

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.618 OF 2019

1. Sau. Madhavi Chetan Arne Applicants
2. Kum. Mihika Chetan Arne

Vs.

1. Shri. Chetan Dinkar Arne
2. State of Maharashtra Respondents

**ALONGWITH
CRIMINAL REVISION APPLICATION NO.117 OF 2019**

Shri. Chetan Dinkar Arne Applicant

Vs.

1. Sau. Madhavi Chetan Arne
2. Kum. Mihika Chetan Arne Respondents

Mr. Swapnil S. Mhatre for Applicants in Revn. No. 618 of 2019 and for Respondents in Revn. No. 117 of 2019.

Smt. Suvarna B. Telgote i/by Mr. Rajan R. Salvi for Applicant in Revn. No. 117 of 2019 and for Respondents in Revn. No. 618 of 2019.

Mr. S.S. Hulke, APP for State

Coram : NITIN W. SAMBRE, J.

Date : 8th January, 2020

P.C.:

1. Heard respective counsel.
2. The order impugned is dated 1st September, 2017 passed by the Family Court, Nashik directing payment of maintenance of Rs.2,500/- per month to the wife and Rs.4,000/- per month to the daughter w.e.f. 20th May, 2014.
3. This order is questioned by both i.e. the husband and wife. The contentions of the applicant-husband is, the order impugned is passed in the absence of his lawyer, as such there is a denial of an opportunity. The further submission is that while passing the order impugned, an award of maintenance of Rs.3,000/- in restitution proceedings is not considered by the Family Court.
4. In this very order of award of maintenance passed by the Family Court, wife is seeking enhancement.
5. The admitted facts are, when the order impugned was passed, the pendency of restitution proceedings and before passing of maintenance of Rs.3,000/- is not looked into or brought to the notice of the Family Court.

6. Apart from above, the fact remains that the counsel for the applicant-husband remained absent before the Family Court. As such, the applicant-husband was not properly represented. In view of law laid down by the Hon'ble Apex Court in the case of Rafique and Another Vs. Munshilal and Another, reported in A.I.R, 1981 SC, page 1400, in my opinion, the case for consideration based on equity is made out.

7. The applicant-husband so as to demonstrate his bonafide submits that he shall deposit an amount of Rs.2,50,000/- towards arrears which can be split in Rs.63,000/- of arrears arising out of restitution proceedings and Rs.1,83,000/- from the present proceedings within a period of eight weeks from today.

8. Since the applicant-husband is present in the Court, said statement is made by him through his lawyer is accepted as an undertaking. He is made to understand the consequences if the above undertaking is not complied with.

9. The applicant-husband shall deposit total amount of Rs.2,50,000/- towards arrears in the Family Court, Nasik within a period of eight weeks from today. If such amount of arrears is deposited, the parties to the petition shall be offered fresh opportunity of hearing and the Family Court shall make every endeavour to decide the proceedings from the stage of final hearing and conclude the same within a period of three months from the date of communication of this order.

10. Parties hereby agree that they shall appear before the Family Court on 27th January, 2020. The deposit of arrears will be condition precedent and if the applicant-husband fails to deposit the amount, the order directing payment of arrears shall govern the proceedings between the parties.

11. The order impugned dated 1st September, 2017 is quashed and set aside subject to compliance of aforesaid conditions.

12. It is made clear that the applicant-husband shall continue to pay the amount of maintenance as ordered by the Family Court on 1st

September, 2017 and also in the restitution proceedings till the disposal of proceedings by the Family Court.

13. Both these applications stands allowed to the above extent.

14. The Respondent-wife is permitted to withdraw balance amount of arrears, which was deposited in this Court.

15. The Family Court shall also permit withdrawal of the amount, if so deposited by the applicant-husband in favour of respondent-wife.

(NITIN W. SAMBRE, J.)