

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.173 OF 2015

Ambadas Madhav Kute ... Applicant
Vs.
Gayatri @ Anita Ambadas Kute and others ... Respondents

Mr. Girish R. Agrawal for Applicant.
Ms Sarika Shah a/w. Mr. Swapnil S. Mhatre for Respondents No.1 and 2.

CORAM : R. G. KETKAR, J.
DATE : JUNE 7, 2018

P.C. :

Heard Mr. Agrawal, learned Counsel for the applicant and Ms Shah, learned Counsel for the respondents No.1 and 2 at length.

2. By this Application under Sections 397 and 401 of the Code of Criminal Procedure, 1973, applicant has challenged the judgment and order dated 26.12.2014 passed by the learned Judge, Family Court, Nashik in Petition No.E 283 of 2012. By that order, the learned Judge allowed the Petition instituted by respondents No.1 and 2 and rejected the claim made by the respondent No.1 - Gayatri @ Anita for maintenance. The learned Judge directed the petitioner herein to pay Rs.8,000/- per month to the respondent No.2-Sarthak from the date of filing of the application. In addition, the petitioner is directed to pay costs of Rs.2,000/- of the Petition.

3. In support of this Petition, Mr. Agrawal submitted that petitioner is working in a Police Department. At the relevant time, he was getting salary of Rs.15,080/- per month and presently, he is getting salary of Rs.29,000/- per month. From his first marriage, he is having two children. The elder daughter is of a marriageable age and the younger son is a student. He has to maintain his children from first wife. Having

regard to the income of the petitioner and the fact that he is required to maintain children from the first wife, the learned Judge of the Family Court was not justified in directing the petitioner to pay maintenance @ Rs.8,000/- per month to the respondent No.2. He has no capacity to pay maintenance @ Rs.8,000/- per month. He further submitted that the learned trial Judge, while directing the petitioner to pay maintenance from the date of filing of the Petition, has not given any reason. In support of this submission, he relied upon the decision of the Apex Court in ***Jaminiben Hirenghai Vyas Vs. Hirenghai Rameshchandra Vyas, 2015 (2) SCC 385***. He, therefore, submitted that the direction issued by the learned trial Judge for payment of Rs.8,000/- per month towards maintenance may be suitably modified.

4. On the other hand, Ms Shah supported the impugned order. She has taken me through the compilation of documents in respect of properties standing in the name of the petitioner. She submitted that some of the properties are joint family properties where petitioner has share. Properties bearing Gat No.305/7, 304/8 are exclusively standing in the name of the petitioner. She submitted that respondents are residing in a row house situate at Makhamalabad. For some period, petitioner was paying monthly installments and thereafter has stopped paying the loan installments. Respondents are paying installments to the bank. In fact, petitioner had given application to the bank to sell the row house through auction. She submitted that having regard to the expenses incurred by the respondent No.2, it cannot be said that the learned trial Judge has awarded exorbitant maintenance. Petitioner has not established that he was paying maintenance to the respondent No.2 till the date of filing of the application. She, therefore, submitted that no case is made out for interfering with the impugned order.

5. Mr. Agrawal submitted that in pursuance of the order dated

24.04.2015, petitioner has deposited Rs.1,50,000/- in the trial Court. In pursuance of order dated 20.10.2016, petitioner paid Rs.2,10,000/- to the respondent No.1 by way of cheque. He submitted that amount of Rs.1,50,000/- is withdrawn by the first respondent. Ms Shah confirms the said fact and does not dispute that respondent has received Rs.3,60,000/-. She however submitted that petitioner is in arrears of Rs.2,60,000/- as of today.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that petitioner is working in the Police Department. At the relevant time, he was getting salary of Rs.15,080/- and it is not in dispute that as of today, petitioner is getting salary of Rs.29,000/- per month. It is true that petitioner has to maintain children from first marriage. It is equally true that petitioner is under legal obligation to maintain the respondent No.2. The relationship between the petitioner and the second respondent is not in dispute. A perusal of the cross-examination of the petitioner shows that earlier, he was paying installments of loan taken for purchasing row house at Makhamalabad. The petitioner, however, seems to have stopped paying the installments and had addressed a letter to the bank for selling the same through auction. It also appears that respondents are paying installments of the loan taken for purchasing row house at Makhamalabad. The learned trial Judge had declined to award maintenance to the first respondent on the ground that she is not a legally wedded wife of the petitioner and consequently, she is not entitled to claim maintenance. At the same time, petitioner has admitted paternity of the respondent No.2, and as such, he is liable to pay maintenance. After considering the income of the petitioner as also having regard to the fact that the petitioner has share in the joint / ancestral properties as also some properties stand exclusively in his name, I do not find any merit in the submission of

Mr. Agrawal that the learned trial Judge committed error in awarding maintenance @ Rs.8,000/- per month.

7. Mr. Agrawal relied upon the decision of the Apex Court in the case of **Jaminiben Hirenghai Vyas** (*supra*). In that case, the High Court, without giving any reason for not granting maintenance from the date of the application, had awarded maintenance from the date of the order. In the present case, no material is produced on record by the petitioner to indicate that he was paying maintenance to the second respondent at least prior to filing of the application. Hence, reliance placed by Mr. Agrawal on **Jaminiben Hirenghai Vyas** (*supra*) does not advance the case of the petitioner. In view thereof, I do not find that the learned trial Judge has committed any error in directing the petitioner to pay maintenance from the date of filing of the application. In the result, no case is made out for interfering with the impugned order. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab