

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.311 OF 2015**

Arpit Kamal Chaurasia .. Applicant

Versus

The State of Maharashtra & Anr .. Respondents

WITH

CRIMINAL REVISION APPLICATION NO.339 OF 2015

Mrs.Barkha Arpit Chaurasia & Anr .. Applicants

Versus

Arpit Kamal Chaurasia & Anr .. Respondents

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Mr.Abad Ponda with Mr.Gautam Tiwari, Mr.Rajinder Singh, Mr.Lallid Chaudhary i/b Manish Pabale i/b Probus Legal for the applicant in Revision 311/15 and for respondent in Revision No.339/15.

Mr.Jaydev Trivedi and Bhupati Vaze i/b Mr.K.K.Tiwari for respondent nos.2 in Revision 311/15 and for the applicant in Revision 339/15.

Mr.Rajan Salvi, APP for respondent no.1 in both the Revisions.

CORAM: SMT.BHARATI H. DANGRE, J

RESERVED : 5th APRIL 2018

PRONOUNCED : 13th APRIL 2018

JUDGMENT:-

1 Both the Revision Applications are being heard together since they challenge the order below Exhibit-6 passed by the Judge, Family Court No.7 Mumbai in Petition No.E-161-13, and the said impugned order dated 30th March 2015 is passed on an application moved by the petitioner wife for grant of maintenance for herself and her minor child under Section 125 of the Code of Criminal Procedure. Revision Application No.311 of 2015 is filed by the husband assailing the said order whereas Revision Application No.339 of 2015 is filed by the wife, posing a challenge to the same order.

It would be necessary to refer to certain facts leading to the filing of the present revision applications. For the sake of convenience, parties are hereinafter referred to as 'husband' and 'wife'.

2 The marriage between husband Arpit Kumar and wife Barkha was solemnized in Mumbai on 15th July 2011, and on 20th October 2012, the couple was blessed with a female child. It is the case of the parties that the marriage between the parties was irretrievably broken down in September 2012 and since then the wife started residing separately. The cause of friction between the parties is not for this Court to ponder upon or adjudicate, but suffice it to say

that both the parties levelled serious allegation against one another, and started residing separately. The wife shared the custody of the daughter. The husband resorted to filing of certain criminal proceedings in Amboli Police Station against the wife and her brother alleging that they are running a sex racket. The wife instituted proceedings under the provisions of Domestic Violence Act at the Andheri Court, Mumbai on 12th March 2013. The wife also filed proceedings under Section 125 of the Code of Criminal Procedure in the Family Court at Bandra on 12th March 2013. On 8th October 2013, the wife filed a police complaint against the husband at Vasant Vihar Police Station at New Delhi.

3 It is pertinent to note that in the proceedings instituted by the wife under the provisions of Domestic Violence Act, the Family Court awarded the maintenance of Rs.15,000/- to the wife and Rs.5,000/- to the daughter. However, the said order passed by the Family Court is not a subject matter of dispute in the present revisions, but the said order is being only referred to and being taken note of by this Court.

An application was moved by the wife for grant of maintenance under Section 125 of the Code of Criminal Procedure and it was alleged in the application that she was residing in Oshiwara along with a small child and the husband has neglected to cater to their needs including food,

clothing, shelter, resulting into lot of physical and mental torture to the wife. In the said application, the applicant wife alleged that she is not working anywhere due to damage of her prestige whereas the respondent husband is a businessman and operating business in partnership. It is alleged in the application that he was the Director of Viraj Steel and Energy Ltd, K.P Group Company which was having its branches throughout the country. An allegation was made that the husband is earning approximately an amount of Rs.50,000/- per month and, therefore, an amount of Rs.6,00,000/- per month was claimed by the wife for her maintenance and an amount of Rs.4,00,000/- was claimed for the maintenance of daughter Gauri.

The said application came to be opposed by the respondent husband by filing the reply and according to the husband, the wife is financially well off, and the husband has made allegations about certain ill-habits of the wife and also made certain serious allegations about the profession in which she was involved into. According to the husband, the wife is a leading actress in South Indian industry from where she is earning high and handsome amount and it is also stated that she is running a production house which produces films, videos, music etc. It is alleged that she has an earnings of Rs.15 lakhs per month and she is the owner of two apartments at Andheri, out of which one of the Apartment has been rented out. The husband denied the allegation

about his earning capacity as alleged in the application filed by the wife and on the other hand, he admitted that he is getting an amount of Rs.30,000/- per month from Viraj Steel and Energy Ltd and that he has no connection with the other companies as alleged.

