

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
CRIMINAL REVISION APPLICATION (REVN) NO.159 OF 2019
(Rahul Chandrakant Shah ..Vs. Shraddha Rahul Shah and Anr.)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri A. Tirukh, Advocate for Applicant.
Shri Dhengale, Advocate for the Non-Applicants.

CORAM : AVINASH G. GHAROTE, J.

DATE : 5th JULY, 2022.

. Heard Shri Tirukh, learned Counsel for the Applicant and Shri Dhengale, learned Counsel for the Non-Applicants.

2. The application challenges the impugned order dated 20.04.2019 passed by the Family Court, Akola, whereby the application for maintenance filed by the Non-Applicants/Wife and Daughter has been allowed by directing the Applicant/Husband to pay maintenance at the rate of Rs.2,000/- per month to the Non-Applicant no.1/Wife and Rs.3,000/- to the Non-Applicant no.2/Daughter from the date of the order.

3. Shri Tirukh, learned Counsel for the Applicant submits, that at the time of passing of the impugned order, the salary of the Applicant as recorded by the learned Court below in Para 14 of the impugned order was Rs.6,000/- with a field work daily allowance of Rs.100/-. According to the learned Counsel for the Applicant, the learned Court below,

has incorrectly presumed that the Applicant had an ability and capability to earn handsome salary to the tune of Rs.20,000/- to Rs.25,000/- and ignoring the actual salary, which was being earned by the Applicant, merely on the basis of the above presumption, the impugned order came to be passed.

4. It is further submitted, that the admission on the part of the Non-Applicant No.1/Wife that she was working in Paraskar Honda Showroom as a Follow-up Attendant and was receiving a salary of Rs.3,000/- per month has been ignored. It is further contended that the maintenance, is more than 50% of the salary of the Applicant, leaving him nothing to survive for. It is further submitted, that the daily allowance of Rs.100/-, which was to be given to the Applicant, could not be considered as his salary, as the same was necessary for commuting for the Applicant considering his job as a medical representative, and therefore, his salary ought to be held to be Rs.6,000/- per month, considering which, the impugned order is required to be quashed and set aside.

5. Shri Dhengale, learned Counsel for the Non-Applicants opposes the application and submits, that the daily allowance cannot be deducted from the salary as it is a sum, which the Applicant would be receiving. He further submits, that though the Non-

Applicant No.1 was serving as a Follow-up Attendant with Paraskar Honda Showroom and was receiving a salary of Rs.3,000/- per month, she has left her job, and therefore, the impugned order does not need any interference.

6. The material on record indicates, that the salary of the Applicant at the relevant time was Rs.6,000/- per month. The allowance of Rs.100/-, which was to be paid to him was for the field work, which in his capacity as a medical representative, the Applicant was required to visit various medical practitioners and cannot be said to be a part and parcel of his salary, considering which, the inclusion of this amount in the salary of the Applicant, by the learned Trial Court was clearly not justified. The impugned order, is merely based upon a conjecture that the Applicant has the ability to earn a handsome salary. Ability to earn, *vis-a-vis* what is being actually earned are two different things altogether and the judgment of the Court, cannot be based upon a conjecture or surmise, but has to be based upon the factual position available on record, which considering the material placed before the learned Court below indicates a salary of Rs.6,000/-, being drawn by the Applicant at the relevant time. The impugned order, therefore, is not commensurate with the salary, which was being drawn by the Applicant at the relevant time as taking his salary of

Rs.6,000/-, the impugned order dated 20.04.2019 directs the payment of maintenance at the rate of Rs.5,000/-, which is nearly 80% of his salary, and therefore, was not justified at all. However, considering the fact that there has been an increase in the salary of the Applicant, which as of today is Rs.8,500/- and Rs.2,300/- as allowance for the month of June-2022, for which a certificate dated 01.07.2022 is tendered across the Bar by Shri Tirukh, learned Counsel for the Applicant which is taken on record and marked "X" for the purpose of identification, the impugned order, is not being interfered with regarding the quantum of maintenance granted, but considering that the increase in the salary of the Applicant has taken place from January-2021, the maintenance shall be payable at the rate awarded by the learned Trial Court from January-2021 and not from the date of the impugned order.

7. Revision application is partly **allowed**. No cost.

8. Criminal Application No.156 of 2022 filed by the Non-Applicants is **dismissed**

JUDGE

TAMBE.