

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
REVISION APPLICATION NO. 386/2016

Mohan Ramesh Jadhav

... Applicant

V/s.

Sou. Chitra Mohan Jadhav & Ors.

... Respondents

Mr. Girish R. Agrawal for the Applicant

Mr. S. V. Gavand, AGP for the Respondent State.

CORAM: K.K. TATED, J.

DATED : JUNE 23, 2017

PC. :

1. Heard the learned counsel for the parties. By consent of the parties, the matter is taken up for final hearing.

2. By this application, the applicant husband is challenging the order dated 29.03.2016 passed by the Family Court, Nasik in Petition E-85/2013 u/s.127 of the Code of Criminal Procedure, 1973 (the Code) directing him to pay sum of Rs.2000/- pm. to respondent Nos.1 to 3 each towards the enhanced maintenance amount from the date of application i.e. 22.04.2013 and also cost of Rs.1000/-.

3. In the present proceedings, initially the respondent wife had made an application u/s.125(1) of the Code claiming maintenance charges from the applicant husband for herself and her two minor daughters. Same was decided by the Family Court, Nasik by judgment dated 01.08.2011 directing the applicant husband to pay sum of Rs.600/- p.m. to the wife and Rs.500/- to respondent Nos.2 and 3 minor children. Thereafter the respondent wife made an application

u/s.127 of the Code for grant of enhanced amount of maintenance. In that application, the Family Court recorded the evidence of both the parties and passed the impugned judgment dated 29.03.2016 holding that the respondents are entitled to sum of Rs.2000/- pm. by way of maintenance charges from the date of application i.e. 22.04.2013. Said order is challenged by the applicant husband before this court.

4. During the course of arguments, the learned counsel for the applicant, across the Bar made a statement that, by this petition, the applicant is challenging the order passed by the Family Court, Nasik dated 29.03.2016 only in respect of maintenance charges awarded in favour of respondent Nos.1 Wife Chitra. He submits that he received instructions from his clients that he is ready and willing to pay maintenance charges for his children as per judgment dated 29.03.2016. The statement is accepted.

5. The learned counsel for the applicant submits that he is challenging the impugned judgment on following two grounds:

(i) The order dated 29.03.2016 passed by the Family Court, Nasik is bad in law, because the respondent No.1 is not a legally wedded wife.

(ii) The Family Court has erred in coming to the conclusion that the enhanced maintenance charges to be paid from the date of application i.e. 22.04.2013 u/s. 127 of the Code.

6. The learned counsel for the applicant submits that the respondent wife had filed a complaint u/s.498-A read with 34 of the Indian Penal Code against the applicant and his relatives which was registered as Case No.1185/2009 before the Chief Judicial Magistrate, Nasik. Same was finally decided by judgment dated 17.08.2011. He

submits that the applicant as well as his relatives were acquitted in that case on the ground that respondent No.1 was not legally wedded wife of the applicant. In support of his contention, he relies on paragraph 7 of that judgment which reads thus:

“7. That apart, admittedly it is case of the complainant herself that earlier she was married with one Shyam Ramchandra Nagpure @ Nikhale on 05.06.1995 as per Hindu Rites and Customs and that she divorced from him as per Divorce Deed (Exh.52). From this sort of evidence, the learned Advocate Mr. R. M. Bomache appearing for accused vehemently submitted that the earlier marriage of the complainant cannot be said to have been legally dissolved by such a divorce deed. It has been submitted that the earlier marriage of complainant can be said to be still subsisting. As such the so called marriage dated 21.01.2000 registered on 02.02.2000 of the complainant with the accused Mohan is void as per Sec. 17 of the Hindu Marriage Act. Sec.17 of Hindu Marriage Act, 1955 reads that, any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living, and the provisions of Secs. 494 and 495 of the Indian Penal Code shall apply accordingly. Here in the instant case, the so called divorce by divorce deed is totally contrary to the provisions of Sec.13 of the Hindu Marriage Act, 1955. Therefore, the said divorce of the complainant with her earlier husband is illegal. Thus, it is clear that the allegations for the offence punishable u/s.498-A of the I.P.C. 1860 does not attract in this case. No offence is made out and proved by the prosecution against any of the accused. The prosecution failed to prove the guilt of accused beyond reasonable doubt and with sufficient evidence. Hence, I record my finding to the point No.1 in the negative.”

