon the Court to compare the signature of the respondent No.1 over the alleged Nikahnama below exhibit-43 and the signatures on the admitted documents. It is in that context, the Family Court compared the signatures under Section 73 of the Act and recorded a finding that the signatures over Nikahnama below exhibit-43 and signature over petitioner below exhibit-1 are totally different. The signatures over the alleged Nikahnama below exhibit-43 and petition below exhibit-1 are not made by one and the same person though there is similarity of names and addresses.

5. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. Perusal of the oral evidence of R.W.3 and R.W.4 examined by the petitioner in support of his case shows that both the witnesses did not support the petitioner. With the assistance of the learned Counsel appearing for the parties, I have perused the evidence of R.W.3 and R.W.4. After perusal of the evidence, I do not find that the Family Court committed any error. As far as the reliance placed by Mr. Warunjikar on the opinion of the Forensic Consultant dated 02.07.2014 is concerned, the said opinion is obtained after the impugned order was passed. That apart, at the request of the petitioner, the said opinion is given by the Forensic Consultant. In order to substantiate his case on the basis of that opinion, the petitioner will have to examine Ms Kaushal. At present, the said opinion cannot be taken into consideration.

6. The Family Court observed that the petitioner is earning approximately Rs.10,000/- per month from his business and he is also getting income from rent of City centre premises. It is on that basis, the Family Court directed the petitioner to pay monthly maintenance @Rs.5,000/-. In view thereof, no case is made out for invoking powers under Section 401 of the Cr.P.C. Hence, the Petition fails and the same is dismissed.

7. At this stage, Mr. Warunjikar orally applies for continuation of the ad-interim order dated 24.09.2014. On the other hand, respondent No.1 states that the petitioner has not paid maintenance as awarded by the impugned order for last 5 years. In view thereof, request for continuation of ad-interim order is rejected.

(R. G. KETKAR, J.)