

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

**CRIMINAL REVISION APPLICATION NO.34 OF 2020
WITH APPLN/3853/2022 IN REVN/34/2020**

Ashok Sadanand Shinde
Age : 50 yrs, Occ. Nil.,
R/o. Radha Terrace Flat No.5,
Opposite Historical Museum,
Daware Galli, Ahmednagar,
Dist Ahmednagar.

...Applicant

Versus

Rojmery Ashok Shinde
Age : 39 yrs, Occ. Nil.,
R/o. Plot No.2, Behind Paris Hall,
Tarapur, Christian Colony,
Ahmednagar, Dist. Ahmednagar

...Respondent

...
Advocate for Applicant : Mr. Surve Kshitij H.
Advocate for Respondent : Mr. Jayabhar Dattatraya R.

...
CORAM : S.G. MEHARE, J.

DATED : JANUARY 13, 2023

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.
2. Heard learned counsel for the applicant and learned counsel for the respondent.
3. The applicant is the husband. He has impugned the order of maintenance passed by the learned Judge, Family Court, Ahmednagar in E Petition No. 122 of 2018 dated 08.01.2020. The

learned Judge quantified the maintenance @ Rs. 4,000/- per month from the date of filing of the petition i.e. 17.12.2013.

3. Learned counsel for the applicant has vehemently argued that the divorce petition was filed prior to the application filed by the respondent before the Magistrate under Section 125 of Criminal Procedure Code. Subsequent thereto, she moved an application on 17.12.2013. The competent Court granted the divorce decree in favour of the petitioner on 03.11.2014. The vehement argument has been advanced by the learned counsel for the petitioner that the respondent suppressed the material fact from the Court and obtained an order of maintenance. Therefore, the order impugned is illegal and against the provisions of law. He would further argue that the learned Judge, Family Court, has passed an order closing the evidence of the applicant on the day of delivering the judgment. Hence, he had no opportunity to appear and lead the evidence. Apart from this ground, he has also argued that the respondent stayed with the petitioner for seven days only, therefore, there is no question of refuse to maintain her. The quantum determined by the learned Court is based upon the guess work and committed an error believing that the petitioner is getting a regular income. Therefore, the quantum and maintenance determined is exorbitant and against the fact.

4. Learned counsel for the respondent would argue that the divorcee is also entitled to the maintenance under Section 125 of

Cr.P.C., till she get remarried. It is an admitted fact that the respondent-wife got married in the month of November, 2021. As far as the conduct of the applicant is concerned, learned counsel for the respondent-wife referred to the observations in para 4 of the impugned judgment and order and argued that various attempts were made to secure the presence of the petitioner after the petition transferred to the learned Judge, Family Court, Ahmednagar. However, a public notice was served upon the applicant on 18.07.2019. The Court proceeded ex parte against the petitioner on 26.08.2019. Therefore, it cannot be said that the applicant has no opportunity to appear and contest the petition. He supports the impugned judgment and order and prays to dismiss the petition.

5. The first ground raised by the learned counsel for the petitioner that suppression of the divorce decree dis-entitles the wife appears no legal base for the sole reason that it was not the material fact affecting the conclusion of the Court. The law is well settled that the divorcee is also entitled to the maintenance till she get remarried. As far as the second ground that no opportunity to appear and lead the evidence was granted to the applicant is concerned, the observations in para 4 are very specific that the Court did not proceed ex parte at once. Other regular mode of securing the presence of the applicant was observed and lastly, the applicant was served through public notice. Thereafter on 26.08.2019, the Court

proceeded exparte. No doubt, the Court closed the evidence of the petitioner on 08.01.2020, that means the Court was waiting for his appearance till that date, therefore, it cannot be said that it is an error of law that warrants interference.

6. There was no income proof before the Court then the learned Judge, Family Court, Ahmednagar correctly applied the principle of able-bodied person and on the basis of the guess work and accepting the case of the petitioner that he does never work, quantified the maintenance amount. The learned Judge, Family Court, Ahmednagar believed that the labour wages at relevant time were 300 to 400 per day. No doubt, the labour may not get work daily, but atleast he may get work for 25 days. Then also on the basis of the guess work, the applicant was earning not less than Rs.10,000/- per month. There was no evidence that the applicant had other responsibilities to discharge. Therefore, this Court does not find any error in quantifying the income of the applicant. Considering the income, the maintenance of Rs.4,000/- per month in view of the family background appears to be not incorrect.

7. The Court has examined the material, considered the arguments advanced by the learned respective counsels and came to the conclusion that there is no substantial ground to interfere with the impugned judgment and order. Hence, the revision application stands dismissed.

(5)

8. Rule stands discharge.
9. Record and proceedings be returned to the learned Judge, Family Court, Ahmednagar.
10. In view of disposal of the revision application on merit, all pending applications stand disposed of.

(S.G. MEHARE, J.)

Mujaheed//