

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Revision Application NO. 149 OF 2018

Abhay Shivaji Tupe	...Applicant
<i>Versus</i>	
Anuradha Abhay Tupe And Anr	...Respondents

With
Criminal Application No.195 of 2018
In
Criminal Revision Application NO. 149 OF 2018

....
Mr. Santaram Tarale, Advocate for the Applicant.
Mr. A.B. Tajane, Advocate for Respondent No.1.
....

CORAM : R. G. KETKAR, J.

DATE : 17th JANUARY, 2019

P.C.

1. Heard Mr.Santaram Tarale, learned counsel for the applicant and Mr.A.B. Tajane, learned counsel for respondent No.1, at length.
2. By this Application under Section 397 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), the applicant has challenged the order dated 4.12.2017 passed by the learned Judge, Family Court No.3, Pune in Petition No.PE-290/2011. By that order, the learned trial Judge allowed the petition instituted by the first respondent under Section 125 of Cr.P.C. and directed the petitioner-husband to pay Rs.14,000/- per month to first respondent wife from 1.12.2017 onwards and continue

to pay the maintenance of Rs.6,000/- per month awarded in the proceedings instituted under the Protection of Women from Domestic Violence Act, 2005 (for short, 'D.V. Act').

3. In support of this application, Mr. Tarale strenuously contended that the learned trial Judge has committed serious error in allowing the petition. He submitted that respondent No.1 without reasonable cause has deserted the petitioner. The petitioner had instituted the petition under Section 9 of the Hindu Marriage Act, 1955 (for short, 'Act') for restitution of conjugal rights. By order dated 6.3.2013, the learned trial Judge allowed the petition and directed the first respondent to join the company of the petitioner within three months from the date of the order. Aggrieved by this decision, respondent No.1 preferred Civil Appeal No.135/2014. The appeal was dismissed under Order XLI Rule 1 of Code of Civil Procedure, 1908 (for short, 'C.P.C.') by the learned District Judge. The learned District Judge observed that respondent No.1 is not interested in pursuing the appeal. Till date, the appeal not restored. He submitted that the learned trial Judge while allowing the petition for restitution of conjugal rights held that without any reasonable cause, respondent No.1 has deserted the petitioner. Thus on one hand, respondent No.1 is not cohabiting with the petitioner without sufficient cause and on the other is claiming

maintenance. On this ground respondent No.1 is not entitled to claim maintenance.

4. Mr. Tarale submitted that the learned trial Judge has considered various properties from paragraph-13 of the impugned order. The learned trial Judge, however, failed to appreciate that all these properties belong to the parents of the petitioner. They are their self-acquired properties. In any case no income is generated from these properties. He submitted that the learned trial Judge has ignored the fact that respondent No.1 has share in her father's property admeasuring 1 Hectare 3 Ares. Said property was sold for Rs.1,41,62,500/-. Respondent No.1 had received her share from the sale proceeds of the property. The learned trial Judge, however, brushed aside the submission by observing that there is nothing to show that she received any share in terms of money after sale of the property. He submitted that the finding recorded by the learned trial Judge from paragraph-13 onwards is not based upon any material on record and are mere *ipse dixit* of the first respondent. He submitted that the petitioner is present in the Court today. Upon taking instructions from the petitioner, he submitted that the petitioner is ready and willing to pay maintenance of Rs.10,000/- per month inclusive of the maintenance awarded under the D.V. Act.

5. On the other hand, Mr. Tajane has supported the impugned order. He has invited my attention to the admissions given by the petitioner in the cross-examination. He submitted that the findings recorded by the learned trial Judge are supported by the material on record as also the admissions given by the petitioner in his cross-examination. He, therefore, submitted that no case is made out for interfering with the impugned order.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. In the proceedings the parties have examined themselves. A perusal of the cross-examination of the petitioner shows that property bearing Survey No.177/1/2A admeasuring 45 Ares and Survey No.182/2/6B admeasuring 33 Ares was sold by the petitioner and others through Power of Attorney Pradip Chavan. The petitioner was one of the vendors of these properties. He further admitted that on 31.12.2007 the petitioner, his brother and father have sold the properties situate at village Manjri (Bk). He admitted that he has obtained Diploma in Automobile Engineering and is running a garage by name "Guru Datta Motors". He is residing at Hadapsar, Pune in two storied building consisting of ten rooms. He denied the suggestion that he is getting Rs.15 to Rs.20 Lakhs from these properties.

7. The learned trial Judge has considered various properties, a list whereof was produced below Exhibit-28 as also the transactions entered into by the petitioner. The learned trial Judge observed that sale deed was executed by the petitioner and others in favour of Aniruddha Deshpande and others under which agricultural land bearing Gat No.177/1/2A admeasuring 45 Ares and Survey No.182/2/6B admeasuring 33 Ares was sold by the the landlords. Respondent No.1 had produced valuation report of the property. The valuation of Survey No.168/7B, Sadesatra Nali, Hadapsar Pune is Rs.7,43,000/-, the valuation of Survey No.204/3A/1, Sadu Nare Vasti, Sadesatra Nali, Hadapsar, Pune is Rs.1,63,46,000/-. The value of Gat No.7781/1 Tarvade, Thevur, Pune is Rs.1,16,37,500/-. Respondent No.1 had filed 7/12 extracts at Exhibit-18 showing various immovable properties belonging to the petitioner. After considering this material on record, the learned trial Judge observed that the petitioner-husband has several immovable properties and some of the properties are sold by him.

8. In paragraph-14, the learned trial Judge also considered the submission of the petitioner that respondent No.1 has share in Survey No.48 and the same was sold for Rs.1,41,62,500/- and it was observed that nothing is produced by the petitioner to show that respondent No.1 received any share in terms of money after the sale of said property.

That apart, this aspect was also considered while deciding the proceedings under the D.V. Act. In paragraph-15, the learned trial Judge observed that the petitioner is a man of means.

9. For the reasons recorded in paragraphs-13 to 15 of the impugned order, I do not find that the learned trial Judge has committed any error while fixing the maintenance. The learned trial Judge has directed the petitioner to pay modest maintenance amount of Rs.14,000/- per month apart from Rs.6,000/- per month awarded in the proceedings under D.V. Act. Hence, Criminal Revision Application fails and the same is dismissed. In view of dismissal of Criminal Revision Application, Criminal Application No.195/2018 for stay of the impugned order does not survive and is disposed of. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)