7. The learned counsel for the applicant submits that as per the provisions of section 125 of the Code, only wife can claim maintenance charges from husband. In support of his contention, he relies on the judgment of the Apex Court in the matter of **Savitaben Somabhai**

Bhatiya Vs. State of Gujarat & Ors. 2005 Cri. L.J.2141.

8. The learned counsel for the applicant submits that the Family Court has erred in coming to the conclusion that the applicant has to pay maintenance charges from the date of application made by wife u/s.127 of the Code. He submits that in the maintenance application the wife has not given any reason as to why she is claiming maintenance from the date of application. Not only that, even the Family Court has failed to give any reason for awarding enhanced maintenance from the date of application. He submits that the Apex Court, in the matter of ***Jaiminiben Hirenbbhai Vyas & Anr. Vs. Hirenbbhai Ramesbbhchandra Vyas & Anr. 2015 All.M.R. (Cri.) 376 SC*** held that if the maintenance charges are awarded from the date of application in that case, the Court must give reason for the same. He submits that in the present proceedings, the Family Court has not given any reason why the court has granted enhanced maintenance from the date of application. The learned counsel for the applicant submits that on these two grounds, the impugned judgment dated 29.03.2016 passed by the Family Court in Petition No.E-85/2013 be set aside to the extent of directing the applicant to pay maintenance charges of Rs.2000/- pm to respondent No.1 from the date of application i.e. 27.03.2016.

9. On the other hand, the learned counsel for the respondent vehemently opposed the Civil Revision Application. He submits that in the present proceedings the respondent wife made an application u/s.127 of the Code for enhancement of maintenance charges. Therefore, the grounds raised by the learned counsel for the applicant

that respondent No.1 is not entitled to any maintenance u/s.125 of the Code cannot be considered in the present proceedings.

10. The learned counsel for the respondent submits that before the Family Court, the wife has brought on record the evidence to show that the applicant's income is near about Rs.50,000/- p.m. from various business and also he is working as an Electrician. Considering these facts and the evidence on record, the Family Court has rightly passed the impugned judgment dated 29.03.2016 directing the applicant to pay sum of Rs.2000/- p.m. to the respondents by way of maintenance from the date of application i.e. 22.04.2013. He submits that the Family Court, in para 11 given reason why the Court has awarded enhanced maintenance from the date of application. Therefore, the objection raised by the applicant for granting enhancement from the date of application is not maintainable. Hence, there is no substance in the present Civil Revision Application. Same be dismissed with costs.

11. It is to be noted that, in the present proceedings the applicant challenges the impugned judgment dated 29.03.2016 passed by the Family Court u/s.127 of the Code. The respondent wife had filed an application u/s.127 of the Code for enhanced compensation. Therefore, the issue involved in the present proceedings is limited i.e. whether the enhancement granted by the Family Court is maintainable in law.

12. In the present proceedings, the applicant has brought on record the evidence of D.W.2 Jayashree Dattatray Shelar. She has specifically stated in her evidence that the respondent wife was working with them

as *Anganwadi Madatnis* and she was getting remuneration of Rs.4000/-pm. Bare reading of section 125 shows that if a wife is unable to maintain herself, then she is entitled to maintenance. In the present proceedings, though the wife is working as *Anganwadi Madatnis*, the applicant has not challenged the order passed by the Family Court u/s.125 of the Code. He has challenged the order passed u/s.127. Therefore, considering these facts and as the respondent can earn and maintain herself, I am of the opinion that the impugned order dated 29.03.2016 passed by the Family Court in Petition No.385/2013 is liable to be set aside to the extent of granting enhanced maintenance to respondent No.1 Sou. Chitra Mohan Jadhav.

13. It is to be noted that, the Family Court, in para 11 of the impugned judgment given reason as to why the court is awarding enhanced maintenance from the date of application. Therefore, the objection raised by the Advocate for the applicant is not maintainable on this point.

14. Hence, following order is passed:

- a. Civil Revision Application is partly allowed.
- b. The impugned judgment dated 29.03.2016 passed by the Family Court, Nasik in Petition No.E-85/2013 is modified to the extent that respondent Sou. Chitra Mohan Jadhav is not entitled to enhanced maintenance amount.
- c. No order as to costs.

(K.K. TATED, J.)