

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 128 OF 2022

Sayyad Salman Sayyad Rasool .. Applicant

Versus

Tabassum Begum Sayyad Salman and another .. Respondents

Mr. Shivaji Bhimrao Bhapkar, Advocate for the Applicant.
Smt. Anjali Bajpai-Dube, Advocate for Respondent Nos. 1 and 2.

CORAM : KISHORE C. SANT, J.

DATED : 19th SEPTEMBER, 2022.

P. C. :-

1. Heard the learned advocates for both the parties.
2. The respondent/wife had filed application under Section 125 of the Code of Criminal Procedure (for short Cr.PC.) claiming maintenance for herself and one child in the Court of learned Judicial Magistrate First Class (J.M.F.C.), Parbhani. After the establishment of the Family Court at Parbhani, the matter came to be transferred to the Family Court at Parbhani and was re-numbered as Petition-E No. 49/2020. The same is decided by the judgment and order dated 12.10.2021 directing to the applicant/husband to pay maintenance to the wife and child at the rate of Rs. 3,000/- (Rs. Three Thousand only) per month and Rs. 2,000/- (Rs. Two Thousand only) per month respectively. In addition to that, the husband was further directed to

pay Rs. 2,000/- (Rs. Two Thousand only) to the wife towards cost of the petition.

3. The applicant/husband filed an application for setting aside the judgment and order dated 12.10.2021. The applicant/husband filed an application under the provisions of Section 126 sub section 2 of the Cr.P.C. for setting aside the ex-parte order. His case is that, he has received the knowledge of passing of order only after he received a notice issued by the learned Family Court in the execution proceedings bearing PER No. 2/2022 directing him to attend on 16.02.2022. In his submission, the order is ex-parte order and therefore, he prayed for setting aside the same. The application was opposed by the respondent/wife. The learned Court below has considered the application. It is observed that the notice is duly served upon the applicant after the matter was transferred to the Family Court. There is no serious dispute about the record of the Court showing the service of notice. Since in spite of service of notice, as per the report of the Court, the Family Court passed an order dated 10.08.2021 to proceed the matter ex-parte. The matter was thereafter adjourned on two occasions i.e. on 07.09.2021 and 23.09.2021. The respondent/wife filed her affidavit and placed some documents on record on 23.09.2021. On 04.10.2021, the wife filed an affidavit of evidence. By order dated 12.10.2021, the petition was allowed.

4. The learned Court below while deciding the application observed that, when the matter was pending in the Court of learned J.M.F.C., Parbhani, the applicant/husband had even conducted cross examination of the respondent/wife and in view of that, the order cannot be said to be ex-parte.

5. It is this order which is under challenge before this Court. The respondent/wife has filed an affidavit in reply stating that no sufficient cause is shown for setting aside the order. She states that in subsequent development, the husband has performed a second marriage. The respondent/wife also delivered a second child on 04.05.2018. In view of this, she states that since the husband has now performed a second marriage, he did not attend the Court thereafter and he has also not paid the amount of maintenance at any point of time.

6. The learned advocate for the applicant relied upon the judgment of the Karnataka High Court in a case of Suryakanth Vs. Smt. Allamaprabhu alias Allawwa reported in 2000 CRI. L. J. 120 wherein, it is held that the application under Section 126 sub section 2 of the Cr.P.C. is maintainable when good cause is shown. Per contra, the learned advocate for the respondent relied upon the judgment of the Hon'ble Apex Court in a case of Shamima Farooqui Vs. Shahid Khan

reported in 2015 AIR (SC) 2025. She submits that, in this case the husband is only playing dilatory tactics. The very purpose of establishing the Family Court is to have a speedy disposal of the matrimonial cases etc. She prays for dismissal of the criminal revision application.

7. Looking to the dates of transfer of the maintenance application from the Court of learned J.M.F.C. to the learned Family Court and the date of the judgment, both have been passed during the pandemic period. This is also a factor that needs to be considered while considering this application. Considering this position, it would be in the interest of justice to set aside the impugned order dated 09.03.2022 by restoring the Petition-E No. 49/2020 decided by the learned Judge, Family Court, Parbhani dated 12.10.2021.

8. The learned advocate for the respondent submits that as the Family Court recorded that the applicant has not deposited any amount towards maintenance from the date of order and as on today the amount of arrears is approximately Rs. 3,38,000/- (Rs. Three Lakh Thirty Eight Thousand only). The interest of justice would be met by directing the applicant/husband to deposit 50% of the amount of arrears in the learned Family Court, Parbhani within a period of eight (08) weeks from today and continues to pay monthly maintenance as

directed by the learned Family Court regularly.

9. The husband to show the bonafides by depositing 50% amount of the arrears in the learned Family Court, Parbhani within a period of eight (08) weeks from today and is directed accordingly.

10. The respondent/wife is at liberty to withdraw the amount without filing any formal application.

11. Subject to deposit of the amount, the revision application stands allowed.

12. The Family Court would make endeavour to decide the petition as expeditiously as possible.

13. The parties are at liberty to take necessary steps before the Family Court, Parbhani.

14. The revision application is disposed of.

(KISHORE C. SANT, J.)

PS.B.