

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Cr. Revision Application NO. 483 OF 2017

Khan Saheb Mulla

...Applicant

Versus

Kulsum Khan Saheb Mulla And Ors

...Respondents

Ms.Megha S.Bajoria, for the Applicant.

Mr.PH.Gaikwad, APP for the State.

CORAM : G.S.KULKARNI, J.***DATE : 18th JANUARY, 2018***

P.C. :

1. Heard the learned Counsel for the applicant. Challenge in this application is to the order dated 8 June 2017 passed by the learned Judge, Family Court Mumbai at Bandra whereby the application of the respondent no.1-wife and the minor son under Section 125 of Code of Criminal Procedure, has been allowed in the following terms:-

“1. Petition No.E-169/2013 is allowed with cost of Rs.5000/-.

2. The respondent shall pay maintenance @ Rs.2500/- p.m. to the Petr.No.1 and Rs.1500/- p.m. for the minor son, in all Rs.4000/- p.mj. From the date of petition i.e. 14/02/2013.

3. The copy of this order be given to the Petr.No.1 free of costs.”

2. The only contention as urged on behalf of the applicant in challenging the order is that the applicant is a retired senior citizen and drawing meager pension of Rs.1700/-. It is contended that it is not possible for the applicant in such meager pension to make payment of the said amount of maintenance. It is thus contended that the respondent-wife is also working as a 'Alima' from which she is receiving some income. However, there is no material placed on record before the trial Court to substantiate this contention. Learned Judge even taking into consideration the said contention and the evidence which had come on record, in paragraph 20 of the judgment has made the following observations:-

“20. Considering the available evidence on record, it can be safely stated that the Petr.No.1 is working as a 'Alima' and she has some source of income but if the Petr.No.1 and her son are left unattended by the respondent she is bound to do something for their survival. She is not expected to remain idle and starve. She is a destitute lady. She has to look after her expenses and the expenses of the minor son. She is bound to do something. This meager income cannot be said to be sufficient for survival of both the petitioners and this will not absolve the respondent from the liability of maintaining the petitioners. If this income of the Petr.No.1 is compared to the property owned and the expenses incurred by the respondent, then it will be seen that her income is very negligible. The respondent owns a house, his parents have another house at the native place. The respondent has provided education to son upto B.Sc. And to the daughter upto B.A.M.S. And now he says that the Petr.No.1 is able to maintain herself and her son, which is not justifiable. If the income of the Petr.No.1 is very meager, it cannot be said to be the income, so as to refuse maintenance to the petitioners.”

3. Having considered the submissions as made on behalf of the applicant and having perused the impugned order and the documents as placed on record, in my opinion, no fault can be found in the amount of maintenance of Rs.2,500/- granted to the respondent-wife and Rs.1,500/- to the minor son. It cannot be disputed that in any case the applicant is required to bear the entire expenses qua the livelihood and education of minor son as also he would be required to bear some expenses for the livelihood of the respondent no.1-wife. The amount of Rs.2,500/- and Rs.1,500/- as directed by the learned Judge, Family Court to be paid to the respondent-wife and minor son respectively, in my opinion, are not excessive and unreasonable considering the material on record and the observations more particularly in paragraph 20 of the impugned order passed by the family Court. The revision application is devoid of merit and it is accordingly rejected. No costs.

4. The applicant is directed to deposit with the trial Court the entire amount of arrears of maintenance within a period of one month from today, if already not deposited, with a liberty to the respondents to withdraw the said amount.

(G.S.KULKARNI, J.)