

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

CRIMINAL REVISION APPLICATION NO. 368 OF 2015

Shri Anwar Shakir Sayyad

Petitioner.

Vs

Sau. Shirin @ Rashidbao @
Tannoja Anwar Sayyad and Ors.

.. Respondents

Mr. Abhas Z. Mookhtiar, Advocate for Petitioner.

CORAM : R.G.KETKAR,J.
DATE : 02/05/2017

PC:

1. Heard Mr. Abhas Mookhtiar, learned counsel for the petitioner at length.

2. By this Application under Section 401 of the Code of Criminal Procedure, 1973, (for short, 'Cr.P.C.'), the petitioner has challenged the Judgment and order dated 22.4.2015 passed by the learned Judge, Family Court, Nashik in Petition No.E-148 of 2012 filed under Section 125 of Cr.P.C. By that order, the learned trial Judge partly allowed the petition and directed the petitioner herein to pay Rs.5000/- per month to respondent no.1-wife and Rs. 3000/- to respondent no.2-daughter as allowances of maintenance from the date of application, i.e. 10.7.2012. The petitioner is further directed to pay Rs.3000/- towards costs of the petition to respondents no.1 and 2.

3. In support of this petition, Mr. Mookhtiar submitted that the petitioner is working as a labourer. He has to maintain his

parents, brother and sisters who are depending on his income. His mother met with an accident and is operated. He has also incurred expenditure towards her medical expenses. The petitioner's father is aged and is suffering from blood pressure and diabetes. He has also suffered heart attacks in the past and is taking medical treatment. He submitted that having regard to his income as also persons depending on him, it is not possible for him to pay maintenance as awarded by the learned trial Judge. He submitted that only on the ground that the petitioner re-married and son is borne out of wedlock, learned trial Judge has awarded the maintenance. He submitted that nothing is produced on record to indicate the income of the petitioner and his capacity. Having regard to his income, it is impossible for him to make payment.

4. Mr.Mookhtiar further sought time to produce the documents. He submitted that the documents will establish that respondent no.1 is gainfully employed and is, therefore, not entitled to claim maintenance from the petitioner. To the query made by the Court, he stated that the said documents were not produced before the trial Court.

5. I have considered the submissions advanced by Mr. Mookhtiar. I have also perused the material on record. While passing the impugned order, in paragraph 8, the learned trial Judge has considered the case of the petitioner, namely, that he

is working as labourer and his parents, brother and sisters are dependent on him as also illness and expenses incurred towards medical treatment. The learned trial Judge also noted that in the cross examination, the petitioner admitted that his brother is doing agricultural work and it is ancestral agricultural land. He is working with a trader at Ozar, namely, Mr Bharat Yeola. The petitioner, however, did not examine Mr.Bharat Yeola, the trader at Ozar to bring on record his monthly income. The learned trial Judge also noted admission of the petitioner that he has not made any arrangement for maintenance and survival of respondents no.1 and 2 since they are residing separately. The learned trial Judge also considered in paragraph 9 the fact that on 26.8.2011 the petitioner performed second marriage and is having one son by name Harsh. His admission itself shows that the petitioner is able to maintain the family, second wife and child. The learned trial Judge has also noted that the petitioner has not given Talak to the first respondent.

6. A perusal of the impugned order shows that the learned trial Judge has considered the case put up by the petitioner. It is important to bear in mind that monthly income of the petitioner is within his special knowledge. He did not depose about his monthly income. Equally, he did not examine his employer to bring on record his monthly income. During the course of his cross examination, it has come on record that ancestral

agricultural land is with the family of the petitioner.

7. It is also relevant to note that the documents which are sought to be produced here were not produced before the trial Court. It will be open to the petitioner to move the trial Court for modification of the order by producing the documents, if so advised. All contentions of respondents no.1 and 2 in that regard are expressly kept open. In view thereof and for the reasons recorded in paragraphs 8 and 9 of the impugned order, no case is made out for invocation of powers under Section 401 of Cr.P.C. Hence, Petition fails and the same is dismissed. Order accordingly.

(R.G.KETKAR, J.)