

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

**CRIMINAL REVISION APPLICATION NO.144 OF 2018
ALONWITH
CRIMINAL APPLICATION NO.171 OF 2019**

Mr. Pankaj Shravan Kapoor Applicant

Vs.

1. Mrs. Bhavya Pankaj Kapoor
2. Ira Pankaj Kapoor
3. State of Maharashtra Respondents

Mr. Hassnain Kazi Sayyed for Applicant.
Mr. P.C. Kansara i/by Mr. Sanjay Bhojwani for Respondent no.1.
Mr. N.B. Patil, APP for State

Coram : NITIN W. SAMBRE, J.

Date : 5th February, 2020

P.C.:

1. This application is by the husband under Section 115 of Code of Criminal Procedure in the form of revision, questioning an order passed by the Family Court in exercise of powers under Section 125 of Code of Criminal Procedure awarding maintenance of Rs.25,000/- per month to the wife and Rs.15,000/- per month to daughter, Ira w.e.f. 10th September, 2014.

2. Apart from above, the other orders, which are challenged by the applicant are 23rd August, 2017, whereby the present applicant was directed to deposit an amount equal to 25% of the arrears, out of Rs.12,00,000/-; order dated 8th September 2017, whereby the petitioner was directed to file an affidavit whether he was present before Sindhi Panchayat at Bhopal; Order dated 12th September, 2017, wherein the directions were given to the applicant to comply with the order of payment of maintenance by giving appropriate schedule; Order dated 10th October 2017, wherein Criminal Miscellaneous Application No.31 of 2017 was dismissed for non-compliance of the order of payment of arrears of maintenance.

3. Learned counsel for the applicant-husband would urge that when the first order dated 15th March, 2017 was passed by the Family Court No.2, Pune, awarding maintenance in favour of the wife and a daughter, he misunderstood the notice received in said proceedings and as such bonafide remained absent. According to him, the Family Court mis-calculated the income of the present applicant to the tune of

Rs.1,00,000/- when his I.T. returns shows his annual income of Rs.1,20,000/-. As such, according to him, the amount of award of maintenance is completely disproportionate to the known source of income. The further contention of the applicant is, the applicant is not disowning the responsibility to maintain the child and he is honouring responsibility by regularly paying medical and other expenses, which demonstrates his bonafide. In the aforesaid background, the order of award of maintenance is liable to be quashed and set aside and the applicant be granted fresh opportunity to canvass his case in defence.

4. While countering the aforesaid submissions, learned counsel for the non-applicants, wife and daughter would support the order including the other orders. He sought dismissal.

5. From the record and the evidence of the non-applicant wife in the proceedings before the Family Court, it was established that the father of the applicant is a Proprietor of a shop, who are dealing in watches. The applicant is shown to be an employee in the said shop and his income for the financial year 2014-2015 is shown to be

Rs.1,19,000/-. This Court is not sensitive to the fact that the Income-Tax returns of the applicant for the financial years 2014-2015 depicts his income, as a servant working in the said shop, is of Rs.1,19,000/-, but the Court cannot be oblivious to the fact that the applicant is the only son and they are into a profiteering business of selling of watches. The I.T. returns in this case is only for assessment of income, however, in the backdrop of aforesaid facts, this Court need to reject the contention of the applicant that his only source of income is working as a servant in the shop of his father.

6. The law contemplates that the wife and the child born out of such wedlock are entitled to live similar lifestyle as that of lived by husband before and after separation.

7. The defiant attitude of the applicant of non complying the orders of this Court is apparent from his conduct as is noticed by the Family Court, which is reflected in the orders impugned. The first order of payment of maintenance was passed on 15th March, 2017, which is not complied till date and total arrears mounted are about

Rs.20.00 Lakhs. Considering the fact that the applicant has intentionally not appeared before the Family Court, when the order of maintenance was passed, an option was given to the applicant-husband to show his bonafides by depositing the amount of arrears in this Court, so that he can be given an opportunity to put-forth his case before the Family Court. Learned counsel for the applicant submits that he has instructions to argue the matter on merit. Said conduct prima facie speaks of the very mind of the applicant in the matter of not-honouring the orders of the Court of paying maintenance to his wife and only daughter.

8. It appears that the Family Court was sensitive to the aforesaid fact that the applicant was not present before the Family Court, hence, the Family Court showed its indulgence in favour of the applicant-husband. So as to test his bonafides, has directed deposits of arrears, which order till date is not honoured though thereafter by repeated orders passed by the Family Court, the applicant was given chance to comply. The Family Court has involved the social organisation particularly the community to which both the parties

belonged, so as to have settlement in the matter, however, the defiant attitude of the applicant has prevailed there also.

9. As such, if the overall conduct of the applicant is appreciated, as is reflected in the orders, which are subject matter of challenge, the applicant is not in mood of complying orders.

10. Apart from above, the fact remains that the financial income of the year 2014-2015 if considered as Rs.1,19,000/-, the same is in the form of servant working in the shop and the applicant is the only son of his father, who must have share in the profit.

11. The fact remains that the I.T. returns shows increase in his salary, while working in a shop, which by itself prompted this Court to infer that the income from the business has gone up resulting into increase in his salary.

12. In the aforesaid background, in my opinion, the award of maintenance of Rs.25,000/- per month to the wife and Rs.15,000/- per month to a daughter is very just justified.

13. No interference is called for.
14. The Criminal Revision Application fails. Dismissed.
15. In view of dismissal of the Revision Application, Criminal Application No. 171 of 2019 does not survive, the same is accordingly disposed of.

(NITIN W. SAMBRE, J.)