

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

CRIMINAL REVISION APPLICATION NO. 115 OF 2016

Wasim Javed Ansari	... Applicant
V/s.	
Sadaf Naaz Wasim Ansari & Anr.	... Respondents

Mr. Hakim Salim for the Applicant.
Mr. S.R. Gaud for the Respondent No.1.
Mrs. A.S. Pai AGP for Respondent No.2 State.

**CORAM : K. K. TATED, J.
DATED : 06/10/2016**

PC.:

. Heard learned Counsel for the parties.

2 By this Criminal Revision Application, the Applicant husband is challenging the order dated 12.01.2016 passed by Family Court No.4, Mumbai in Petition No. E-241 of 2012 directed Applicant husband to pay sum of Rs. 9,000/- per month to the wife by way of maintenance from the date of Application i.e. 11.06.2012.

3 In the present proceeding, the wife initially filed Criminal Case No. 174/Misc/2010 in the Court of Metropolitan Magistrate, 25th Court, Mazgaon, Mumbai under Protection of Women from Domestic Violence Act, 2005 for maintenance and other reliefs. That application was decided by the learned Magistrate on 29.09.2011 granting maintenance of Rs.3,000/- per month to the daughter. The learned Magistrate rejected wife's application for maintenance for herself.

4 Thereafter, the wife preferred application under Section 125 of Cr.P.C. before the Family Court No.4 at Bandra, Mumbai being Petition No. E-241 of 2012 claiming the maintenance for herself and her daughter. That application was decided by the Family Court by impugned order dated 12.01.2016 granting maintenance @ Rs.9,000/- per month to the wife and Rs.3,000/- per month to the child. Hence, the present petition.

5 The learned counsel for the petitioner husband submits that Family Court erred in coming to the conclusion that Respondent wife is entitled to maintenance @ Rs.9,000/- per month and that also from the date of application. He submits that Family Court failed to consider the fact that the earlier the respondent wife filed application under the provision of Protection of Women from Domestic Violence Act, 2005 claiming maintenance for herself as well as the daughter. The learned counsel for the petitioner submits that respondent wife studied up to H.S.C. and D.Ed. He submits that respondent wife in her deposition before the Family Court admitted that she can work as a teacher with her qualification if she gets the job. He submits that the Family Court failed to consider the fact that respondent wife, if so desire can earn for herself as well as daughter's maintenance. The learned counsel for the petitioner submits that at present petitioner is unemployed and therefore, it is very difficult for him to pay sum of Rs.9,000/- per month by way of maintenance. He further submits that the Family Court erred in coming to the conclusion that the respondent wife is entitled to maintenance from the date of application under Section 125 of Cr.P.C. He submits that in the interest of justice, this Hon'ble Court be pleased

to set aside the order dated 12.01.2016 passed by the Family Court No.4 Mumbai in Petition No. E-241 of 2012 by which the Family Court directed the petitioner to pay sum of Rs.9,000/- by way of maintenance to the Respondent No.1 wife. He submits that if the impugned order is not set aside, irreparable loss will be caused to the petitioner.

6 The learned counsel for the petitioner submits that in the present proceeding, the Respondent wife is not entitled to any maintenance because on her own, she deserted the petitioner. He further submits that initially to cover of fact of the desertion, the Respondent wife filed petition for restitution of conjugal rights. That application was dismissed by the Court. Respondent wife is well educated and she can take up the job for her maintenance. On the basis of these submissions, the learned counsel for the petitioner submits that the impugned order is required to be set aside.

7 On the other hand, learned counsel for the respondent wife vehemently opposed the present petition. He submits that admittedly, as on today the Respondent is not working any where. He submits that even at the time of marriage, the petitioner specifically instructed respondent that they want household wife. He submits that though respondent has completed her HSC and D.Ed, she is not getting any job. He submits that the earlier the petitioner was getting the gross salary to the extent of Rs.53,260/- and net of Rs.48,837/-. He further submits that petitioner resigned his earlier job and worked with Praxis Technologies Pvt. Ltd. from 08.11.2006 to 01.10.2012. He further submits that the petitioner already married and he is maintaining his

second wife. He submits that the Family Court rightly held that the Respondent is entitled to the maintenance @ Rs.9,000/- per month and that also from the date of application. He submits that respondent has filed application under Section 125 of Cr.P.C. before the family court on 11.06.2012 and same was decided on 12.01.2016. He further submits that to dispose of her application, the Court took more than 3 years. He submits that if there is gap between the filing of the application and decision, then maintenance is required to be granted from the date of application. In support of this contention, he relied on Apex Court Judgment in the matter of ***Bhuwan Mohan Singh V/s. Meena & Ors. in Criminal Appeal No. 1331 of 2014 dated 15.07.2014***. He relief on paragraph 16 of the said Judgment, which reads thus:

“16. In the present case, as we find, there was enormous delay in disposal of the proceeding Under Section [125](#) of the Code and most of the time the husband had taken adjournments and some times the court dealt with the matter showing total laxity. The wife sustained herself as far as she could in that state for a period of nine years. The circumstances, in our considered opinion, required grant of maintenance from the date of application and by so granting the High Court has not committed any legal infirmity. Hence, we concur with the order of the High Court. However, we direct, as prayed by the learned Counsel for the Respondent, that he may be allowed to pay the arrears along with the maintenance awarded at present in a phased manner. Learned Counsel for the Appellant did not object to such an arrangement being made. In view of the aforesaid, we direct that while paying the maintenance as fixed by the learned Family Court Judge per month by 5th of each succeeding month, the arrears shall be paid in a proportionate manner within a period of three years from today.

8 On the basis of these submissions and authority, the learned

counsel for the Respondent submits that there is no substance in the present petition and same is required to be dismissed.

9 I heard both the sides at length. It is to be noted that in the present proceeding, though the Respondent is educated upto HSC D.Ed, at present she is unemployed. Though she has tried to get job, but there was no success in her attempts. It is to be noted that earlier the petitioner was working and was getting net salary to the tune of Rs.48,837/-. Thereafter, he joined Praxis Technologies Pvt. Ltd. from 08.11.2006 to 01.10.2012. Apart from that the petitioner remarried and he is maintaining his second wife, children and his parents. This itself shows that petitioner is in position to pay maintenance as awarded by the Family Court. Considering this fact and the reasons recorded by the Family Court in the impugned order dated 12.01.2016, I do not find any reason to interfere in the well reasoned order.

10 Hence, Criminal Revision Application stands rejected.

11 The learned counsel for the petitioner seeks one year time to clear the arrears of maintenance. The same is strongly opposed by the learned counsel for the Respondent.

12 Considering the fact of the present case, eight months time is granted to the petitioner to clear the arrears of the maintenance charges by equal monthly installments.

13 It is made clear that if there is default of any monthly

installments for clearing arrears of maintenance charges, respondent has liberty to prefer an appropriate application for recovering the same and that application would be decided on its own merits.

(K.K.TATED, J.)