

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION (ST) NO.384 OF 2017

Shri Mohammadhussain Nijampasha Patil .. Applicant

vs.

Smt.Nilofar 2 Farhin (Gori) & Another .. Respondents

Mrs.Laxmi P. Rao for the applicant

Mr.Akshay Petkar for the respondent no.1

**CORAM : K. K. TATED, J.
DATE : JULY 26, 2017**

PC.:

1. Not on board. By consent of both the parties, matter is taken on board.

2. By this application, applicant husband is challenging the judgment dated 24.2.2017 passed by Family Court, Solapur in Petition No.E-48/2014 under section 125 of the Criminal Procedure Code directing applicant husband to pay sum of Rs.30,000/- per month to the wife and Rs.10,000/- per month to the minor son towards maintenance from the date of filing of petition till further orders. Family Court also directed applicant to clear arrears of maintenance charges in 15 equal instalments. The Family Court made it clear that if any amount is paid by the applicant husband to the respondent wife towards interim maintenance in Domestic Violence Proceedings, that

will be deducted from the amount awarded towards maintenance charges.

3. The learned counsel for the applicant submits that Family Court erred in coming to the conclusion that respondent wife is entitled sum of Rs.30,000/- per month by way of maintenance and Rs.10,000/- per month to the son. She submits that considering the income of the applicant, the amount awarded by the Family Court is on higher side. She submits that applicant has responsibility to maintain one girl child, his parents and grant parents. She submits that considering the income of the applicant, it is very difficult for him to comply the orders passed by the Family Court.

4. The learned counsel for the applicant submits that as per applicant's Income Tax returns for the Assessment Year 2014-15, his gross income comes to Rs.10,32,477/- only. She submits that in the said gross amount, re-imburement is also included. She further submits that out of the gross amount, applicant had to pay Income Tax to the extent of Rs.1,23,085/-. On the basis of return of Assessment Year 2014-15, actually applicant was getting less than Rs.1,00,000/- per month in his hand. She further submits that as per Form 16 details of salary paid and allowances exempted under section 10 and 17(2) of the Income Tax Act, 1961, her total income for the period 1.4.2013 to 31.3.2014 comes to Rs.10,34,977/- only. She submits that Family Court relied on the salary certificate for the months January 2016 to June 2016 (Exhibit-30) and held that respondent is entitled maintenance @ Rs.30,000/- per month. She submits that as per the pay slip for the month of January, 2016 applicant's basic salary was shown as Rs.55,088.87, for February, 2016 – Rs.53,189.25, for March,

2016 – Rs.55,088.87, for April 2016 – Rs.40,398.50, for May, 2016 – Rs.55,088.88 and June, 2016 – Rs.55,088.87. She submits that these facts were not considered properly by the Family Court and erred in coming to the conclusion that the respondent wife is entitled maintenance which is on higher side. She submits that considering the applicant's responsibility to maintain the second wife and other family members, this Hon'ble Court be pleased to set aside the order passed by Family Court and reduce the maintenance charges payable to the respondent per month. She submits that if present Criminal Revision Application is not allowed, irreparable loss will be caused to the applicant.

5. On the other hand, the learned counsel for the respondent wife vehemently opposed the present Criminal Revision Application. He submits that the Family Court after considering the pay slips for the month of January 2016 to June 2016 Exhibit- 30 held that the applicant is liable to pay maintenance charges to the wife and her son. He submits that even considering the documents placed on record by the applicant i.e. Form 16 (see rule 31(1) (a) of the Income Tax Rules) and Return filed by the applicant for the Assessment Year 2014-15 clearly shows that the applicant is earning more than Rs.1,35,000/- per month. He submits that it is very difficult for the wife to maintain herself along with minor son in such a meagre amount. He submits that applicant has not provided any accommodation to the wife. He further submits that even wife has to bear the expenses of son towards his education, medical expenses etc. Therefore, there is no question of allowing the present Criminal Revision Application.

6. I have heard both the sides.

7. The question involved in the present Criminal Revision Application is whether the impugned order passed by Family Court dated 24.2.2017 is required to be interfered with.

8. It is to be noted that Family Court in paragraph 40 of the impugned order relying on the salary certificate Exhibit-30 held that applicant's gross salary for the month of February, 2016 was Rs.1,37,894/-, for the month of March, 2016 – Rs.1,73,085.24/- April 2016 – Rs.2,17,756.87, May 2016 – Rs.2,13,699.84, and June 2016 – Rs.1,24,782.86. The Family Court also held in paragraph 41 of the impugned order that on the basis of the average gross salary for six months, the applicant is getting more than Rs.2,25,000/-. On the basis of these facts, Family Court decided the maintenance amount.

9. Considering the submission made by the learned counsel for the applicant, that applicant has to maintain his second wife, daughter, parents and grant parents, cannot be considered at this stage because overall, the Family Court has awarded less than 1/3rd amount of the applicant's salary to the respondent and her minor son. It is specifically stated in the said impugned order that respondent wife is household wife. She is not doing anything. She is fully dependent upon the applicant only. Considering these facts and Exhibit- 30 i.e. salary slip for the months January 2016 to June, 2016, Form 16 issued by the Income Tax Department under section 10 and 17(2) of the Income Tax Act, 1961, I am of the opinion that applicant has not made out any case to interfere with the well reasoned order passed by Family Court.

10. The learned counsel for the applicant submits that Family Court by impugned order dated 24.2.2017 directed applicant to clear the

arrears of maintenance amount in 15 equal instalments. She requested to change it to 30 equal instalments.

11. The learned counsel for the respondent vehemently opposed for this request made by the advocate for applicant. He after taking instruction from father of respondent no.1 who is present in court, makes a statement that, that can be changed to 25 instead of 15, equal instalments. Therefore, following order is passed:

- (a) Applicant to clear the arrears of maintenance as per impugned order dated 24.2.2017 in ***25 equal instalments*** instead of 15.
- (b) Criminal Revision Application stands rejected.
- (c) No order as to costs.

(K.K.TATED, J.)