

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 1590 OF 2018**

Prashant Ashok Shinde	]	Petitioner
Vs.		
Dhanshri @ Sampati Prashant Shinde & Ors	]	Respondents
.....		
Mr. Kuldeep U. Nikam, for petitioner.		
.....		

CORAM : R.G. KETKAR, J.

DATE : 13TH APRIL, 2018.

P.C.

Not on board. At the request of Mr. Nikam, taken up for admission.

2. Heard Mr. Nikam, learned Counsel for the petitioner.
3. By this Petition under Article 227 of the Constitution of India, the petitioner/husband has challenged the judgment and order dated 2nd February, 2018 passed by the Family Court, Kolhapur below Exhibit 8 in Petition No.E-3 of 2017. By that order, the learned trial Judge partly allowed the application made by respondent/wife and directed the petitioner to pay maintenance of Rs. 5,000/- per month to respondent No.1 and Rs. 3,000/- per month to respondent No.2 herein from the date of the application till further orders or decision of Petition, whichever is earlier.
4. In support of this Petition, Mr. Nikam invited my attention to compromise entered into between the parties in Criminal Appeal No.319 of 2010 on 5th February, 2013. At clause (1), petitioner herein agreed to provide

residential accommodation to respondents No.1 and 2. He submitted that the petitioner has provided flat to respondents No.1 and 2 and thus complied with clause(1). By clause (2), the petitioner had undertaken to maintain respondents No.1 and 2. He submitted that from the date of the order, the petitioner has been paying School fees of the second respondent, paying electricity charges as also providing food and is taking care of other requirements of respondents No.1 and 2. He submitted that as the petitioner was complying with clauses of the consent terms dated 5th February, 2013, respondents No.1 and 2 filed application only in the year 2017. This substantiates the petitioner's claim that he was strictly complying with the consent terms dated 5th February, 2013.

5. Mr. Nikam submitted that assuming that the petitioner is not complying the consent terms, respondents No.1 and 2 were not justified in filing an application u/s 125 of the Criminal Procedure Code, 1973 (for short "Cr. P.C.") Respondents No.1 and 2 would have filed Contempt Petition for violating consent terms. He further submitted that while directing the petitioner to pay maintenance of Rs. 8,000/- per month, the learned trial Judge ignored the fact that the petitioner is not gainfully employed. He is working as site supervisor with private building contractor Vishnupant Baburao Sumbhe. He invited my attention to salary certificate dated 21st January, 2017 issued by the said Contractor to the effect that the petitioner is paid Rs. 6500/- per month towards salary by way of cash. He, therefore, submitted that in any case, direction issued by the learned Judge to pay maintenance @ Rs.8,000/- deserves to be set aside.

6. I have considered submission of Mr. Nikam. I have also perused the material on record. Even if, I accept submission of Mr. Nikam that by providing accommodation to respondents No.1 and 2, petitioner has complied

clause 1 of the consent terms, there is no material to indicate that the petitioner has complied clause 2 of the consent terms. A perusal of clause 2 of the consent terms also shows that it is as vague as possible. In fact, parties instead of entering into clause 2, should have fixed a particular amount to be paid by the petitioner to respondents No.1 and 2 towards maintenance. In the absence of any particulars, it is not possible to accept the submission of Mr. Nikam that clause 2 of the consent terms is complied with.

7. As far as reliance on the salary certificate issued by contractor Vishnupant Baburao Sumbhe is concerned, as against this, the respondent/wife has contended that the petitioner is a building contractor. Even otherwise, save and except salary certificate relied by the petitioner, there is no other evidence to substantiate that case. The learned trial Judge considered this aspect in paragraph 12 and after considering the present rate of inflation directed the petitioner to pay Rs.8,000/-.

8. For the reasons recorded in paragraphs 11 and 12 of the impugned order, I do not find that the learned trial Judge committed any error in passing the impugned order. Mr. Nikam submitted that in stead of filing application u/s 125 of the Cr.P.C, respondents No.1 and 2 could have initiated contempt proceedings for non compliance of the compromise terms. I do not find any merit in this submission as basically this submission is not substantiated by any provision of law or any precedence. In view thereof, no case is made out for interfering with the impugned order. Hence, Petition fails and the same is dismissed. It is needless to observe that observations made herein are only for considering validity of the impugned order passed below Exhibit 8. The trial Judge to decide the main proceedings un-influenced by the observations made in this order and the impugned order. Order accordingly.

[R.G. KETKAR, J.]