

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

CRIMINAL REVISION APPLICATION 23 OF 2015

(Mohd. Ajam Abdul Rahaman Vs. Nilofar Sultana w/o Mohd. Ajam & others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Abdul Subhan, Advocate for the applicant.
Shri U. J. Deshpande, Advocate for the respondents.

CORAM : S. B. SHUKRE, J.
DATED : 20 JULY, 2016

Heard.

On going through the impugned judgment and order, I do not think that any illegality, impropriety or incorrectness could be noticed in it. Although, learned Counsel for the applicant has tried his level best to find fault with the impugned order, I am unable to agree with him. The learned Counsel for the applicant has pointed out that the learned Judge of the Family Court has not considered the evidence of the applicant's witness Mohd. Ishak and also documentary evidence vide Exh.40 in its proper perspective. According to him, the evidence of Mohd. Ishak and also the document at Exh.40, disclosing cancellation of the licence granted to the applicant for repairing of taxi meters, would show that income of

the applicant has been depleted substantially. According to him, Mohd. Ishak has stated in no uncertain terms that income of the applicant is not more than 150/- to 200/- per day and that the cancellation of income from repairing of taxi meters would further show reduction of income of the applicant.

I am not inclined to accept the argument for the simple reason that in the year 2008-09, the applicant had filed Income-tax returns which showed that his annual income was of Rs.1,07,029/-. If the applicant had such income in the year 2008-09, there is no reason why it should not be presumed that the applicant had such income also in subsequent years, unless he filed on record copies of income-tax returns for the subsequent years or showed reason for not filing them, which he has not.

Learned Counsel for the applicant further submits that the Income-tax return filed by the applicant had no relevance with the actual income earned by the applicant at the time of passing of the order in the year 2015. In order to accept this argument, I think, the applicant ought to have

brought on record some more evidence. It could have been in the nature of his Income-tax returns for the subsequent years or the reason for not filing them.

The applicant has not filed them and has also failed to show that he did not file them for some reason. Therefore, said argument cannot be accepted. So, the fact, which is established on record, is that at least for one year the income of the applicant was more than Rs.1 lakh. This would show that the applicant has sufficient financial capacity to provide maintenance to the non-applicants.

So far as the witness Mohd. Ishak is concerned, it is true that the learned Judge of the Family Court has not specifically dealt with his evidence. It is also true that the impugned order does not categorically deal with the documentary evidence which is at Exh.40. But, upon overall reading of the order challenged in this application, I find that the learned Judge has applied his mind to the entire evidence that is available on record and drawn his conclusions. In the process, the learned Judge may have failed to particularly refer to some of the evidence but that by itself would not make the order

as illegal or improper. Ultimately, it has to be seen as to what prejudice has been caused to the applicant. However, I do not find any such prejudice having been caused to the applicant. There is one more reason for reaching such a conclusion. It is an admitted fact that the applicant has performed the second marriage, which would show that the applicant has sufficient means to maintain not just one wife but also two wives. If the applicant was not possessed of sufficient means, he would not have performed the second marriage. There is also no doubt about the fact that the applicant is an able bodied person and this fact would further strengthen the capacity of the applicant to earn such income as is sufficient to discharge his responsibility towards his extended family.

In the circumstances, I find no illegality or perversity in the impugned judgment and order and this application deserves to be dismissed.

The revision application stands dismissed.

JUDGE

CERTIFICATE

“I certify that this order uploaded is a true and correct copy of original signed order.”

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