

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.153 OF 2018

Siddheshwar S/o Suryakant Baikre,
 Age: 32 years, Occ.: Service,
 R/o. Her, Taluka-Udgir,
 District Latur.

...Applicant

Versus

1. Pradnya d/o Narsing Bawache @
 Pradnya w/o Siddheshwar Baikre,
 Age: 29 years, Occ.: Service at
 Dnyaneshwar Mauli Prathamik Vidhya Mandir,
 Tirupati Society, Udgir,
 Taluka-Udgir, District Latur.
2. Aryan S/o Siddheshwar Baikre,
 Age: 02 years, Occ.: Nil,
 Both R/o.Basveshwar Cauk, Katpur Road,
 Latur, Taluka and District Latur.
 (Under Guardian of Respondent no.1)
 Pradnya d/o Narsing Bawache,
 Age: 29 years, Occ.: Service,
 R/o. As above.

...Respondents

 Mr. Vaibhav B. Dhage, Advocate for the Applicant
 Mr. R.K. Ashtekar, Advocate for Respondent no.1.

CORAM : MANGESH S. PATIL, J.
DATE : 04.01.2019

JUDGMENT :

Heard. Rule. Rule is made returnable forthwith. The learned advocate for the respondents waives service. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioner who is husband of the respondent no.1 and

father of the respondent no.2 is impugning the order passed by the learned Judge of the Family Court, Latur in Petition No.E 101 of 2017 on 28.03.2018 thereby granting maintenance to the respondent no.1 @ Rs.10,000/- per month and to the respondent no.2 @ Rs.5,000/- per month from the date of the application under the provisions of Section 125 of the Code of Criminal Procedure.

3. The learned advocate for the applicant submits that the learned Judge of the Family Court has not afforded adequate opportunity to the applicant to contest the proceeding. The respondent had filed several proceedings in different courts and it was difficult for him to attend all these proceedings by availing leave from his work place. The matter was conducted by the learned Judge in a hasty manner. He had already filed an application for transferring the proceeding which was pending in this Court and still the learned Judge was audacious enough to conclude the proceeding. The impugned order is perverse and arbitrary and may be quashed and set aside.

4. The learned advocate for the respondents strongly opposes the revision. He submits that every opportunity was extended to the applicant to file his say even he had availed the opportunity of cross examining the respondent no.1 and her witnesses. Though he had filed an application for transfer of the proceeding, this Court had not stayed the proceeding before the Family Court therefore no fault can be found

with the learned Judge in going ahead with the hearing and concluding it. The learned advocate for the respondents would further point out that even otherwise, the learned Judge has decided the proceeding after extending sufficient opportunity to the applicant. He has assigned plausible reasons as far as his income is concerned and has fixed the quantum of maintenance which is proportionately reasonable. There is no perversity or arbitrariness in the impugned order and this Court should not intervene under the revisional powers.

5. I have carefully gone through the papers. Before advertng to the facts and the merits it is necessary to reiterate that the powers of the revisionary Court under Section 397 are circumscribed by settled principles. A revisionary Court is not empowered to substitute its own conclusions in place of the ones drawn by the lower Court unless the order impugned suffers from the vice of perversity, arbitrariness or capriciousness. Thus bearing in mind these inherent limitations on the powers of this Court in this Revision let us examine the impugned order objectively.

6. The applicant had not disputed the fact that the respondent no.1 was his wife albeit he disputed paternity of the respondent no.2. He had alleged that the respondent no.1 was already pregnant on the date of marriage. It is due to intervention of some mediators that he had allowed himself to be shown as the father of the respondent no.2.

Admittedly, she had filed a proceeding against him under Section 498-A of the Code of Criminal Procedure and had also alleged about he having solemnized a second marriage and had filed a complaint of bigamy for the offence punishable under Section 494 of the Indian Penal Code. The respondent no.1 had corroborated her allegations by stepping into the witness box and even the applicant had availed of an opportunity to cross-examine her. Further she also examined her father as a witness and even he was cross examined on behalf of the applicant. Pertinently the applicant himself did not step into the witness box and in the circumstances the learned Judge has concluded that there was reasonable cause for the respondents to stay separately and to claim maintenance.

7. As regards the capacity of the applicant to maintain the respondents, for want of evidence from his side and by taking note of the fact that he had admitted that he was serving as a Primary Teacher and by drawing adverse inference the learned Judge concluded that he must have been drawing a salary of around Rs.30,000/- to 35,000/-. He also took note of the fact that he had admitted that he was having agricultural land and by drawing a reasonable conclusion in respect of the income from agriculture, the learned Judge fairly concluded that his monthly income from all these sources must have been Rs. 40,000/-.

8. As regards the source of income for the respondent no.1 she

clearly conceded that she was working as a Teacher in a school which does not receive any grant. No contrary evidence was led by the applicant. Besides assuming that she has been earning something, it is not expected of the wife to starve and wait for the husband to have mercy upon her and grant her maintenance. Merely because a wife somehow earns her livelihood, it cannot be said that she is capable of maintaining herself. Therefore considering all these aspects and the evidence the learned Judge has fairly concluded that all the necessary ingredients for making the respondents entitle to claim maintenance were made out and has fixed the quantum of maintenance as mentioned herein-above. By no stretch of imagination can it be said that the order is either perverse, arbitrary or capricious so as to enable this Court to exercise the revisional powers.

9. So far as the alleged bias on the part of the learned Judge is concerned, admittedly, the applicant had availed of fair opportunity to contest the proceeding. He had filed say, had cross examined the respondent no.1 and her witness and it is thereafter that he seems to have filed an application for transfer of the proceeding. However there is no record to show that the proceeding before the Family Court was stayed by this Court and therefore it was not expected of the learned Judge to have stayed the proceeding merely because a transfer petition was filed in this Court by the applicant.

10. All in all, the impugned order does not suffer from any illegality much less suffers from any vice of being either perverse, arbitrary or capricious.

11. The Criminal Revision Application is dismissed.

12. The Rule is discharged.

13. In view of disposal of the Criminal Revision Application No.153 of 2018, Criminal Application No.2104 of 2018 is also disposed of.

(MANGESH S. PATIL, J.)