

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Revision No. 104 of 2017
[Hrishikesh Shamraoji Shende Vs. Darshana Hrishikesh Shende]

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

Court's or Judge's orders

Ms. Ratna Singh, Adv., for the applicant.
Mr. C. G. Barapatre, Adv., for the respondent.

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CORAM : NITIN W. SAMBRE, J.

DATE : 10th September, 2018

01. The marriage between the parties to the application was solemnized on 6th July, 2014.

02. It is claimed that the parties after their marriage stayed at Pune from 11th September, 2014 to 12th December, 2014. The applicant-husband claims that on 19th November, 2015, the non-applicant-wife on her own left his house and 16th June, 2016 applied for maintenance under Section 125, Criminal Procedure Code. The learned Family Court against the claim of Rs.10,000/- per month for interim maintenance, awarded Rs.2500/- vide the impugned order dated 27th April, 2017. Hence this Revision.

03. The learned counsel for the applicant would invite attention of this Court to the provisions of Sub-sections 4 and 5 of Section 125 of Criminal Procedure Code and also Sub-clause (3) of section 25 of the Hindu Marriage Act so as to claim that the wife in given situation is not entitled for maintenance when the husband is able to establish that she is leading an adulterous life. According to the applicant, the maintenance as referred to in Sub-section (4) of Section 125 of Criminal Procedure Code includes an interim maintenance as there is an express mention about the same. The learned counsel would draw support from the judgment of this Court in the matter of **Dattatray Ekanath Salunke Vs. Manisha Dattatray Ssaluke & others** [2015 ALL MR (Cri) 1690] and the order of Division Bench of this Court dated 10th September, 2015 passed in Family Court Appeal No. 68 of 2014 [**Sukhdeo R. Tumane Vs. Jyoti Sukhdeo Tumane**] so as to substantiate the aforesaid contentions. It is also claimed that the proceedings for divorce pursuant to the provisions of Sub-section (1) of Section 13 of the Hindu Marriage Act are pending since March, 2018, in which the respondent is avoiding the service of notice. What is claimed by the applicant is based on the pleadings of the parties, particularly in paragraphs 5,6 and 7 of the application for maintenance, which is a bundle of lies as could be inferred from the documents which are placed before the Court below. The learned counsel for the applicant would also invite attention of this Court to the

screen shots of the SMSes sent by her paramour to the respondent so as to claim that the respondent is leading an adulterous life. Accordingly, it is claimed that the order for payment of maintenance is liable to be set aside.

04. Per contra, Shri Barapatre, learned counsel for the respondent, supports the order. According to him, the present non-applicant never avoided the service of notice in Hindu Marriage petition No. 99 of 2018 pending on the file of Fourth Joint Civil Judge [Senior Division], as at no point of time, the said notice was offered for service on the non-applicant. He would submit that the order impugned is just and proper in the facts and circumstances of the case and sought rejection.

05. Considered rival submissions.

06. The marriage between the parties took place on 6th July, 2014 is not a disputed question of fact. As such, the only issue which needs to be considered at this stage of the proceedings is whether there is neglect on the part of the applicant in maintaining the respondent-wife. The proceedings for maintenance were initiated way back in 2016, whereas the applicant has initiated proceedings for divorce in March, 2018. The basic pleadings in the application for maintenance moved by the respondent are with regard to income of the applicant and neglect on the part of the applicant to

maintain her. In reply, the present applicant has raised plea of leading adulterous life by the respondent and in support of such contentions, apart from pleadings of the parties, photo copies of the screen shots of SMSes sent to the respondent by her paramour are placed on record. In revisional jurisdiction this Court is not supposed to appreciate the evidence that too at interlocutory stage, an application for grant of maintenance under Section 125 of Criminal Procedure Code is decided. However, considering the said evidence before this Court, it is seen that the said screen shots do not indicate the dates when the same are taken. Apart from above, the said material can be looked into by the Court below at an appropriate stage of the proceedings.

07. But for pleadings of the present applicant that the respondent is leading an adulterous life and the above referred screen shots, I hardly notice any material on record to reach to a conclusion so as to grant benefit to the applicant pursuant to the provisions of Sub-sections (4) and (5) of Section 125 of Criminal Procedure Code.

08. The contention of the applicant that provisions of Sub-Section (3) of Section 25 of the Hindu Marriage Act are attracted is also liable to be rejected for the reason that the present proceedings are pending out of the order passed under the provisions of Section 125, Criminal Proceedings and not Hindu Marriage Act which

an independent remedy available to the applicant-husband.

09. The support drawn by the applicant in the matter of *Dattatray Salunke Vs. Manisha Salulke* [supra] and *Sukhdeo Tumane Vs. Jyoti Tumane* [supra] will be of no assistance, particularly when in the matter of Dattatray there was already a decree for divorce which is not the fact in the case in hand. In so far as the case of Sukhdeo is concerned, in the said matter, the observations of the Division Bench are that the appellant-husband therein was in a position to successfully prove the adulterous life being spent by the respondent-wife therein, which is not a fact in the case in hand.

10. In the aforesaid background, in my opinion, no case for interference is made out. Revision is devoid of any merit. Same is dismissed.

11. So far as the proceedings of Hindu Marriage Petition No. 99 of 2018 are concerned which are initiated by the present applicant against the non-applicant, the learned counsel Shri Barapatre submits that the non-applicant-wife shall file her appearance on the next date of hearing in the said matter as he waives service of notice in the said matter.

12. Let the proceedings of Hindu Marriage Petition

No. 99 of 2018 be decided expeditiously as the parties assure this Court that they shall co-operate in the expeditious disposal.

Judge

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