

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

CRIMINAL REVISION APPLICATION NO. 514 OF 2015

Mr. Harshad Ganpat Nimje & Ors.	... Applicants
V/s.	
Mrs. Shilpa Harshad Nimje & Anr.	... Respondents

Mr. Harshad Ganpat Nimje, Applicant party in person.
Mrs. Ratna Bhargavan i/b M/s. R. Bhargavan & Asso for the Respondent.

**CORAM : K. K. TATED, J.
DATED : 23/08/2016**

PC.:

. Heard Mr. Harshad Ganpat Nimje, Applicant No.1 party in person for himself as well as on behalf of Applicant No. 2 Malti Ganpat Nimje and Applicant No.3 Hema Prabhakar Barapatre and learned Counsel for the Respondent.

2 The Applicant No.1 party in person submits that Applicant No.2 is his mother and Applicant No.3 is his sister. He has authority to argue on behalf of them also.

3 The Applicant No.1 is husband of Respondent No.1. The dispute is going between husband and wife. In the dispute, the Respondent No.1 filed Criminal Appeal No. 1195 of 2014 challenging the Judgment and Order passed by learned Metropolitan Magistrate, 61st Court, Kurla, Mumbai in Domestic Violence Case No. 463/Misc/2011. In that Criminal Appeal, the Sessions Court passed impugned order dated 31.08.2015 and directed Applicant No.1 to pay maintenance charges to

the Respondent No.1. Hence, the present Criminal Revision Application.

4 By this Criminal Revision Application, the Applicants are challenging the order dated 31.08.2015 passed by the learned Additional Sessions Judge, Gr. Mumbai in Criminal Appeal No. 1195 of 2014 directing Applicant No.1 to pay an amount of Rs.5,000/- per month to the Respondent No.1 and Rs.3,000/- per month to her daughter for their maintenance from the date of Application i.e. 15.11.2011. The Sessions Judge also directed Applicant No.1 to pay an amount of Rs.5,000/- per month towards the rent for the alternate accommodation to the Respondent No.1 from September, 2015.

5 Applicant No.1 party in person submits that Sessions Court failed to consider the documents on record and arguments made by him at the time of passing the impugned order dated 31.08.2015. He submits that because of this litigation, he is unemployed for last more than three years. He does not have any source of income. He submits that sometimes, he gets the job and from that job, he earns Rs.4,000/- to Rs.5,000/- per month. He submits that he does have any property in his name. He submits that he purchased one flat from builder in proposed project at Karjat, Dist. Raigad. He submits that apart from that, he does not have any property in his name. He submits that as on today, he does not have any source of income and therefore, it is not possible to pay maintenance as awarded by the Sessions Court by order dated 31.08.2015. He further submits that it is not possible for him to clear the arrears of Rs.4,20,000/-. He submits that considering his

financial position as of today, this Hon'ble Court be pleased to set aside the order dated 31.08.2015 passed by the Sessions Court in Criminal Appeal No. 1195 of 2014.

6 On the other hand, the learned Counsel Mrs. Ratna Bhargavan appearing on behalf of the Respondent No.1 vehemently opposed the present Criminal Revision Application. She submits that as of today, sum of Rs.4,51,000/- is due and payable by the Applicant No.1. She submits that Applicant No.1 has source of income and with malafide intention he is avoiding to make payment of maintenance charges to the Respondent. She submits that the Applicant No.1 filed affidavit dated 14.02.2013 in which he has specifically admitted that he was Director of Foundation Education Service Pvt. Ltd. She relies on following paragraphs of affidavit of Applicant No.1, which reads thus:

"1. I, Mr. Harshad Ganpat Rao Nimje, Director of Foundation Education Service Private Ltd (hereinafter called "the Company") incorporated on 17/10/2005 under the Companies Act, 1956 having its Registered Office at C-2/401, Lok Everest Cement Company Road, Mulund (West), Mumbai 400080 & having CIN No.U80903MH2005PTC156768 do solemnly affirm and state as under :

2. I, Mr. Harshad Ganpat Rao Nimje, S/o Ganpat Rao Nimje, holder of DIN Number 01603946 and PAN Number ADHPN1749H, am Director of the company stated above since 17/10/2005 (Copy of Income Tax PAN Number duly attested by a whole time practicing Chartered Accountant is enclosed.)

3. My present residential address is C6, 4/901, Lokmansarovar, Cement Company Road, Near East-West Flyover, Mulund-West, Mumbai- 400080(Copy of documentary evidence duly attested by a whole time practicing Chartered Accountant is enclosed).

4. *Permanent address is same as mentioned above.*
5. *The Company does not maintain any bank account as on date.*
6. *I affirm that the Company Foundation Education Service Private Ltd. have assets and liabilities amounting to Rs.4,50,000/-(as per annexed statement of Accounts.)*
7. *The company commenced business/ operations/ commercial activity after incorporation but has been inoperative for the past Three year due to some administrative reasons.”*

7 The learned Counsel for the Respondent No.1 further submits that before the marriage, the Applicant No.1 advertised in newspaper showing that his income was Rs.9,00,000/- to Rs.10,00,000/- per year. She further submits that to deficit the Respondent's claim, the Applicant No.1 with malafide intention obtained income certificate from Tahsildar, Amravati showing meager income. She submits that as soon as the Respondent No.1 learnt about the said income certificate, she immediately filed application in the Court of Tahsildar. After considering the pleading of both the parties, the learned Tahsildar passed an order on 13.03.2013, canceled the income certificate, which was in favour of Applicant No.1. She submits that it is very difficult for the respondent No.1 to maintain herself as well as her daughter, who is taking education in third standard.

8 Considering these facts, the learned Counsel for the Respondent No.1 submits that there is no substance in the present Revision Application and same to be dismissed with costs.

9 I heard both the sides at length. During the course of arguments when this Court called upon the Applicant No. 1, in how much time he will clear the outstanding maintenance charges of Rs.4,20,0000/-. He shown his inability to do so. This itself shows that he does not want to comply the order dated 31.08.2015 passed by the Sessions Court in Criminal Appeal No. 1195 of 2014.

10 Considering the evidence on record of the Applicants, the advertisement given by the Applicant No.1 at the time of marriage in the newspaper and reasons given by the Trial Court in impugned order, I am of the opinion that Applicants failed to make out any case to interfere with the well reasoned order passed by the Sessions Court.

11 Hence, Criminal Revision Application stands rejected.

(K.K.TATED, J.)