4 The Family Court proceeded to hear the application and considered the arguments advanced on behalf of both the parties, the wife in support of her claim for maintenance and the husband opposing this claim.

The Family Court observe that the daughter is aged about 2 years and some months, and at the time of presentation of the application, she was 4 months old. The Court noted that the debate between the parties is about their income, and the Court then proceeds on the basis of the allegations made in the application, as appearing on the record that the respondent is a Director of various companies and the documents in relation to the said companies were placed on record in form of the documents from the Registrar of Companies. However, the Court observed that nothing has been placed on record to evaluate the income accruing to the husband out of those companies and he has not explained as to how he has calculated the figure of Rs.30,000/- being the amount received by him. As far as the wife is concerned, the Court has taken into consideration the allegations made by the husband and *prima facie* accepted the evidence tendered

to demonstrate that the wife was working in film industry and she has done lot of assignments of modelling and entered into South Indian film industry. The Judge, Family Court however, observed that she possesses source of income, but she is denying the said income. The Court very helplessly observed that the petitioner and respondent has not approached the Court, *bonafide*, but by referring to the position of law, as regards the amount of maintenance to be awarded to a wife with no earning capacity, the Court arrived at a conclusion that the wife is not entitled to claim maintenance. As far as the daughter is concerned, the Judge, Family Court has arrived at a conclusion that the daughter is two years and some months old, and though the wife has claimed an exorbitant amount of Rupees Four lakh per month, the needs of the child would be required to be taken into consideration before awarding the said amount. The Family Court by taking into consideration the age of the child and the requirements peculiar to the said age, concluded that an amount of Rs.30,000/- per month is sufficient for the child. In the circumstances, by the interim order passed on 30th March 2015, the Judge, Family Court directed the husband to pay an amount of Rs.30,000/- per month for the maintenance of the daughter from the date of the application i.e. 12th March 2013.

I have heard Advocate Abaad Ponda appearing for the applicant in Revision Application No.311 of 2015. The respondent wife is represented by Advocate Jai Trivedi.

5 The learned counsel Mr.Ponda would submit that the impugned order passed by the Family Court is erroneous. He would submit that under the provisions of Domestic Violence Act, the Family Court has awarded maintenance of Rs.15,000/- to the wife and Rs.5,000/- to the child, by taking into consideration the earning capacity of the husband and the need of the wife and the daughter. He would submit that in the present proceedings instituted under Section 125 of the Code of Criminal Procedure, though the amount of maintenance has been denied to the wife, the daughter is awarded maintenance of Rs.30,000/- from the date of the application. Mr.Ponda would question the impugned order of the Family Court on the ground that when an order of maintenance have already been passed under the proceedings instituted under the Domestic Violence Act, whether such maintenance could be again awarded under Section 125 of the Code of Criminal Procedure. He would invite attention of this Court to the provisions of the Domestic Violence Act and specifically under Section 24 of the said Act and also to the judgment of this Court delivered in the case of Prakash Dangi V/s. Rekha Dangi (Coram: Hon'ble Smt.Justice Shalini Phansalkar Joshi in Cr.Writ Petition No.3791 of 2016) which has been stayed by the Hon'ble Apex Court.

Mr.Ponda would also submit that the impugned order suffers from arbitrariness since the learned Judge has made observations, which are self contradictory and though

the learned Judge had made a specific observation that the parties were not able to lead appropriate material before it, so as to arrive at a figure as to what would be the right amount of maintenance to be awarded to the daughter, the order cannot be sustained. He would submit that submission was advanced before the Family Court that the husband is earning an amount of Rs.30,000/- and the wife has not brought any material on record to dispel the said statement by demonstrating to the contrary. In such circumstances, he would submit that cumulative, the husband is made to pay Rs.50,000/- per month in both the proceedings towards maintenance of the wife and daughter, which leaves him with no amount in his hands to maintain himself though surely it is the responsibility which the law expects a husband to discharge.

