

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.589 OF 2021

Manoj Anganamal Jindal	...	Petitioner
V/S.		
Smt. Krishna Arjunlal Todi & Anr.	...	Respondent

Mr. Vivek Tambe, Advocate for Petitioner.
Mr. A. M. Saraogi, Advocate for Respondent No.1.
Mr. Amit Palkar, APP for Respondent No.2 – State.

CORAM : A. S. GADKARI, J.
DATE : 4th MARCH, 2021.

P.C.:

1. By the present Petition under Article 227 of the Constitution of India, the Petitioner-husband has impugned Judgment and Order dated 21st November 2020, passed in Petition No.E-14 of 2016 by the learned Judge, Family Court No.2, Mumbai, allowing the said Application filed by Respondent No.1-Wife for maintenance under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.').

2. Heard Mr. Tambe, learned advocate for the Petitioner, Mr. Saraogi, learned advocate for Respondent No.1 and Mr. Palkar, learned APP for Respondent No.2 State.

3. The Petitioner and Respondent No.1 married each other on 8th February 2012. As there was matrimonial discord between them, the

Respondent No.1 filed proceedings under Protection of Women from Domestic Violence Act, 2005 and also, under Section 125 of Cr.P.C. claiming maintenance.

4. Respondent No.1 filed the present Application on 8th December 2015. It further appears from record that, the efforts of Marriage Councilor for bringing amicable settlement amongst the parties have failed. It is the contention of Respondent No.1 that, the Petitioner and his family are having four firms. That the Petitioner is earning handsome amount from his business and is not taking necessary care of Respondent No.1. It was the further contention of Respondent No.1 that, the Petitioner is earning Rs.5,00,000/- per month. The Petitioner appeared in the matter and filed his written statement below Exhibit 11. The Petitioner denied all the contentions of Respondent No.1. The Petitioner contended that, he is not earning Rs.5,00,000/- per month and the amount claimed by Petitioner of Rs.50,000/- per month as maintenance is beyond his salary. The record further indicates that, Respondent No.1 led oral evidence before the Trial Court. The Petitioner filed various documents before the Trial Court, however did not examine himself or allowed Respondent No.1 to cross-examine him before the Trial Court.

The Trial Court after hearing the parties to the said Application has directed the Petitioner to pay a maintenance @ Rs.50,000/- per month

under Section 125 of Cr.P.C. from the date of filing of the said Petition and has also granted other consequential reliefs, by its impugned Judgment and Order dated 21st November 2020.

5. Learned counsel for the Petitioner submitted that, Respondent No.1 has suppressed material documents from the Trial Court. The observations made by the Trial Court that *“The Respondent ought to have examined himself. He ought to have entered into witness box.”* have been wrongly mentioned, though the Petitioner never refused to enter into the witness box. He further submitted that, in a proceeding under Section 125 of Cr.P.C., it is not necessary for the Petitioner to enter into witness box. When this Court confronted him with the aspect of ‘rebuttal of presumption’ and for that entering in to witness box, he submitted that, it is also not necessary. He submitted that, directing the Petitioner to pay Rs.50,000/- per month would amount to double jeopardy. He emphatically submitted that, this Court ‘should and must’ allow his Petition to have equity in the matter. He submitted that, dismissing his Petition at the threshold would mean saddling the Petitioner with unreasonable amount of maintenance and punishing him. He submitted that, the impugned Judgment and Order is bad in law. He, therefore, prayed that the Petition may be allowed.

6. Per contra Mr. Saraogi, learned counsel for Respondent No.1 opposed the Petition and supported the impugned Judgment and Order. He submitted that, as a matter of fact, the Petitioner has not annexed necessary and relevant documents even to this Petition disclosing his true and correct income. He submitted that, the maintenance awarded by the Trial Court is just and unreasonable. He submitted that, there are no merits in the Petition and it may be dismissed summarily.

7. At the outset, it is to be noted that, the learned advocate for the Petitioner advanced various arguments before this Court without any basis for it. Though, the Petitioner has not annexed any documents in support of his contention, learned advocate for the Petitioner wants this Court to believe in his statements as gospel truth. He also submitted that, to have equity in the matter, the documents which he now intends to produce before this Court across the bar be looked into, even if, those are not annexed to the Petition and opportunity to deal with the said documents was not given to the other side. This cannot be countenanced.

8. Perusal of record indicates that, the marriage between the Petitioner and Respondent No.1 was a lavish marriage. The Petitioner himself has produced on record compilation of the documents (Exhibit 24) before the Trial Court. Respondent No.1 has given a list of valuable articles and expensive gifts given to the Petitioner and his relatives at the

time of marriage. The income tax return filed by the Petitioner for the year 2014-15 discloses his income of Rs.10,08,759/-. The record further indicates that, though the Trial Court granted an opportunity to the Petitioner to enter into the witness box he did not do so. He has cross-examined Respondent No.1 at length. However, nothing beneficial to the Petitioner has been brought on record. As the Petitioner did not enter witness box and / or made him self available for the cross-examination by Respondent No.1, an adverse inference has to be drawn against him. It appears that, the Petitioner wants to suppress his real and true income from the Courts. Even if the Petitioner has denied that, he has no concern with the four firms mentioned by Respondent No.1 in her Application, it appears that atleast one of the firm in the list belongs to him as it is in his name. The Trial Court has recorded a finding that, the Petitioner is trying to suppress his real income from it and that is the reason, he did not enter into witness box and faced cross-examination. That the Petitioner has earning much more than what is disclosed in his income tax return and it is the reason, he did not entered into witness box. I find substance in the findings recorded by the Trial Court.

9. After perusing record, this Court is of the view that, the maintenance awarded by the Trial Court is a reasonable maintenance, which is commensurate with the facts and record. The Trial Court has not

committed any error either in law or in facts, while passing the impugned Judgment and Order.

10. Petition being dehors of merits is accordingly dismissed in limine.

(A. S. GADKARI, J.)