

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.212 OF 2015

Ijaz Mehtab Qureshi

...Applicant

V/s.

Zeenat Ijaz Qureshi & Anr.

...Respondents

Mr.M.N. Dhamal for Applicant.

Ms.Rubby Sheikh i/b. M.I.Sheikh for Respondents.

CORAM : G.S. KULKARNI, J.

DATE : 25th JANUARY, 2018

P.C.:

Heard learned Counsel for the applicant and learned Counsel for the respondents.

2. Challenge in this petition is to the order dated 12th February 2015 passed by the learned Judge of the Family Court at Mumbai whereby Petition No.E-441 of 2011 as filed by the respondent No.1-wife claiming maintenance under Section 125 of the Code of Criminal Procedure has been allowed in the following terms:-

“This petition is allowed as under.

5. The Respondent shall pay maintenance @ Rs.2500/- per month to the petitioner wife from the date of filing this petition i.e. 15/11/2011 till the date of Judgment and Rs.3000/- per month from the date of this Judgment onwards.

6. He shall pay Rs.3000/- as costs of this petition to the petitioner.

7. The Respondent shall clear the arrears within 6 (six) months from the date of this Judgment.

8. The Respondent shall deposit maintenance amount on or before 10th date of each English month in the account of the petitioner.

9. The Petitioner shall provide her account number alongwith IFS Code to the respondent in writing.

10. *A copy of Judgment be given free of costs to the parties as per section 128 of Criminal Procedure code.*

11. *The Judgment is dictated and pronounced in open court in present of both parties.”*

3. Learned Counsel for the applicant in challenging the impugned order would submit that the maintenance of Rs.2,500/- per month which has been granted is on a higher side as the applicant does not have such a source of income. It is submitted that the applicant is working as a driver and is earning Rs.5,000/- per month and thus the learned trial Judge could not have awarded maintenance of Rs.2,500/- per month. It would be appropriate to note the observations of the learned trial Judge in considering the said case of the petitioner. The learned trial Judge has made the following observations in paragraph Nos.17 and 19 of the impugned order which read thus:-

“17. An evidence of Petitioner shows that respondent is working as a driver and earning Rs.15,000/- per month. The Respondent has admitted in his reply as well as in evidence that he is working as a private driver. But he has raised his defense that he is not earning Rs.15,000/- per month but he is getting Rs.5000/- per month. Therefore, onus lies on the respondent to prove his income which is within his special knowledge. The Respondent has having an opportunity to lead an evidence of his employer with whom he is working but he has not adduced an evidence of his employer. Hence, it require to draw an adverse inference against the story of his monthly income. Therefore, my opinion is that the contention of respondent that he is earning Rs.5000/- per month is not substantiated by cogent evidence. Therefore, I hold that he has failed to discharge on us lies on him. Hence, my opinion that he is getting Rs.5000/- per month is not believable and true. Therefore, I safely hold that the Respondent is getting income more than Rs.5000/- per month and he is having sufficient means.

18.

19. *An evidence of petitioner further shows that she is unemployed and totally dependent on the respondent. This fact is not challenged by the Respondent while taking cross examination. He has not adduced cogent evidence regarding source of income of Petitioner wife. Therefore, an evidence of Petitioner that she is unemployed and unable to maintain*

herself is appears trustworthy, believable and true. Therefore, my opinion is that the petitioner has proved that she is unable to maintain herself. Hence I, answer point No.2 in affirmative.”

4. It is not in dispute that the respondent-wife is unemployed and totally dependent on the applicant-husband which is not challenged in the cross-examination. There was no evidence adduced on behalf of the applicant in regard to any source of income of the respondent-wife. Thus, it was clear that the respondent-wife was unemployed and was unable to maintain herself. The reasons as recorded by the learned trial Judge and as noted above are appropriate and cannot be held to be perverse to award maintenance of Rs.2,500/- per month to the respondent. In any event, in my opinion, the amount of maintenance which has been granted by the learned trial Judge is not unreasonable and is bare minimum as it is definitely not over sufficient for the respondent-wife to sustain her livelihood, considering high costs of living.

5. In the aforesaid circumstances, I find no merit in the petition. It is accordingly dismissed. Needless to observe that it would be open for the respondent-wife to take appropriate steps to enforce and execute the order as passed by the learned trial Judge.

[G.S. KULKARNI, J.]