

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 271 OF 2017

Hiralal S/o Baburao Tribhuvan,
Age 56 years, Occ : service,
R/o S.T.Colony, Aurangabad.

.. APPLICANT

VERSUS

Sau.Mangalabai Heeralal Tribhuvan,
Age 49 years, Occ. Household,
R/o Govindchi Girni,Mondha Naka
Ashish Chavdi, Aurangabad.

.. RESPONDENT

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Mr. R.V.Gore, Advocate for the Applicant
Adv.Manjusha Sevekar h/f R.G.Shirsat for respondent.

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CORAM : MANGESH S. PATIL, J.
DATE : 03.10.2019

ORAL JUDGMENT :-

Heard both sides. Rule. Rule is made returnable forthwith. With the consent of both sides, the matter is heard finally at the stage of admission.

2] The respondent claiming to be the wife of the applicant filed a proceeding under Section 125 of the Code of Criminal Procedure in the Family Court. By the impugned judgment and order the Family Court allowed her application and awarded her maintenance at the rate of Rs.3000/- per month from the date of the application. Being aggrieved and dissatisfied, the applicant has preferred this Revision under Section 397 read with Section 401 of the Cr.P.C.

3] The learned advocate for the applicant submits that the applicant specifically denied matrimonial relation. In spite of that no specific issue was framed by the Family Court. Lack of evidence to establish such marital relation has also been ignored and finding has been recorded about there being such marital relation without there being sufficient and cogent evidence. The observation and conclusion in that regard is quite perverse and arbitrary. The learned advocate therefore, prays that the matter may be remanded for decision afresh by directing the Family Court to frame specific issue and to decide it afresh by extending opportunity to both sides to lead evidence.

4] The learned advocate for the respondent submits that though no specific issue was framed by the Family Court regarding existence of matrimonial relation, the parties were alive to the dispute and led evidence to substantiate their rival contentions. Even the learned Judge by meticulous scanning of the evidence has recorded a finding about existence of such matrimonial relation and has accordingly awarded the maintenance which may not be interfered with.

5] I have carefully gone through the record and the proceedings and the impugned judgment. True it is that the learned Family Court Judge has not framed any specific issue regarding existence of the matrimonial relation. However, as can be seen, since inception the applicant is aware that the respondent is claiming to be his wife. Not only this even during the course of recording of evidence he was aware of the dispute and had not only cross examined her touching this aspect but has in his testimony disputed this fact and was cross examined on that point. Further, as can be noticed from the impugned judgment, the learned Judge has also considered the entire

evidence touching this aspect and has not only scanned the oral and documentary evidence but has also observed as to how the documents collectively demonstrate existence of a matrimonial relation between the two.

6] It is to be remembered that the proceeding before the Family Court was summary proceeding and it was not expected that the learned Judge ought to have insisted for a concrete proof regarding marriage between the applicant and the respondent. She has specifically observed that being a proceeding of criminal nature and when according to the provisions of Section 14 of the Family Courts Act, she was entitled to consider the documents even in the absence of proof as contemplated under the Indian Evidence Act, has scanned oral as well as documentary evidence. I find no sufficient and cogent reason to take any other view when the learned Judge has reached a plausible conclusion. In order to invoke power of revision under Section 397 of Cr.P.C., it has to be demonstrated that the decision of the lower Court is perverse, arbitrary and capricious, without which this power cannot be invoked. Therefore, when the decision of the learned Judge is based apparently on correct appreciation of the material on the record and the finding is duly substantiated with plausible reasons, this Court need not intervene.

7] Apart from the above state of affairs even if one needs to scan the evidence, it is apparent that the Election Card of the respondent reads the name as Mangalabai Tribhuvan Wife of Hiralal. This Election Card was issued on 30/11/1994. It is also apparent that she had filed copies of various letters purportedly sent by her father and also a Deed of Family Arrangement purportedly executed by his father. As is noticed by the learned Judge, it is after production of these documents that he filed his affidavit in lieu of examination in chief. In that affidavit he disputed the Deed of Family

Arrangement but did not deny/dispute the letters. These letters were of the years 1988 to 1996. These letters *prima facie* show that her father was making grievance with the Supervisor of the applicant about his conduct towards the respondent as a wife. Besides, though the applicant filed affidavit of his brother in lieu of his examination in chief, he did not keep his brother present for facing the cross examination and this was indeed a material circumstance to draw an adverse inference against him. It is in view of such evidence, one can easily draw an inference that she is his legally wedded wife. The conclusion drawn by the learned Judge of the Family Court therefore is clearly borne out from the evidence.

8] As far as quantum is concerned, during the course of examination, the applicant admitted that he was earning Rs.25,000/- per month and therefore, the quantum of maintenance fixed by the learned Judge at Rs.3000/- per month by no stretch of imagination can be said to be disproportionate to his income or unconscionable so as to arrive at some different figure.

9] Considering the aforementioned facts and circumstances, I find no sufficient and cogent reason to invoke the powers of Revision.

10] The Revision is dismissed. The Rule is discharged.

11] The learned advocate for the respondent has prayed for withdrawal of the amount deposited in this Court. The amount deposited in this Court be paid to the respondent.

[MANGESH S. PATIL, J.]