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

CRIMINAL REVISION APPLICATION NO.168/2013

Kailash Tulshiram Pavitrakar,
aged 50 Yrs., Occu. Agriculturist,
R/o Lasur, Tq. Daryapur,
Distt. Amravati. ..Applicant.

..Versus..

Sau. Meena Kailash Pavitrakar,
Aged about 45 Yrs., Occu. Household,
Work C/o Prabhakar Gawande,
R/o Rukhmini Nagar, Near Suyog
Mangal Karyalay, Amravati,
Tq. and Distt. Amravati. ..Non-applicant.

Shri S.S. Dhengale, Advocate for the applicant.
Shri S.D. Harode, Advocate for the non-applicant.

CORAM : Z.A. HAQ, J.
DATE : 16.3.2016

JUDGMENT

1. Heard Shri S.S. Dhengale, advocate for the applicant and Shri S.D. Harode, advocate for the non-applicant.

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

3. The applicant - husband has challenged the order passed by the Family Court directing the applicant to pay maintenance at the rate of Rs.5,000/- per month

from 9th November, 2010, to the non-applicant - wife.

4. The non-applicant had filed the Miscellaneous Criminal Application No.17/2006 on 17th January, 2006 under Section 125 of the Criminal Procedure Code praying that the applicant - husband be directed to pay maintenance of Rs.1,500/- per month, to the non-applicant.

The applicant disputed the relationship and according to the applicant, the non-applicant was not his legally wedded wife. The learned Magistrate framed the points and concluded that the non-applicant failed to prove that she was legally wedded wife of applicant and dismissed the application filed by the non-applicant.

The non-applicant had filed Criminal Revision No.28/2008 challenging the order passed by the learned Magistrate on 29th January, 2008. The learned Additional Sessions Judge by the order dated 18th July, 2008 confirmed the findings recorded by the learned Magistrate and dismissed the revision.

The non-applicant had filed Special Civil Suit No.8/2006 praying for recovery of arrears of maintenance amount and for grant of future maintenance. The learned Civil Judge Senior Division by the judgment dated 4th May, 2009 concluded that the non-applicant had proved the marriage between the non-applicant and applicant. The learned Civil Judge further recorded that the non-applicant had proved that she was divorced by the applicant. The learned Civil judge dismissed the civil suit concluding that the claim of the non-applicant under Section 18 of the Hindu Minority

and Guardianship Act was not tenable.

After the Special Civil Suit No.8/2006 was decided by the judgment dated 4th May, 2009, the non-applicant filed Petition No.E-114/2010 under Section 127 of the Criminal Procedure Code praying that the order passed by the learned Magistrate in Miscellaneous Criminal Application No.17/2006 on 29th January, 2008 be modified and the applicant be directed to pay Rs.15,000/- per month to the non-applicant. The Family Court by the impugned judgment, has partly accepted the claim of the non-applicant and has directed the applicant to pay maintenance amount of Rs.5,000/- per month to the non-applicant, the amount being payable from 9th November, 2010. The applicant begin aggrieved by the above judgment, has filed this revision application.

5. Shri Dhengale, advocate for the applicant has submitted that the application filed by the non-applicant under Section 127 of the Criminal Procedure Code was not maintainable as there is no order in existence directing the applicant to pay amount of maintenance. It is further submitted that the claim of the non-applicant for maintenance cannot be granted only on the basis of the finding recorded by the civil Court in Special Civil Suit No.8/2006 as applicant had no opportunity to challenge that finding as the civil suit filed by the non-applicant was dismissed. It is submitted that in any case, the civil Court recorded finding that the non-applicant had herself proved that she was divorced by the applicant and further that the claim of the non-

applicant for maintenance was not maintainable under the provisions of the Hindu Minority and Guardianship Act and in view of the above findings, the Family Court could not have granted maintenance to the non-applicant, exercising jurisdiction under Section 127 of the Code of Criminal Procedure. It is submitted that the impugned order be set aside and the application filed by the non-applicant under Section 127 of the Code of Criminal Procedure be dismissed with costs.

6. Shri Harode, advocate for the non-applicant has supported the impugned judgment. It is submitted that the applicant was denying the claim of the non-applicant for maintenance on the ground that the non-applicant was not the legally wedded wife of the applicant but after the adjudication on this point by the civil Court and the conclusive finding of the civil Court that the marriage between the non-applicant and applicant was solemnized on 23rd May, 1983, the applicant is under obligation to maintain the non-applicant. It is submitted that the Family Court has rightly directed the applicant to pay amount of maintenance to the non-applicant and the impugned judgment does not require any interference by this Court in the revisional jurisdiction. It is prayed that the revision be dismissed with costs.

7. After hearing the learned advocates for the respective parties, I find that the learned Principal Judge of Family Court has not adverted to the relevant points. The learned Principal Judge has framed the following points for consideration:

"1. Whether the petitioner Meena has proved that in the consequence of decision of competent court and findings recorded below Issue No.7A, in Spl. C.S. No.8/2006, (Meena..vs..Kailash) now the applicant is declared as legally wedded wife of the respondent, hence it is a fit case to vary the order passed in Misc. Cri. Appl. No.17/2006? ..Yes.

2. If yes, whether the petitioner is entitled for maintenance from the respondent under section 125 of Cr.P.C.? ..Yes.

3. What will be the quantum of maintenance ?" ..As per final order."

The learned Principal Judge has not considered whether the application filed by the non-applicant under Section 127 of the Code of Criminal Procedure is maintainable in the background of litigation. The learned Principal Judge has not adverted to the point as to whether the applicant is having sufficient means and has neglected or refused to maintain the non-applicant. The learned advocate for the applicant has submitted that the Family Court has committed an error by directing the applicant to pay maintenance to the non-applicant while considering an application under Section 127 of the Code of Criminal Procedure when there was no order by any Court earlier determining the liability of the applicant to pay the maintenance allowance to the non-applicant and the entitlement of the non-applicant to receive the amount of maintenance from the applicant. In my view, all these points are required to be considered by the Family Court. As the learned Principal Judge has not adverted to the relevant points, the impugned judgment is unsustainable. Hence, the following order:

(i) The order passed by the Family Court in Petition No.E-114/2010 on 8th

December, 2011 is set aside.

(ii) The matter is remitted to the Family Court, Amravati for deciding the petition afresh, according to law, after considering all the points raised by the parties.

(iii) The parties undertake to appear before the Principal Judge, Family Court, Amravati on 29th April, 2016 at 11 a.m. and abide by further orders in the matter.

(iv) Rule made absolute in the above terms.

(v) In the circumstances, the parties to bear their own costs.

CRIMINAL APPLICATION (APPR) NOS.151/2015 & 152/2015

In view of disposal of main application, these applications do not survive and are disposed of accordingly.

JUDGE

Tambaskar.