



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

CRIMINAL REVISION APPLICATION NO.57/2021

Smt.Kumita w/o Purushottam Nagose & another

..APPLICANTS

v e r s u s

Purushottam s/o Bhagwan Nagose

..RESPONDENT

.....
Mr.A.K. Madane, Advocate for the Applicants

Mr.V. D. Raut, Advocate for Respondent
.....

CORAM: ANIL L. PANSARE, J.

Date of Reserving : 05.10.2023

Date of Pronouncement: 29.11.2023

PC:

The applicant no.1-Smt.Kumita is the wife and applicant no.2-Anjali, is the daughter of the non-applicant. The present Revision has been filed questioning the legality, propriety and correctness of the judgment and order dated 24th February, 2021 passed by the learned Judge of the Family Court, Nagpur in Petition No. E-475/2014. As such, the petition was filed by the wife, son-Pravin and daughter-Anjali, however, pending trial, it transpired that son-Pravin has joined the company of non-applicant-husband and, therefore, the Family Court has excluded him while directing the non-applicant to pay Rs.10,000/- per month to the applicants herein, in terms of the provisions of Sections 125 of the Code, 1973 (*"the Code"* in short).

2. Having heard both the sides at length and having gone through the impugned judgment and the record placed before me, it transpired that the parties have made wild, bald and baseless allegations against each other. The wife alleged that there is a demand of dowry to the tune of Rs. 20 lakhs at the instance of husband. The husband alleged illicit relationship of wife with one Vishwas Dabale. The learned Family Court, after taking note of attending circumstances, has held that the husband has neglected and refused to maintain the applicants herein and further that the applicant no.1-wife is unable to maintain herself, so also the applicant no.2-son and accordingly ordered the husband to pay maintenance at the rate of Rs. 10,000/- per month.

3. As regards the proof of income, both the parties have filed affidavit of assets and liabilities. The husband appears to be an agriculturist. He deposed that he has borrowed a loan of Rs.1 lakh against the land bearing Survey No.340/2/1 and Rs.25 lakhs against the land bearing Survey No.217/5, from Bank of India, Bhivapur Branch. The 7/12 extracts to that effect, were filed by him (Exhs. 18 to Exh.20). The learned Family Court has taken note of the said fact, and opined that upon own showing, the husband appears to be an agriculturist and is capable of paying loan of good amount. The husband, however, in his evidence deposed that he is working as a labourer in agricultural field and is earning Rs.2000/- to Rs.3000/- per month. This theory has been not believed by the Family Court, and in my view, rightly so, because he himself has in the affidavit of assets and liabilities disclosed the fact of owning agricultural land and taking loan of substantial amount against the same. He could thus be said to be capable of paying reasonable amount to the wife, which he is duty bound if he fails to make out a case

under sub-section (4) of Section 125 of the Code. He failed to prove ingredients of said provision.

4. The evidence of wife is that she is unable to maintain herself as she is not earning anything. The affidavit of assets to that effect has been filed. The learned Family Court, however, noted that the wife had also filed Criminal Complaint Case No. 834/2016 under the provisions of the Protection of Women from Domestic Violence Act, 2005, before the learned Magistrate, wherein vide order dated 11.01.2017, the learned Magistrate has directed the husband to pay an amount of Rs. 7000/- per month, as an interim maintenance to the applicants herein. This fact has been, however, suppressed by the wife in her statement of assets (Exh.42). The Family Court has then taken note of the law laid down in the case of Rajnish vs. Neha, reported in (2021) 2 SCC 324 which, *inter alia*, dealt with the issue of overlapping jurisdiction, as regards granting maintenance and then considered the personal expenses and day-to-day requirements of the applicants and thought it appropriate to direct the husband to pay Rs. 1500/- each to the applicants, in addition to Rs. 7,000/- awarded by the learned Magistrate in Criminal Complaint Case No.834/ 2016.

5. The learned counsel for the applicants failed to show that the Family Court has committed any apparent error, to interfere with the judgment passed by it. There was no reason for the wife to suppress the vital fact. The Family Court could have rejected the application on that count. Nonetheless, considering the relationship between the parties and the parameters applicable to grant maintenance, in terms of the law laid down in the case of Rajnish vs. Neha (*supra*), in my view, the Family

Court has considered the income and liability of the husband and has arrived at a reasonable conclusion that the applicants are entitled for an amount of Rs. 10,000/- per month, in terms of Section 125 of the Code.

6. I do not find any illegality or perversity having been committed by the Family Court and, therefore, the judgment and order passed by the Family Court, does not warrant any interference in the revisional jurisdiction. The Revision being devoid of merit, is rejected.

(ANIL L. PANSARE, J.)