

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL REVISION APPLICATION NO.225/2013

Shri Shiv S/o Surendra Mishra,
aged about 31 Yrs., Occu. Nil,
R/o Plot No.13, Bachhusingh Layout,
NR Hanuman Mandir, Narendra
Nagar, Nagpur - 440 027.

..Applicant.

..Versus..

1. Smt. Deeplata W/o Shiv Mishra,
aged about 27 Yrs., Occu. Legal
Practitioner, R/o C/o Chandrakant
Kalikaprasad Pande, Plot No.7,
Dwarkapuri Nagar, Post Bhagwan
Nagar, Nagpur - 440 027.
2. Master Rigved S/o Shiv Mishra,
aged about 7 Yrs., Occu.
Guarding R -1, R/o C/o Chandrakant
Kalikaprasad Pande, Plot No.7,
Dwarkapuri Nagar, Post Bhagwan
Nagar, Nagpur - 440 027.

..Non-applicants.

AND

CRIMINAL REVISION APPLICATION NO.6/2014

1. Smt. Deeplata W/o Shiv Mishra,
aged about 30 Yrs., Occu. Household.
2. Master Rigved S/o Shiv Mishra,
aged about 6 Yrs., Occu. Nil.

Both applicant no.1 and 2 are
R/o C/o Chandrakant Kalikaprasad
Pande, Plot No.7, Dwarkapuri Nagar,
Post Bhagwan Nagar, Nagpur - 27.

..Applicants.

..Versus..

Shri Shiv S/o Surendra Mishra,

aged about 34 Yrs., Occu. Service,
R/o Branch Manager, Berar Finance
Ltd., Opposite Police Line, Seoni Road,
Chhindwara (M.P.) 480 001.

..Non-applicant.

Shri M.R. Pillai, Advocate for the applicant.

Shri S.V. Sirpurkar, Advocate for non-applicants 1 and 2. ..(In Cri. Revn. Appln. No.225/2013)

Shri S.V. Sirpurkar, Advocate for the applicants.

Shri M.R. Pillai, Advocate for the non-applicant.

..(In Cri. Revn. Appln. No.6/2014)

CORAM : Z.A. HAQ, J.

DATE : 12.4.2016

JUDGMENT

1. Heard Shri M.R. Pillai, advocate for the husband (applicant in Criminal Revision Application No.225/2013) and Shri S.V. Sirpurkar, advocate for the wife and minor son (non-applicants in Criminal Revision Application No.225/2013).

The husband has filed Criminal Revision Application No.225/2013 challenging the order passed by the Family Court granting maintenance to the wife and minor son.

The wife and minor son have filed Criminal Revision Application No.6/2014 challenging the order passed by the Family Court insofar as the maintenance of Rs.3,000/- per month is only granted and claiming maintenance of Rs.5,000/- per month for wife and Rs.5,000/- per month for minor son.

2. **Rule.** Rule made returnable forthwith.

Both these applications are being disposed of by common judgment as the same order passed by the Family Court is challenged in both the revision applications.

3. The contention on behalf of the husband is that the wife had been living in adultery and, therefore, she is not entitled for maintenance. According to the husband, the wife has admitted in writing that she had extra-marital relations and the Family Court has failed to consider this documentary evidence and, therefore, the order passed by the Family Court granting maintenance to the wife is unsustainable.

Shri Pillai, advocate for the husband has pointed out the decree for judicial separation passed by the Court at Chhindwara and has submitted that the wife is living away from the husband and, therefore, it cannot be said that the husband has neglected to maintain her. It is submitted that the wife is a practising advocate and earning substantially whereas the husband is jobless and these facts are not properly considered by the Family Court.

The learned advocate has submitted that the husband is not challenging the order passed by the Family Court granting maintenance to the minor son and he would be paying Rs.1,000/- per month to the minor son as directed by the Family Court. It is prayed that the order passed by the Family Court granting maintenance of Rs.2,000/- per month to the wife be set aside.

4. Shri Sirpurkar, advocate for wife and minor son has submitted that the husband was earlier working as Branch Manager at Berar Finance Private Limited, Chhindwara and drawing salary of Rs.20,000/- per month and this fact is not considered by the Family Court while determining the amount of maintenance payable to the wife and minor son. It is submitted that though the husband claims that now he is jobless, it is undisputed that he is an able bodied and fit person and if he has given up job for which he was getting salary of Rs.20,000/- per month, it has to be presumed that he is earning Rs.20,000/- per month or more. It is submitted that the accusations made by the husband against wife that she is living in adultery are false and are repelled by the Court at Chhindwara. It is prayed that the order passed by the Family Court be modified and the husband be directed to pay maintenance of Rs.5,000/- per month to the wife and maintenance of Rs.5,000/- per month to the minor son.

5. After examining the documents placed on the record and going through the copy of the judgment passed by the Court at Chhindwara, I find that the conclusions of the Family Court that the husband has failed to prove that wife was living in adultery, cannot be faulted with. In the proceedings under Section 13 of the Hindu Marriage Act, the civil Court framed an issue as to whether the wife had extra-marital affair with Manish Pande even after the marriage. The Court has

recorded that the husband has failed to prove the allegation. The Family Court has considered these aspects in paragraph no.25 and 26 of the impugned order. It cannot be said that the findings recorded by the Family Court suffer from any illegality or perversity.

The wife and minor son have failed to bring on the record the evidence to show income of husband. The submission made on behalf of the wife and minor son that as the husband was earning Rs.20,000/- per month when he was in service, it should be presumed that though he has left the service he might be earning Rs.20,000/- or more per month, cannot be accepted. The burden to prove the income of husband was on the wife and as she has failed to discharge the burden, the Family Court has rightly concluded that the husband would be liable to pay Rs.2,000/- per month to the wife and Rs.1,000/- to the minor son. The conclusions of Family Court are proper and do not require any interference by this Court in the revisional jurisdiction.

In view of the above, both the criminal revision applications are **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

Tambaskar.