

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

CRIMINAL REVISION APPLICATION NO.72 OF 2022

**SAMADHAN ANANDA LOKHANDE
VERSUS
PRIYANKA W/O SAMADHAN LOKHANDE AND ANOTHER**

...

Advocate for Applicants : Mr. Harshal Prakash Randhir
Advocate for Respondents: Mr. K.B. Jadhav.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 25th OCTOBER, 2023

ORDER :-

The applicant impugns the judgment and order dated 9.12.2021 passed by the Family Court, Jalna in E-Petition No. 135 of 2021 by which the applicant is directed to pay maintenance of Rs. 10,000/- to the respondent No.1 and maintenance of Rs. 5,000/- to respondent No.2 under the provisions of Section 125 of the Cr.P.C.

2. The learned advocate for the applicant would submit that the applicant was served with notice of the proceeding before the Family Court. He had engaged an advocate. However, because of the duties during the pandemic period, he could not attend the court proceeding nor he could provide necessary instructions to his advocate, which has resulted in passing of the impugned order in absence of cross examination of the respondent No.1 and recording of the evidence of the applicants.

3. The learned counsel for the respondent would submit that, initially, the proceeding was filed before the JMFC at Jalna. It was transferred to the Family Court. Thereafter, notices were issued to the parties. The revision applicant was served with the notice of the proceeding and he had also engaged an advocate Mr. Daine. However, the applicant or his advocate failed to attend the family court. Consequently, the order dated 9.12.2021 passed on the basis of evidence recorded by the respondent No.1.

4. Having considered the submissions advanced, it appears that the present proceedings is concluded on 9.12.2021. The applicant or his advocate were not present to cross examine the respondent No.1. Even the applicant could not lead the evidence. The contention raised on behalf of the applicant is that he was busy with his duty being a Police Constable during pandemic period is not specifically disputed on behalf of the respondent. It would be, therefore, in the interest of justice to grant one more opportunity to the applicant to cross examine the respondent No.1 so also lead his own evidence, in support of his defence.

5. The learned counsel for the respondent submits that the applicant has failed to deposit the amount of maintenance till this date. The Salary Certificate on record shows that the applicant has sufficient means to pay the maintenance as quantified by the Family Court. The respondents have no source of income, therefore, he urges that the applicant be directed to deposit the amount in case the impugned order is set aside.

6. Pertinently, the applicant does not dispute the relationship with the respondent No.1 and admits that marriage between the applicant and respondent No.1 still subsists. The only issue that has been pressed into service on behalf of the applicant is that, respondent No.1 has left the matrimonial home on her own volition. Considering defence, one opportunity needs to be granted to the applicant. All the issues are to be decided during the course of trial after granting opportunity to applicant. In that view of the matter, the following workable order is passed :-

ORDER

- [I] The criminal revision application is partly allowed;
- [ii] The impugned order dated 9.12.2021 passed by the Family Court in Application E-135 of 2021 is hereby quashed and set aside subject to condition that the applicant deposits 50% of the arrears as per the order dated 9.12.2021 with the Family Court, within a period of six weeks from today, further continue to pay the cumulative maintenance @ 7,500/- p.m. to the respondents till final disposal of the application No. E-135 of 2021.
- [iii] Parties to appear before the Family Court on 8.11.2023. The applicant may cross-examine respondent No.1/wife within four weeks from the date of appearance.
- [iv] The applicant shall file evidence affidavit within a week thereafter.
- [v] Cross-examination of applicant/husband shall be completed within a period of 4 weeks after filing of his evidence affidavit.
- [vi] The learned Judge, Family Court, Jalna is requested to expeditiously decide the proceeding as early as possible and in any

event, within six months from today.

[vii] Non deposit of maintenance amount as indicated in Clause (ii) shall entail in restoration of order dated 9.12.2022 and any steps taken in terms of directions mentioned in clauses (iii) to (v) shall stand vitiated automatically without further reference to this Court.

[viii] The revision application stands disposed of in above terms.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-