

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Application [APL] No.745 of 2018
[Uday Singh Babbi son of Harbhajan Singh Gabbi Vs. Satwant Kaur
Trilok Singh Sandhu]

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

Court's or Judge's orders

Mr. G. L. Bajaj, Adv., for the applicant.

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CORAM : NITIN W. SAMBRE, J.
DATE : 14th August, 2018

01. Heard Shri G. L. Bajaj, learned counsel for the applicant, who is non-applicant before the Family Court, Nagpur, wherein the present respondent has initiated proceedings for grant of maintenance.

02. The daughter of the present applicant is not added as a party-respondent to the present application, for the reason that the applicant-father is ready and willing to pay maintenance as ordered by the Family Court.

03. While questioning the order impugned whereby maintenance of Rs. 4,000/- is awarded in favour of respondent, the learned counsel would urge that the respondent so also the present applicant were already married. After having parted company of their respective spouses, they were in live-in relationship. According to

him, if the parties are in live-in relationship, the provisions of Section 125 of Criminal Procedure Code are not available for claiming maintenance. It was then urged that a preliminary objection to that effect is still not dealt with and that the amount of maintenance is disproportionate to the known source of income.

04. Considered the contentions raised by Shri Bajaj, learned counsel for the applicant.

05. The learned Family Court has observed that so as to establish claim that the respondent was already married, the applicant has not produced any document on record. Though Mr. Bajaj has tried to rely upon a copy of First Information Report which was produced by the respondent, at interlocutory stage, appreciation of the same, in my opinion, does not need to be gone into, particularly when it is an admitted position at the behest of present applicant that he is ready and willing to pay maintenance to the daughter born out of the alleged live-in relationship.

06. Apart from above, Shri Bajaj, learned counsel for the applicant, invited my attention to the subsequent development, namely the application for divorce filed against the first wife was allowed.

07. Learned counsel Shri Bajaj invited my attention to the judgment delivered by this Court at Aurangabad

Bench in the matter of **Reshma Begum Gajanfar Kazi Vs. State of Mah. & another** [2018 SCC OnLine Bom 1827] to claim that the if the party is in live-in relationship, she is not entitled for the maintenance.

08. In the aforesaid judgment, the Court was considering the provisions of Section 2 [f] of the Protection of Women from Domestic Violence Act, 2005, whereas in the present case, we are concerned with the grant of interim maintenance under Section 125, Criminal Procedure Code. For the reasons recorded hereinafter as to why the order of grant of maintenance in favour of respondent can be justified at interim stage, the application deserves dismissal. The relationship between the applicant and Non-applicant is not disputed. As the applicant has already accepted paternity of the child as the order to that extent of award of maintenance is not questioned. As such, the judgment in the matter of *Reshma Begum* [cited supra] will be of hardly any assistance.

09. While awarding interim maintenance, the Family Court has considered the aforesaid relationship between the parties and the applicant's income from the business he is carrying on. Considering the nature of business and and income therefrom and the admitted relationship, the interim maintenance awarded, in my opinion, does not warrant any interference. No case is made out for causing interference.

10. In so far as claim of the applicant - qua - pendency of a preliminary objection is concerned, it shall be open for the Family Court to deal with the issue raised therein at the final stage of the proceedings. The applicant is at liberty to place on record such documents as are necessary for adjudication of the claim before the Family Court.

11. With the above observations, the present Revision Application is dismissed.

Judge

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