

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 406 OF 2014

Yusuf Abdul Aleem Khan ... Applicant
Vs.
Nilofar Yusuf Khan & Anr. ... Respondents

Mr. Rahul Arote, Advocate for the applicant.
Mrs. Seema Santosh Singh, Advocate for respondent no. 1.
Mr. D.P. Adsule, APP for Respondent no. 2/State.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **JUNE 11, 2015**

P.C.:

Both the parties are present today in the Court.

2. This Revision Application is preferred by the applicant/husband thereby challenging the order of the Family Court dated 31st July, 2014 passed by the learned Judge of the Family Court, Bandra in Petition No.E-68 of 2010.

3. Petition No. E-68 of 2010 was filed by the respondent/wife against her husband under section 125 of the Cr. P.C. praying for maintenance of Rs.20,000/- p.m. for herself and her two minor children.

3. The learned counsel for the applicant submitted that the

applicant/husband was earlier working as a driver in Dubai and at that time, he was drawing a salary of Rs.1,500 Dirhams p.m. in January/February, 2014. He submitted that the learned Judge of the Family Court has committed a mistake in holding the salary in Indian rupees at Rs.42,500/- p.m. The learned counsel submitted that today the applicant/husband has left the job from Dubai, as his contract is over and he has returned to India. He is now jobless. The learned counsel submitted that the amount of maintenance awarded by the Family Court to the wife and children is exorbitant and it is not possible for the applicant/husband to pay the said amount, as he is jobless.

4. The learned counsel for the respondent/wife has opposed the contention and has submitted that the learned Judge of the Family Court has discarded his case on the point that he has to take care of the wife of his deceased brother. The learned Family Court Judge has highlighted his admissions in the cross-examination that he did not know the whereabouts of his brother's wife whether she is working in Tata or not.

5. Perused the judgment delivered by the learned Judge of the Family Court. There is also a petition filed by the wife under Domestic Violence Act and the learned Judge of the Family Court has considered the amount of maintenance which is given under the Domestic Violence Act and

thereafter has awarded maintenance to respondent/wife of Rs.6,000/- p.m. and Rs.5,000/- p.m. each to both the minor children. It is to be noted that the judgment of the Family Court is delivered on 31st July, 2014 and the Criminal Application was filed on 19th August, 2014 and at the relevant time, the applicant was working in Dubai as a driver. That means, as per the submissions of learned counsel for the applicant/husband, the applicant left the job 15 days back and came to India from Dubai. However, he has challenged the order on the ground of incapacity to pay the amount of maintenance. In August, 2014 he was having a job. Moreover, to look after the minor children is the responsibility of the father and so also to maintain the wife is the legal obligation of the husband. Under such circumstances, unemployment is not a justifiable ground for able-bodied person to reduce the amount of maintenance. Hence, the Application is dismissed.

6. It is made clear that the amount of maintenance which is under section 125 of Cr. P.C. and also under the Domestic Violence Act is inclusive maintenance and thus, the maintenance amount comes to Rs.16,000/- p.m., i.e., Rs.6,000/- to wife and Rs.5,000/- each to two minor children.

(MRS.MRIDULA BHATKAR, J.)