

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.462/2015

Shrkhar s/o Pratapsingh Nagpure Vs. Sima w/o Shekhar Nagpure

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri I.S.Charlewar, Advocate for applicant.
Shri I.N.Choudhari, Advocate for non applicant.

CORAM : N.W.SAMBRE, J.
DATE : MARCH 24, 2017

On April 4, 2012 the parties entered into a wedlock. However, in view of matrimonial discord proceedings under sub-section 1 Section 125 of the Cr.PC for grant of maintenance came to be initiated. The applicant though was tried to be served with Court notice, he refused to accept the same and as such, learned Magistrate by his order dated July 30, 2014, proceeded to award maintenance at Rs.3,000/- per month. The said order was confirmed in revision by the learned Sessions Judge. As such, the present application.

Shri Charlewar, learned counsel for the applicant submits that the order of maintenance has to be termed as ex-parte order as he was not heard by the learned Magistrate. According to him, it was never intention of the applicant to avoid the proceedings by not accepting the notice of the Court as intimation about issuance of notice by the Court was not brought to his

notice. In addition, he would submit that the present applicant is working as a labourer and the amount of maintenance ordered is exorbitant.

The learned counsel for the respondent-wife opposed the claim of the applicant and supported the order passed by the learned Magistrate and the learned Sessions Judge.

Upon considering the submissions, it is required to be noted that the relationship between the parties is not disputed. What is disputed by the applicant-husband is, as regards, intimation of proceeding in question. Learned Magistrate and the learned Sessions Judge, in revision, have relied upon the provisions of Section 23 of the General Clauses Act so as to infer and presume service of notice on the applicant. The said inference is based upon the legal provisions and in my opinion, the view expressed by both the Courts below, particularly, about the service of notice on the applicant-husband of the proceedings in question, does not call for any interference in view of legal fiction.

So far as regards quantum of maintenance is concerned, what is awarded by the Courts below is Rs.3,000/- per month that is about Rs.100/- per day. So as to claim that the amount of maintenance awarded is disproportionate, the applicant-husband before this Court has not brought any documentary or oral evidence or any material about his source of income so as to infer that the amount of maintenance awarded is exorbitant. In my opinion, the view expressed by the learned Magistrate

and confirmed by the learned Sessions Judge is plausible view. No interference is warranted. The application is rejected.

JUDGE

Andurkar