

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Revision Application NO. 107 OF 2015

Shri Nagraj Lingappa Aabatini

...Applicant

Versus

Sou.Laxmi Nagraj Aabatini
and another

...Respondents

....

Mr. Shrishail Sakhare, Advocate for the Applicant.

....

CORAM : R. G. KETKAR, J.

DATE : 14th JUNE, 2018

P.C.

1. Heard Mr.Shrishail Sakhare, learned counsel for the applicant, at length.

2. By this application under Section 397 of the Code of Criminal Procedure, 1973 (for short, 'Cr.PC.'), the applicant-husband has challenged the judgment and order dated 26.12.2014 passed by the learned Principal Judge, Family Court, Solapur in Petition No.7/2013 as also the order dated 16.2.2015 passed by the learned Principal Judge, Family Court, Solapur below Exhibit-14 in said Petition. By order dated 26.12.2014, the learned trial Judge partly allowed the Petition filed by the respondent-wife and directed the applicant herein to pay Rs.5,000/- per month towards maintenance from the date of petition till further

orders. The applicant was directed to clear the arrears in 12 equal installments, amongst other directions.

3. Mr. Sakhare submitted that the learned trial Judge proceeded on the footing that despite service the applicant herein failed to appear. He submitted that in fact the notice was neither received by the applicant nor he had any knowledge of the order passed below Exhibit-1 that the application filed by the first respondent will proceed exparte. In short, he submitted that no opportunity was given to the applicant to contest the proceedings filed by the respondent-wife. He submitted that the applicant filed application under Section 126(2) of Cr.P.C. for recalling the order dated 26.12.2014. However, by the impugned order dated 16.2.2015, the learned trial Judge rejected the application on the ground that the case was finally disposed of and accordingly rejected the application. He submitted that the learned trial Judge did not deal with the case made out by the applicant that he was not served with the summons. Equally the applicant was unaware of the order dated 7.3.2014 directing the matter to proceed exparte as also final order dated 26.12.2014. He, therefore, submitted that the matter is required to be remitted to the trial Court thereby giving opportunity to the applicant to contest the proceedings filed by the respondent-wife under Section 125 of Cr.P.C.

4. I have considered the submissions advanced by Mr. Sakhare. I have also perused the material on record. A perusal of paragraph-3 of the order dated 26.12.2014 shows that the learned trial Judge after considering the record observed that by order dated 7.3.2014 below Exhibit-1, the case proceeded exparte against the applicant herein as he failed to appear even though he was duly served. Mr. Sakhare disputes this position and submitted that the applicant was never served with the summons. Even if it is accepted that the applicant was not served with the suit summons, a perusal of the application dated 16.2.2015 filed by the applicant does not even remotely indicate that he challenged the findings recorded by the learned trial Judge in paragraph-11 of the order dated 26.12.2014. In paragraph-11, the learned trial Judge observed thus :

“11. Laxmi i.e. petitioner states that, the respondent is earning Rs.20,000/- to Rs.22,000/- per month by salary. She had applied to issue summons to produce salary certificate of respondent. The salary certificate exh.8 is produced by the respondent's office. This shows that the respondent is working with Solapur Municipal Corporation as labour since last 11 years. His Gross salary for the month of November 2014 is shown as Rs. 18,071/-. The compulsory deductions are shown as Rs.1,950/-. The net salary is shown as Rs.16,121/-. This shows that the petitioner has exaggerated the income of respondent to some extent.”

5. A perusal of the above paragraphs shows that the net salary of the applicant is Rs.16,121/- and on that basis the respondent was awarded maintenance of Rs.5,000/- per month.

6. In view thereof, I do not find that any case is made out for interfering with the impugned order. Criminal Revision Application fails and the same is dismissed. It will open to the applicant to approach the trial Court on the ground that he is ready to cohabit with the respondent-wife. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)