

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Revision Application (ST) NO. 186 OF 2018

Chetan Harshadrai Makwana

...Applicant

Versus

Meenakshi Chetan Makwana
And Anr.

...Respondents

....

Mr. Ram Ugrah Singh, Advocate for the Applicant.

Ms. Suvarna B. Telgote, Advocate for Respondent No.1.

Mr. Rajan Salvi, APP, for Respondent No.2 – State.

....

CORAM : R. G. KETKAR, J.

DATE : 11th APRIL, 2018

PC.

1. Heard Mr. Ram Ugrah Singh, learned counsel for the applicant, Ms. Suvarna Telgote, learned Counsel for respondent No.1 and Mr. Rajan Salvi, learned APP for respondent No.2 – State, at length.

2. By this application under Section 397 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), the applicant-husband has challenged (1) the judgment and order dated 29.6.2017 in Petition No.E-411/2012 as also (2) the order dated 20.1.2018 below Exhibit-13 in E.R. No.251/2017 passed by the learned Judge, Family Court No.3, Mumbai.

3. By order dated 29.6.2017 in the petition filed by the respondent-wife under Section 125 of Cr.PC., the learned trial Judge directed the applicant herein to pay maintenance @ Rs.25,000/- per month to the respondent from the date of the order and further to pay litigation expenses of Rs.10,000/- to the respondent.

4. By order dated 20.1.2018 below Exhibit-13, the learned trial Judge directed the detention of the applicant in civil prison for a period of six months for non-payment of arrears of Rs.1,80,000/-. The learned trial Judge further ordered release of the applicant herein after expiry of six months or payment of arrears of Rs.1,80,000/- which ever is earlier. If the applicant pays part amount, then his sentence shall be reduced proportionately i.e. @ Rs.15,000/- for one month- sentence 15 days to be reduced.

5. Mr. Singh states that the applicant has deposited the arrears of maintenance of Rs.1,80,000/- in this Court on 10.4.2018.

6. In support of this Application, Mr. Singh strenuously contended that the applicant is a mentally disturbed person. The learned trial Judge has awarded maintenance on the basis of the contentions advanced on behalf of the respondent-wife that the applicant is having a joint family business of Dal Mill and LPG Pump

Station. He submitted that earlier the applicant's father was running this business and presently the applicant's father is not carrying on that business. In other words, he submitted that the family business of Dal Mill and LPG Pump Station is not carried on as on that date. It is, therefore, not possible for the applicant to pay maintenance as awarded by the learned trial Judge.

7. Mr. Singh further submitted that by order dated 20.1.2018 below Exhibit-13, the learned trial Judge had ordered detention of the applicant in civil prison for non-payment of arrears of maintenance of Rs.1,80,000/-. He, therefore, submitted that as the applicant has deposited Rs.1,80,000/- towards the arrears of maintenance in this Court on 10.4.2018, he may be released forthwith.

8. On the other hand Ms. Telgote supported the impugned order. She has invited my attention to the findings recorded by the learned trial Judge in paragraph-9 of the impugned order dated 29.6.2017. She further submitted that the applicant is not attending the proceedings filed in the Family Court. In fact the respondent has filed E.R. No.155/2017 claiming maintenance of Rs.1,20,000/- per month and E.R. No.363/2017 claiming maintenance of Rs.1,45,000/-. She submitted that the applicant is not attending these proceedings as and

when fixed by the Family Court.

9. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. Insofar as the challenge to the order dated 29.6.2017 passed by the learned trial Judge in Petition No.E-411/2012 is concerned, I do not find any merit in the submissions of Mr. Singh. The applicant has resisted the petition filed by the respondent-wife by filing reply Exhibit-9 and denied all the contentions. In paragraph-9 of the impugned order, the learned trial Judge has considered the fact that the applicant and his father's business is shown as Dal mill and LPG Pump Station. The learned trial Judge has also considered the photographs of the applicant's family house as well as his business, produced by the respondent-wife and the learned trial Judge observed that these photographs were not disputed by the applicant. After considering the status and living standards of the applicant, the learned trial Judge observed that the applicant is leading the luxurious life. For the reasons recorded in paragraph-9 of the impugned order, I do not find that the learned trial Judge has committed any error in awarding the maintenance @ Rs.25,000/- per month from the date of the order and litigation expenses of Rs.10,000/-. The challenge to the order dated 29.6.2017 accordingly fails.

10. So far as the order dated 20.1.2018 below Exhibit-13 is concerned, the learned trial Judge ordered detention of the applicant in Civil prison for a period of six months for non-payment of arrears of maintenance of Rs.1,80,000/-. The learned trial Judge further ordered release of the applicant after expiry of six months or payment of arrears of Rs.1,80,000/- whichever is earlier. As the applicant – Chetan Harshadrai Makwana has now deposited Rs.1,80,000/- in this Court on 10.4.2018, he shall be forthwith released from civil prison.

11. All concerned parties, including the Jail Superintendent of Byculla Civil Prison where the applicant is presently detained, shall act upon the authenticated copy of this order.

12. List the Revision Application for reporting compliance on 13.4.2018. On that date, the applicant shall file undertaking incorporating therein that :

- (i) he will regularly attend the proceedings in E.R. No.155/2017 and E.R. No.363/2017 as and when fixed by the Family Court and will not commit any default in appearance before the Family Court; and
- (ii) he will go on paying regularly the maintenance @ Rs.25,000/- per month as awarded by order dated 29.6.2017 till such time the order is modified and will not commit any default.

13. In the meantime, the respondent-wife is permitted to withdraw the amount of Rs.1,80,000/- deposited by the petitioner in this Court on 10.4.2018, unconditionally.

14. Criminal Revision Application is disposed of. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)