

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

938 CRIMINAL WRIT PETITION NO.1387 OF 2018

Shri Deepak S/o Tanaji Pawar,
age: 31 years, occu: agriculture,
R/o Flat No.304, Building No.05
Amrut Sidhi Apartment,
Near Samukhsha & Ksushna Bhagwan Society,
Railway Station, Titwala East
Mumbai, Maharashtra

Petitioner

Versus

1. Sau. Rohini W/o Deepak Pawar
Age: 27 years, Occu.: Service
2. Divyashree D/o. Deepak Pawar
Age: 05 years, Occu.: Nil
under the guardian of Respondent No.1,
R/o. Both, Babasaheb Shankar Lokhare,
Railway Station Road, Sambhaji Colony,
Ambika Nivas (Gawliwada Road).
Ahamadnagar.

Respondents

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Advocate for Petitioner : Mr. Shinde Ganesh P.
Advocate for Respondents No.1 & 2 :Mr. Narwade Narayan B.

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CORAM : **V.L. ACHLIYA, J.**

Date: June 14, 2019

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ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. By consent the petition is heard finally at the stage of admission.
2. The petitioner - original non-applicant has challenged the order dated 7.9.2018 passed in Criminal Revision Application No.72/18 by learned Additional Sessions Judge, Ahmednagar. By

the impugned order, the Revisional Court has partly allowed the revision petition filed by the petitioner and remanded the matter for deciding the Criminal Miscellaneous Application No.719/2016 after extending opportunity of hearing to the petitioner. While passing the order, the Court has directed the petitioner to deposit Rs.3 lakhs towards arrears of maintenance and further to pay Rs.6,000/- p.m. each to the respondents No.1 & 2 w.e.f.10.7.2017. Being aggrieved, the petitioner has preferred this petition.

3. Heard learned counsel for the petitioner and the respondents. Perused the orders passed by the Trial Court as well as the Revisional Court.

4. In brief, it is the contention of the learned counsel appearing for the petitioner that the Trial Court has passed the order to pay maintenance of Rs.24,000/- per month to the respondents i.e. @ Rs.12000/- p.m. to each of the respondents in the proceedings filed under section 125, Cr.P.C., without proper service on the petitioner. The Revisional Court has accepted the case of the petitioner that there was no proper service made to the petitioner before passing the order by the Trial Court and remanded the matter for deciding the matter afresh. While passing the order, the revisional Court had directed the petitioner to pay interim maintenance @ Rs.6,000/- p.m. to each of the respondents w.e.f. 10.7.2017 and to continue to pay the

same till disposal of the petition with deposit of Rs.3 lakhs towards the arrears of maintenance. It is contended that once the order passed by the trial Court is set aside and case is remanded for deciding the matter afresh, the order passed by the Revisional Court to deposit the arrears of maintenance and payment of interim maintenance is not sustainable in law.

5. On the other hand, learned counsel for the respondent Nos.1 and 2 supported the order passed by the trial Court as well as the Revisional Court. It is submitted that the petitioner is a high ranking officer serving in the Customs Department. He has neglected to maintain the respondents, who have no source of income to maintain themselves. Respondent No.2 is a small girl aged about 8 years. In the month of May, 2018 the petitioner was receiving gross salary of Rs.74,068/-. In the facts and circumstances of the case, learned Sessions Court was justified in directing the petitioner to pay the interim maintenance as well as the arrears of maintenance.

6. I have carefully considered the submissions advanced in the light of over all facts of the case. Since the Revisional Court has accepted the case of the petitioner that there was no proper service, the issue in respect of service of notice to the petitioner is not required to be dealt by this Court.

7. The operative part of the order passed by the Revisional Court reads as under:-

"ORDER

- 1. Criminal Revision is hereby partly allowed.*
- 2. The Judgment and order passed by learned Judicial Magistrate First Class (Court No.8), Ahmednagar in Criminal Misc. Application No.719/2016 on 10.07.2017 is hereby set aside.*
- 3. The matter is remanded for fresh trial. It be decided by the court as far as possible within six months.*
- 4. The opponent do pay Rs.3,00,000/- (Rs.Three Lacs only) towards arrears of maintenance from the date of filing of application i.e. Criminal Misc. Application No.719/2016 till the date of decision of learned Trial Court i.e. 10.07.2017 and continue to pay Rs.6,000/- p.m. for applicant No.1 and Rs.6,000/- p.m. for applicant No.2 from that date till final decision of application by learned Trial Court.*
- 5. The amount of Rs.3,00,000/- (Rs. Three lacs only) be deposited in the court by opponent within one month from the date of this order. If the opponent fails to deposit the amount as above, the order of remand shall stand canceled and the order of learned Judicial Magistrate First Class (Court No.8), Ahmednagar of grant of maintenance allowance in Criminal Misc. Application No.719/2016 shall stand confirmed.*
- 6. The parties to appear before the learned Judicial Magistrate First Class (Court No.8), Ahmednagar on or before 29.09.2018.*
- 7. Inform learned Trial Court Accordingly. "*

8. In my view, the order passed by the Trial Court to pay the arrears of maintenance as per the order passed by the Trial Court

is not sustainable in law. Once, the order was set aside by the Revisional Court and case was remanded for fresh decision, the Trial Court was not justified in directing the petitioner to pay the maintenance as per the order passed by the Trial Court. In the facts and circumstances of the case, at the most, the Revisional Court, while setting aside the order passed by the Trial Court and remanding the matter for fresh decision, could have passed the order to pay the interim maintenance till disposal of the application. I am, therefore, inclined to partly allow the petition. Accordingly, the petition is partly allowed and following order is passed:-

ORDER

The order passed by the Revisional Court is modified and substituted as under:-

(A) The Judgment & order passed by the learned JMFC, Court No.8, Ahemadnagar in Criminal Misc. application No.719/2016 dated 10.07.2017 is hereby set aside. The application is restored to file. The case is remanded to trial Court for deciding the application afresh by affording an opportunity of hearing to the petitioner - original non-applicant.

(B) The trial Court is directed to decide the application afresh on its own merit within six months from the date of appearance of the parties before the Trial Court.

(C) Parties are directed to appear before the Trial Court on 1.7.2019.

(D) Pending disposal of application, the petitioner – non-applicant is directed to pay interim maintenance to the respondent Nos.1 and 2 @ Rs.6,000/- p.m. w.e.f. 20.7.2016 i.e. the date of filing of the application till disposal of the main application. The payment of interim maintenance shall be subject to outcome of decision in the case.

(E) The petitioner – non applicant is granted liberty to file written statement in the matter on 1.7.2019 subject to deposit of further amount of Rs.1 lakh in the Trial Court on or before 1.7.2019 and balance amount within eight weeks w.e.f. 1.7.2019.

(F) The Registry is directed to transfer the amount of Rs.1 lakh to the Trial Court to be payable by the petitioner to respondents towards arrears of interim maintenance payable from the date of application.

(G) The respondents – original applicants are granted liberty to withdraw the amount of Rs.1 lakh deposited by the petitioner as well as further amount to be deposited in terms of the order.

(I) Rule is made absolute in above terms.

(V.L.ACHLIYA, J)