

THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL REVISION APPLICATION NO. 167/2019

Mrs. Neelkamal Mukesh Singh and anr ..Versus...Mukesh Awadh Bihari Singh

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

Court's or Judge's orders

Mrs.Hemlata Singh, Advocate for the applicant.
Ms. Shiba N.Thakur, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : 14/06/2022

1] The present application challenges the order dated 31.10.2018 passed by the Principal Judge, Family Court, Nagpur, to the extent it refuses to grant maintenance to the applicant-wife. It is material to note that the impugned order grants maintenance of Rs. 5000/- to the daughter Tanu @ Gitika, which amount undisputedly has and is being paid.

2] Mrs. Singh, learned counsel for the applicants submits that the learned Family Court erred in law in not granting any maintenance to the applicant-wife, as in spite of there being a decree of divorce between the applicant and the respondent, dated 16.2.2010, the provisions of Section 125(1) Explanation-b of Cr.PC permit grant of maintenance even to a divorced wife, considering which the learned Family Court ought to have awarded maintenance to the applicant-wife. She further submits that nothing has been brought on record to

show that the applicant was earning anything, so as to have sufficient funds to maintain herself. It is further submitted that the learned Family Court has quantified the salary of the respondent-husband at Rs.25,000/- per month and even considering that he had remarried, ought to have granted maintenance to the applicant-wife.

3] Ms. Thakur, learned counsel for the respondent submits that the impugned order ought not to be interfered with, as it has duly considered that the applicant-wife was well educated upto M.A in English literature and was capable of earning for herself by undertaking gainful employment. There is nothing on record to indicate that any such attempt has been made by her and she is not expected to sit idle and depend upon the maintenance from the respondent-husband. She further submits that though the learned Family Court has quantified the salary of the respondent at Rs. 25,000/- per month, however, in fact the salary of the respondent was only Rs.15,000/- per month which was reflected from Exh.40 which is his salary certificate and Exh.41, the salary statement given by Sahyog Buildcon with whom he was employed at that point of time. It is submitted that the respondent is working now as a civil contractor and therefore, does not have a fixed salary. The statement of accounts of the respondent under his firm name M/s Shri Ganesh Construction from 1.4.2017 to 29.3.2022 have been placed on record, which pertains to his

account with Nagpur Nagrik Sahakari Bank Ltd. So also the statement of account the respondent with the State Bank of India from 1.4.2017 to 29.3.2022 have also been placed on record.

4] A perusal of these statements indicate substantial transactions in these two accounts, which belong to the respondent. The statement of account with the Nagpur Nagrik Sahakari Bank Ltd., for the period 1.4.2021 to 29.4.2022 indicates deposits and withdrawal to the tune of Rs.24,58,000/- and odd, which would indicate substantial transactions being effected. There are as many as 11 entries in this statement which indicates substantial withdrawal by the respondent-husband, as these are self entries. Considering the state of account being operated by the respondent, it cannot be said that the respondent has no income whatsoever or that the salary of the respondent is restricted to Rs. 15,000/-.

5] Though it is true that wife who is separated from her husband and who is educated is not expected to sit idle, but is expected to be gainfully employed, however, not doing so by itself would not be a ground to disentitle her from the maintenance, as inspite of a plea being taken by the respondent-husband that the applicant-wife was taking private tuition, nothing has been brought on record to substantiate this position. Mrs. Singh, learned counsel for the appellant

makes a categorical statement on instructions that the applicant-wife is not taking any tuition, considering which a case for grant of maintenance to the applicant-wife is made out.

6] Considering the entries in the statement of accounts, as indicated above and the fact that the respondent has remarried and has also other obligations, I deem it appropriate to award maintenance to the applicant-wife at the rate of Rs. 5000/- per month. Considering the circumstances, the order of maintenance shall operate from the date of this order.

7] The revision application is accordingly allowed in the above terms. No costs.

Rvjalit

JUDGE