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

CRIMINAL REVISION NO.34 OF 2016

Pramod Mahadeo Athavale
Aged 39 years, Occ: Nil,
R/o. Sanglud (Ambadevi)
Tah. & Dist. Akola.

..APPLICANT

VERSUS

1. Sau. Sangita Pramod Athavale
Aged 36 years, Occ: Home maker
2. Ku. Manaswi @ Manju Pramod
Athawale
Through her natural guardian
mother – NA No.1

Both R/o. C/o Jayram Shivram
Palaspagar, Gurukrupa Colony,
Near University, Camp, Amravati,
Tah. & Distt. Amravati.

..RESPONDENTS

Mr U.J. Deshpande, Advocate for applicant;

CORAM : N.W. SAMBRE, J.

DATE : 23rd MARCH, 2017

ORAL ORDER :

The applicant-husband has questioned the order passed by the Family Court, Amravati, in Petition No.A-182 of 2011, on 29th March, 2014 awarding maintenance of Rs.5000/- per month to each of the claimant i.e. total Rs.10,000/-. Respondent

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No.1 is wife, whereas respondent No.2 is his daughter.

2. Learned Family Court taking into consideration admissibility of relationship between the parties as husband and wife, so did about paternity of respondent No.2 daughter and considering the income of the applicant awarded maintenance in question. Learned Counsel for the applicant made two-fold submissions; (a) that there is decree for restitution of conjugal rights which is not given its logical end and (b) respondent No.1 was not cross examined, as the applicant at the relevant time could avail such opportunity.

3. It is required to be noted that the decree for restitution of conjugal rights was passed pursuant to the provisions of Section 9 of the Hindu Marriage Act, 1955 at the behest of wife in 2014 and same is not taken to its logical end by the present applicant-husband. As such, submission that decree for restitution of conjugal rights since holds the field, order maintenance ought not

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to have been passed, is liable to be rejected.

4. The next submission that respondent-wife was not subjected to cross examination is concerned, it is required to be noted that appropriate opportunity to that effect was made available to the applicant, which he has chosen not to avail. For such conduct of applicant-husband, he cannot take mileage of the same in the present proceedings so as to solve order of payment of maintenance. The order of payment of maintenance is based on the evidence and other material brought on record. No interference is warranted, as no jurisdictional error could be noticed. Criminal Revision Application fails and stands rejected.

(N.W. SAMBRE, J.)

Tupe