6 Per contra, learned counsel Mr.Trivedi arguing on behalf of the respondent wife in Revision Application No.311 of 2015 and applicant in Revision Application No. 339/15 would submit that the impugned order is erroneous on the ground that it has failed to take into consideration the statement made by the wife that she was once upon a time working in film industry, but now in the peculiar facts which she had narrated in her application, she was not into the business of film industry and has stopped getting any assignments. He would submit that the Court has not taken into consideration the earning capacity of the husband and

has erroneously rejected the claim of the wife for maintenance of an amount of Rs.6,00,000/- which is claimed by her in her application, taking into consideration the earning capacity of the husband and status of the parties. He would also submit that there is no embargo in the wife claiming maintenance under the two different statutes i.e. under the provisions of Domestic Violence Act as well as the provisions of Code of Criminal Procedure by invoking Section 125.

7 I have carefully considered the submissions faced by both the parties. It is no doubt true that while awarding maintenance under Section 125 of the Code of Criminal Procedure, the Court would be required to take into consideration the failure or neglect on the part of the husband to maintain his wife or daughter and the inability on the part of the wife to maintain herself. These two factors have to be taken into consideration before award of maintenance. The wife will be required to discharge the burden that the husband has neglected or refused to maintain the wife and the daughter. It is the case of the wife that her social image was damaged by the husband by filing police complaints which had resulted into she not in a position to explore her talent in the film industry and gain any returns from the same. It is the case of the wife that she is not presently working. In contrast, the husband has tendered on record certain material, on the basis of which the Family Court has

arrived at a conclusion that it is unbelievable that the wife who was once upon a time working in a film industry as an model and had several assignments in her hand would not fetch any work and not able to earn any amount for herself and towards her daughter. Though the court was convinced that the wife is having an earning capacity, the Court did not arrive at a figure as to what is the said capacity, qua the husband as well as the wife. The duty of the Court is to strike a balance between two factors that is the neglect or refusal on the part of the husband to maintain his wife and daughter and the inability of the wife to earn her livelihood for herself. It is no doubt true that on some occasions, work is required to be done. However, in the impugned order, the Court has observed that both the parties have not approached the court with clean hands and have failed to decide their burden.

8 As far as the maintenance of the daughter is concerned, the impugned order has rightly granted the amount of Rs.30,000/- towards the daughter who, on date of decision of the application was approximately 3 years. However, the court did not justify as to why the amount of maintenance of Rs.30,000/- came to be granted from the date of application when the Court itself has observed that at the time when the application was made, the daughter was approximately two months.

9 In the aforesaid circumstances, it can be seen that the impugned order is passed by the Family Court without taking into consideration any factual data and without the parties being permitted to deal with the rival claims of each other by adducing appropriate evidence, including the amount of their earnings and their respective requirements to be satisfied from these earnings. Though the Court has observed that the wife is earning, the Court did not delve upon the issue as to what are her earnings and it has refused to believe that the husband is earning an amount of Rs.30,000/- as claimed by him, but failed to consider as to what are the actual earnings. In such circumstances, it is apparent that the Family Court has not applied the legal parameters as regards the grant of maintenance and has also not taken into consideration the impact of the order of maintenance passed under the provisions of Domestic Violence Act though the attention of the Court was invited to the said fact.

10 In such circumstances, the application of the wife claiming maintenance for herself needs to be remanded back to the Family Court, and the Family Court is directed to deal with the said application afresh by affording necessary opportunities to both the parties to tender the material in their possession so as to discharge the burden under Section 125 of the Code of Criminal Procedure. However, no illegality can be found in the order passed by the Family Court

as regards the award of maintenance of Rs.30,000/- towards the daughter on the date of the order being passed. However, the Family Court is directed to consider whether the amount of maintenance granted to the daughter needs to be awarded from the date of the application, and specifically whether daughter about two months needed the amount of Rs.30,000/-, and to that limited effect, the Family Court would reconsider the said issue of maintenance of the daughter.

11 As far as the maintenance of the daughter is concerned, the said order is upheld to the extent of awarding maintenance of Rs.30,000/- from the date of the order i.e. 30th March 2015. However, as regards the said amount being awarded to the daughter from 12th March 2013, the Family Court would give an opportunity to the parties to advance their submission as to what should be the quantum of maintenance to be awarded from 12th March 2013 to 30th March 2015.

12 In the aforesaid facts and circumstances, Revision Applications Nos.311/15 and 339/15 are disposed of with a direction to the Family Court to reconsider the issue about the maintenance of the wife, which the Family Court has rejected by the impugned order, and the Family Court is directed to reconsider the issue expeditiously.

Both the Revision Applications are disposed of in the light of the aforesaid directions.

(SMT.BHARATI H. DANGRE,J)