

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Criminal Application (APPR) No.189 of 2018
in
Criminal Revision Application No. 149 of 2012
(Deepak Vasantrao Kumbhre .vs. Smt. Jaya Deepak Kumbhare)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. P.K. Mishra, Advocate Applicant.
None present for Non-applicant/Respondent.

CORAM : NITIN W. SAMBRE, J.
RESERVED ON : AUGUST 23, 2018.
PRONOUNCED ON : SEPTEMBER 14, 2018.

For the reasons stated in the application,
same is allowed. Criminal Revision No.149 of 2012 is
restored to file.

Criminal Revision No. 149 of 2012

The parties to the application, whose marriage was solemnized on 25.05.1995, appears to have differences, prompting the respondent herein to file the proceedings for grant of maintenance, being Petition No. E-202 of 2008. The learned Family Court while dismissing the proceedings for divorce preferred by the present applicant, directed the applicant to pay maintenance of Rs.1000/- to each of the sons, for two sons from 11.07.2008 till 17.03.2012 and thereafter @ Rs.2500/- per month to each of the sons. It is also directed that the respondent-wife be paid maintenance of Rs.2500/-

per month during the pendency of the said application and Rs.5000/- thereafter.

2. It appears that the order granting maintenance to the sons is not questioned. Only such order of granting maintenance of Rs.5000/- per month to the wife in Petition No.E-202 of 2008 is questioned.

3. According to Mr. Mishra, after the marriage, first son was born on 09.08.1996 and second on 10.12.1999 and the parties resided together upto 06.05.2016. He would claim that even though the custody of the sons is with the respondent-wife, still fact remains that the issue as regards payment of maintenance to the sons is not agitated. He would then invite attention of this Court to the provisions of Section 125 of the Cr.P.C. so as to submit that the issues framed and answered against the applicant are not in tune with the ingredients of said Section. Mr. Mishra would then invite attention of this Court to the issues:-

“(i) Does the petitioner prove that respondent having sufficient means, he neglected or refused to maintain her?

(ii) Whether petitioner proves that she is unable to maintain herself?

(iii) Whether petitioner proves that she is entitled to claim maintenance? If yes, what should be the quantum of maintenance?

(iv) What order?”

4. According to him, the Court below has failed to appreciate that the respondent wife has voluntarily left the company of the applicant and no evidence whatsoever is considered for award of maintenance particularly in regard to negligence on the part of the applicant to maintain her. Mr. Mishra would also rely upon the judgment of the Apex Court in the matter of **Deb Narayan Halder .vs. Anushree Halder** reported in **(2003) 11 S.C.C. 303**, to substantiate his contention. According to him, if the respondent-wife has left her matrimonial home without any justifiable ground, in such an eventuality, the wife is not entitled to claim maintenance.

5. None appeared for the non-applicant.

6. Upon perusal of the examination-in-chief of the respondent-wife, she has brought on record that at times the applicant used to beat her and also she was required to vacate the house. According to her, the applicant used to act in above manner under the influence of his mother and brother. She claimed that she was left with no other option but to leave the company of the applicant and started residing with her father. She has stated that there was a false complaint lodged against her in the Police Station at Pavai. Both the sons were residing with her and taking education in Nagpur. In her cross-examination, it is brought on record that her father was serving with the Agricultural Department and

none of the members apart from her father, are in Government job. It is brought on record that the mother of the respondent was running a small grocery shop at house. It is also brought on record that the brother of the applicant namely Ramesh was residing with him at Mumbai. She has denied suggestion that financial condition of the applicant and his father was weak. It is also an admitted fact that the applicant is serving with the Custom Department. It is brought on record that the report was lodged against the applicant by the father of the respondent. It is also brought on record that she tried to convince the applicant to stay together. Exh.41 is the salary certificate of the applicant and based on that , the Family Court awarded maintenance by impugned order. The award of maintenance in favour of the respondent is based on the conduct of the applicant in neglecting and refusing to maintain her in absence of any independent source of income to the respondent.

7. Though Mr. Mishra to certain extent is right in pointing out that the evidence about the income and entitlement of the non-applicant for allowance of maintenance is not discussed in detail, however, the fact remains that the proceedings for divorce and grant of maintenance are decided by a common judgment. Though the issues were framed independently, there is also detail appreciation of the evidence in the proceedings for divorce.

8. Apart from above, the appreciation of the evidence referred supra of the respondent in categorical terms speaks of the entitlement of the respondent for maintenance. In the wake of above, in my opinion, no case for interference in the revisional jurisdiction, is made out. Revision accordingly fails and is dismissed.

JUDGE

Rajendra
Gajananrao
Halwai

Digitally signed
by Rajendra
Gajananrao
Halwai
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