FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.59/2019

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders

Advocate Mr.Sachin Kadam I/b Ms Mona S. Malvade for applicant.
Advocate Miss Vaishali Tikle for respondent no. 2.
A.P.P.Mr.Vinoid Chate for respondent/State.

CORAM : K. K. TATED, J
DATE : JULY 12, 2019.

P.C.:

Heard learned counsel for parties.

2. By this criminal Revision Application, husband is challenging Order dated 13.3.2018 passed by Judge, Family Court no.3, Mumbai in petition No.E-276-2016 filed by respondent/wife u/s 125 of Cr.P.C. awarding sum of Rs.25000/- per month maintenance charges from the date of petition and also litigation expenses of Rs.10,000/-.

3. Learned counsel Mr.Sachin Kadam for applicant submits that in the present proceeding the Family Court failed to consider, per month income of the applicant. He submits that the applicant is doing service and is getting only sum of Rs.32,000/- per month by way of salary. To that effect he has placed on record compilation of documents and salary statement for the month of June 2018. He submits that even before trial court the applicant placed on record income tax return for the assessment year 2017-2018 showing his gross income of Rs.2,90,700/- i.e. approximately Rs.25,000/- per month. He submits that inspite of that, Family Court directed applicant to pay sum of Rs.25,000/- p.m. by way of maintenance charges to the respondent/wife.

4. The learned counesl for applicant submits that Family Court erred in observing in para 8 of the impugned judgment, that applicant being Chartered Accountant can easily manipulate his own accounts and income. This observations is not according to law. He further submits that respondent

is also educated. She can earn on her own and these facts were not considered by the Court below. In support of his contention, he relies on judgment of this court, in the matter of **Sayyed Jabbar Ali Vs. Sahiba Fatima reported in 2002 (1) page 623 Mh.L.J**. On the basis of this submission, learned counsel for applicant submits that the impugned order dated 13.3.2018 passed by the Family Court is required to be set aside and or to modify.

4. On the other hand, learne counsel Miss Vaishali Tikle appearing on behalf of the respondent No.2 vehemently opposed the application. She submits that at present respondent is a household wife. She is not doing any service. There is no income for her from any source. She further submits that actually the Family Court passed order dated 13.3.2018 on the basis of earlier order below Exh.12 dated 27.10.2015 in interim application no.193/2013 in Petition No.A-1966/2012. Learned counsel for respondent placed on record copy of said order. She submits that in order dated 27.10.2015, the Family Court, Mumbai at Bandra, in para 4 of the impunged judgment observed that

after going through the Income Tax Returns of applicant for the assessment year 2013-2014, his gross income at that time was Rs.14,75,638/-. She relies on para 4 of the said order which reads thus;

> “(4) So far as quantum of interim maintenance is concerned, according to the respondent/wife, petitioner is a Chartered Accountant and earning Rs.80,000/- per month and nobody else is dependent upn him. He is also enjoying luxurious life. IT is admitted by the petitioner that he is a Chartered Accountant. According to him, he is working in Chartered Accountant firm, however, his reply is silent about his income. As per Court's direction he has produced his Income Tax returns on record alongwith application Exh.28. After going through the IT returns, it reveals that in the assessment yaer 2013-2014 his gross income was Rs.14,75,638/- and in the Assessment Year 2014-2015 his gross income was Rs.14,35,839/-. There appears saving of more than Rs.1 lakh in the IT returns. Thus, even after excluding the necessary deductions, there remains moer than Rs.80,000/- per month in petitioner's hand. Therefore, at this stage, I find substance in the respondent's contention about petitioner's income about Rs.80,000/- per month. So far as parent's liability is concerned, on query by the Court, petitioner has admitted that his father is a pensioner and getting pension of

Rs.10,000/- per month."

5. on the basis of this submission, learned counsel for applicant submits that there is no substance in the revision and same needs to be dismissed.

6. Heard both sides at length. Reading of impugned order dated 13.3.2018 passed by the Family Court shows that the Family Court awarding maintenance of Rs.25,000/-, was based on the basis of earlier order dated 27.10.2015 below Exh.15 in interim application No.193/2013 in Petition No.A-1966/2012. Apart from that, the Family Court also observed in para 13 that, though the court called upon applicant to produce his Income Tax Returns for earlier years, he failed and neglected to do so.

7. Considering these facts, I do not find any reason to entertain present revision application. Apart from that, judgment cited by the learned advocate for applicant mentioned above, is not applicable to the facts of present case because the impugned order passed by the trial court, on the basis of previous order between both parties.

8. Hence, the following order.

a) Criminal Revision application stands dismissed.

b) No order as to costs.

(K.K.TATED, J.)