

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.364 OF 2015

Nitin Nagnath Kale ... Applicant
Vs.
Jyoti Nitin Kale and others ... Respondents

Ms Sneha G. Sanap i/b. Mr. Sudam Kale for Applicant.

CORAM : R. G. KETKAR, J.
DATE : MAY 05, 2017

P.C. :

Heard Ms Sanap, learned Counsel for applicant at length.

2. By this Application under Section 401 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), applicant has challenged the judgment and order dated 10.06.2015 passed by the learned Judge, Family Court No.7, Mumbai in Petition No.375 of 2012. By that order, the learned trial Judge partly allowed the Petition filed by respondents No.1 and 2 and directed the applicant herein to pay maintenance @ Rs.4,000/- for respondent No.1 and Rs.3,000/- for respondent No.2 from the date of the petition.

3. In support of this Application, Ms Sanap invited my attention to-

- a. paragraphs 22 and 25 of the impugned order;
- b. written statement, and in particular paragraph 2 thereof;
- c. cross-examination of the respondent No.1 as also of the petitioner;

4. She submitted that respondent No.1 alleges that the marriage between her and the petitioner was solemnized on 26.12.2005 and respondent No.2 was born on 06.06.2006. In other words, respondent

No.2 is not born out of wedlock between the petitioner and the respondent No.1. She, therefore, submitted that the learned trial Judge was not justified in awarding the maintenance.

5. I have considered the submissions advanced by Ms Sanap. I have also perused the material on record. In paragraphs 30 and 31, the learned trial Judge has observed thus,

“30. The petitioner though pleaded that their marriage is a love marriage but she has not made it clear that prior to the marriage, there was physical intimacy between petitioner and respondent. The respondent though alleged that he is not a father of the child, and there is no access between petitioner and him but he had not made attempts for proving this fact. The respondent has not applied for collecting DNA sample or for DNA test. The respondent was silent on the point of paternity of child except denial. The love affairs alleged by the petitioner and silence of the respondent, non seeking DNA test, shows this conduct which is sufficient to infer that the child is born out of the relations between the petitioner and respondent.

31. It is the duty of the respondent to maintain his wife and child. During the course of written statement as well as evidence, the respondent himself has suggested that he is having income upto Rs.6-7 lakhs per annum. In cross-examination para-4 the respondent has admitted above income from his business. The petitioner though alleged that the respondent is owner of 3 companies but she has not filed single documentary evidence to prove that the respondent is owner of the Companies and earning 3 lakhs rupees per month. There is no evidence at all in respect of the income of respondent except his admission that he is doing business and earning 6-7 lakhs per annum. Though the respondent is having sufficient income, he has failed to obey his marital obligations. The respondent has intentionally neglected and refused to maintain the petitioner and her child though they have no source of income. It is admitted position that the petitioner is housewife having no source of income. The child is taking education. Considering the above facts, in my view, the petitioner is entitled for grant of maintenance. Considering the background, social, economical status of the parties etc. in my view an amount of Rs.3000/- for the child-Ashika and an amount of Rs.4000/- per month for the wife is sufficient. Hence, I answer Point Nos.1 to 3 accordingly.”

6. A perusal of the cross-examination of the petitioner and in particular paragraph 3 shows that he admitted that he did not apply for DNA test though respondent No.1 is alleging that she is mother of his child. For the reasons recorded in paragraphs 30 and 31 of the impugned order, I do not find any merit in this Petition. In paragraph 4 of the cross-examination, petitioner admitted that he is earning Rs.6 to 7 lakhs per annum. The learned trial Judge accordingly considered his income and awarded maintenance. Hence, no case is made out for interfering with the impugned order. Application fails and the same is dismissed. It will be open to the applicant to undergo the D.N.A. Test. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab