



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

CRIMINAL REVISION APPLICATION NO.18/2023

1. Mrs. Leeni w/o Chandrakant Sardar
aged 42 years, Occ. Household,
r/o c/o Mr. Ramesh Vaidya,
Opp. Axis ATM, New Naksha, Nagpur
2. Ku. Ariya d/o Chandrakant Sardar,
aged 15 years, Occ. Nil, through
her mother, r/o c/o Mr. Ramesh Vaidya,
Opp. Axis ATM, New Naksha, Nagpur **.....APPLICANTS**

...V E R S U S...

Mr. Chandrakant Haridas Sardar
aged 48 years, Occ. Dy. General Manger,
r/o Presently resides at O.N.G.C., Hazira
Plant, Surat, PO-ONGC, Nagar,
Surat – 394518.

...NON APPLICANT

WITH
CRIMINAL REVISION APPLICATION NO.148/2023

Mr. Chandrakant Haridas Sardar
aged 48 years, Occ. Dy. General Manger,
r/o Presently resides at O.N.G.C.,
Hazira Plant, Surat, PO-ONGC, Nagar,
Surat – 394518.

.....APPLICANT

...V E R S U S...

1. Mrs. Leeni divorcee of Chandrakant Sardar
aged 42 years, Occ. Household,
2. Ku. Ariya d/o Chandrakant Sardar,
aged 15 years, Occ. Nil, through
her mother, both are r/o c/o Mr.Ramesh
Vaidya, Opp. Axis ATM, New Naksha,
Nagpur **...NON APPLICANTS**

Applicant Mrs. Leeni Chandrakant Sardar in person.
Mrs. P. M. Chandekar, Advocate for non applicant

CORAM:- ANIL L. PANSARE, J.

DATE ON WHICH ARGUMENTS WERE HEARD: 05.10.2023

DATE OF PRONOUNCING THE JUDGMENT : 26.10.2023

JUDGMENT

The applicants in Criminal Revision Application No.18/2023 are wife and daughter and non applicant is husband. The parties to the other Criminal Revision Application No.148/2023 are vice versa. Hereinafter the parties will be referred to as the, “wife with daughter” on one hand and the, “husband” on the other.

2. The wife with daughter and the husband have both questioned the propriety, legality and correctness of the common order dated 15.07.2022 passed by the Family Court No.4, Nagpur in Misc. Criminal Application No. 78/2014 and Misc. Criminal Application No.40/2018.

3. Briefly stated, the facts are, the marriage between the parties was solemnized on 11.02.2007. The daughter was born on 21.02.2008. The husband had filed Petition No. A-858/2007, for dissolution of marriage and the wife filed Petition No.E-346/2009, for grant of maintenance under Section 125 of the

Code. These petitions were disposed of by the Family Court vide common judgment dated 19.10.2011. Both the petitions were allowed. Marriage between the parties was dissolved by the decree of divorce with effect from 19.10.2011. The husband was directed to pay maintenance to the wife at the rate of Rs.5,000/- per month and to the daughter at the rate of Rs.10,000/- per month. The wife and daughter challenged the judgment of the Family Court granting divorce. The appeal came to be dismissed. The finding in this regard has attained finality.

4. After few years, the husband and the wife with daughter have both filed petitions under Section 127 of the Code. The husband sought withdrawal/cancellation of the maintenance and the wife with daughter sought enhancement in the maintenance. The husband's petition was numbered as M.Cr.A. No.78/2014. The wife with daughter's petition was numbered as M.Cr.A.No.40/2018.

5. The parties led evidence. The husband sought cancellation/withdrawal of maintenance on the ground that the wife is working as an Assistant Professor in the college. Her name is enrolled in the electoral roll of Nagpur Division Graduate Constituency, 2013, wherein she declared her status as

an Assistant Professor. She is M.Tech. and having independent source of income to maintain her. The husband further stated that after seeking divorce, he performed second marriage and has two children out of the wedlock. He is required to pay school expenses to the tune of Rs.40,000/- per month. He is getting salary of about Rs.70,000/- per month and is thus not able to maintain the wife with daughter. The wife with daughter contested the said petition on the ground that the husband has performed second marriage pending appeal and, therefore, the marriage is illegal. She further states that she has no source of income to maintain herself and her daughter. According to her, the husband was getting salary of about Rs.2,50,000/- per month. This claim was made in reply to the petition filed in the year 2014, which the wife has modified to Rs.7,33,000/- per month in her petition filed in the year 2018.

6. As regards the wife with daughter's petition, they have sought enhancement of maintenance to the tune of Rs.2,00,000/- per month each on the ground that the daughter has grown up, the cost of transportation, medicines, foods, clothing and education has been increased. She has no source of income. The husband has been promoted as Chief Engineer and is earning Rs.7,33,000/- per month.

7. The husband has contested the petition on the grounds and the contentions raised in his application seeking cancellation/withdrawal of maintenance.

8. Both the parties led evidence in support and is in tune with their respective claims. In the cross-examination, the husband has admitted that he has been promoted as Chief Engineer. He has further admitted that he does not know whether the wife is working as Assistant Professor. He does not possess documents to show the wife's salary. He came to know about the wife's qualification of M. Tech. from the entry shown in the electoral roll of Nagpur Division Graduate Constituency. He has then admitted that after the death of his father, his mother is getting family pension and getting medical reimbursement from the employer. He then admits that his gross salary for the year 2013-14 was Rs.29,45,970/-.

9. The wife was also cross-examined but nothing material could be brought on record except the fact that she passed M. Tech. degree and that she has not given particulars of expenses for seeking enhancement of maintenance of Rs.2,00,000/- per month each.

10. The Family Court noted that the husband has performed second marriage and has to maintain his second wife and two children. His salary for the month of March-2019, was Rs.2,50,000/- approximately and after deductions, his net salary was Rs.98,000/- approximately. He has been promoted to the post of Chief Engineer. In his assets and liabilities, he has shown his monthly salary as Rs.2,80,000/-. As against, the affidavit of assets and liabilities filed by wife at Exh.100, shows that she has no source of income. Considering the earning of the husband and the change in circumstance, which includes change in inflation prices, the Family Court has enhanced the maintenance of wife to Rs.20,000/- from Rs.5,000/- per month and that of daughter to Rs.15,000/- from Rs.10,000/- per month. The husband's petition is accordingly dismissed.

11. The learned counsel for the husband submits that the wife has suppressed the fact of her educational qualification so also her employment. She has cleared M.Tech. in the year 2013 and has joined LL.B. course but did not disclose the dates in her pleadings. At the time of her marriage with the husband, she was a Lecturer in Vasantrao Polytechnic. She resigned from the job without giving any reason. She said that she is suffering from migraine and, therefore, is unable to seek employment.

According to the learned counsel for the husband, the aforesaid reason is unbelievable. She has pursued her higher studies while suffering from migraine and when it comes to seeking employment, she has tendered such an unacceptable excuse. The learned counsel submits that wife, in fact, got employment in Maharashtra Institute of Engineering Technology (MIET) and has suppressed the said fact. The counsel then submits that the husband is getting salary to the tune of Rs.1,65,000/- after deduction and it is difficult for him to pay maintenance of Rs.35,000/-.

12. The learned counsel for the husband has relied upon judgment in the case of **Mamta Jaiswal Vs. Rajesh Jaiswal**, reported in **2000 (3) MPLJ 100**, wherein the Madhya Pradesh High Court, on the qualified spouses remaining idle, has held in paragraph (8) as under:

“8. In fact, well qualified spouses desirous of remaining idle, not making efforts for the purpose of finding out a source of livelihood, have to be discouraged, if the society wants to progress. The spouses who are quarreling and coming to the Court in respect of matrimonial disputes, have to be guided for the purpose of amicable settlement as early as possible and, therefore, grant of luxurious, excessive facilities by way of pendente lite alimony and extra expenditure has to be discouraged. Even then, if the spouses do not

think of amicable settlement, the Matrimonial Courts should dispose of the matrimonial petition as early as possible. The Matrimonial Courts have to keep it in mind that the quarrels between the spouses create dangerous impact on minds of their offsprings of such wedlocks. The offsprings do not understand as to where they should see? towards father or towards mother? By seeing them both fighting, making allegations against each other, they get bewildered. Such bewilderedness and loss of affection of parents is likely to create a trauma on their minds and brains. This frustration amongst children of tender ages is likely to create complications which would ruin their future. They cannot be exposed to such danger on account of such fighting parents.”

13. True it is that in the tussle between husband and wife, the sufferer is the innocent child/children. As regards conduct of spouses, it is a common experience that they would seldom reveal true status of employment and earning. The judgment in the case of **Rajnish Vs. Neha and Ors.;** reported in **(2021) 2 SCC 324**, is of great help in this regard. The parties are now required to submit affidavit of assets and liabilities. The issues involved are decided on the basis of such affidavits coupled with the other evidence led before the Court. The same has been done here by the Family Court. The question, however, is whether the wife, in the present case, who is highly qualified, has intentionally not attempted to seek employment. I will answer the said question a little later.

14. Another judgment relied upon by the counsel for the husband is in the case of *Damanreet Kaur Vs. Indermeet Juneja & anr.*; passed by the Delhi High Court in Criminal Revision Petition No.344/2011. It appears that this judgment has been obtained from the website of Indian Kanoon, which is not an authentic law journal. The learned counsel ought not to have relied upon such a judgment and should have taken efforts to get the judgment from the authentic law journals. Nonetheless what appears from the said judgment, is that the judgment in the case of *Smt. Mamta Jaiswal's* (supra), has been relied upon to deprecate the conduct of spouses, who are well qualified but desires to remain idle and not making efforts to find out a source of livelihood. The Court held that this conduct is to be deprecated, if the society intends to progress. The aforesaid principle has been culled down from *Smt. Mamta Jaiswal's* case (supra) and, therefore, requires no separate consideration.

15. The wife in person has countered the submission made by the husband's counsel. She submits that her husband has, in the year 2007, filed proceeding for dissolution of marriage. The marriage was dissolved vide order dated 19.10.2011. She then submits that she has not only taken efforts

for seeking employment but has also pursued higher studies. She has obtained the post graduate degree subsequent to dissolution of marriage. She was in employment with the HDFC but was compelled to resign in the year 2014 for her daughter's welfare. She further submits that she is making efforts to seek employment but because of her age and lack of experience, though highly qualified, she is unable to get desired employment. She further submits that her husband is getting handsome salary to the tune of Rs.7,33,000/- per month and, therefore, could easily pay an amount of Rs.2,00,000/- per month each to the wife and her daughter.

16. In support, she has relied upon judgment in Rajnesh.Vs.Neha's case (supra), wherein the Court has observed that factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to

sacrifice her employment opportunities for nurturing the family, child rearing, etc. According to wife, she was required to sacrifice her employment for daughter's welfare and upbringing.

17. Having given thoughtful consideration to the rival submissions and having gone through the impugned judgment and material placed before the Court, following facts emerge:

(i) The husband has handsome salary. The quantum, however, is not satisfactorily established. The wife claims that he is earning Rs.7,33,000/- per month. The husband has stated his income to be Rs.2,80,000/- per month. This income was of the year 2019. The impugned judgment has been delivered in the year 2022. The latest salary status is not on record, though the Family Court has noted that the husband being in Government service will get periodical increase in the salary. The counsel for the husband has argued that the take home salary of the husband is Rs.1,65,000/-.

(ii) The husband has performed second marriage, whether it is legal or illegal is a different matter. The fact remains that he has to maintain his wife and two children.

(iii) There is no other dependent on the husband inasmuch as his mother is getting family pension as also medical reimbursement from the employer.

(iv) The wife claims to have taken efforts to seek employment and has pursued her post graduate qualification. The nature of attempts made by the wife to seek employment has, however, not been shown. She has not placed on record the details where she sought employment and the outcome of her applications so made for seeking employment.

(v) The wife claims that she was required to sacrifice her employment in the year 2014 for the welfare of child. The present status, however, is not known. As stated earlier, she has not placed on record the details of attempts made by her to seek employment. The only explanation comes forth from the wife is that because of her age and lack of experience, she is not getting employment. This contention would have helped her had she filed on record the attempts made by her to seek employment at various places and the response on her applications by the employer.

(vi) The wife with daughter has sought monthly maintenance of Rs.2,00,000/- each but no details thereof have been placed on record.

18. The net result of above discussion is that the husband is capable of paying enhanced maintenance. At the same time,

the wife is capable of seeking employment. The husband claims that the wife has intentionally resigned from the earlier employment and is wasting her time as also of husband by filing various proceedings before the various Courts. The wife claims that she is lacking experience to seek employment but the record indicates that she was in employment during the subsistence of her marriage and after dissolution of marriage as well. According to her, she was compelled to resign in the year 2014. This is, thus, not a case of no experience at all. The wife appears to have reasonable experience and, therefore, she is capable of seeking employment. The wife, therefore, is well advised to focus on seeking employment though she may pursue remedies available to her, in accordance with law. The evidence, as regards the standard of her living at the matrimonial house, is not overwhelming.

19. In the circumstances, I am not inclined to further enhance her maintenance. The daughter, however, is entitled for enhancement because she has grown up, resulting into increase in expenses towards education and other necessities as also considering the inflation in prices of the essential commodities. The daughter, therefore, is entitled to get monthly maintenance of Rs.25,000/- per month. The Family Court failed

to consider these aspects. If the take home salary of husband is Rs.1,65,000/-, the reasonable amount of maintenance ought to have been granted for daughter. The above arrangement should meet the ends of justice.

20. In view of above, following order is passed.

ORDER

(i) Criminal Revision Application No.18/2023 is partly allowed.

(ii) Criminal Revision Application No.148/2023 is dismissed.

(ii) Judgment and order dated 15.07.2022, passed by the Family Court, Nagpur in Petition No. M.Cr.A. No.78/20014 with Petition No.M.Cr.A.No.40/2018, is modified thus:

The husband – Mr. Chandrakant s/o Haridas Sardar is directed to pay maintenance of Rs.25,000/- per month to the daughter Ku. Ariya d/o Chandrakant Sardar. Rest of the order stands intact.

The revision applications are disposed of in the above terms.

(Anil L. Pansare, J.)