



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 116 OF 2023

Mohsin Tahir Shaikh,
Age : 35 years, Occu. : Labourer,
R/o. Idgah Maidan, Shevgaon,
Taluka Shevgaon, Dist. Ahmednagar
M. No.8855082358

... Applicant

Versus

1. Afrin Mohsin Shaikh,
Age : 29 years, Occu. : Nil,
R/o. C/o. Mohammed Rajjak Patel,
Police Mukhyalaya, Ahmednagar.

At present,
D/o. Mohammed Razzak Patel (Retd Police),
Morya Park, Behind Morya Medical,
Bolhegaon - 414 111.
Taluka & District Ahmednagar.
Maharashtra State.

2. Saad Mohsin Shaikh,
Age : 09 years, Minor Under
Guardianship of mother Respondent No.1.
R/o As above.

... Respondents.

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Mrs.Ansari Asafia Nuzhat, Advocate for Applicant.
Ms. Suvarna A. Zaware, Advocate for Respondent No.1.
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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 21 NOVEMBER 2024
PRONOUNCED ON : 26 NOVEMBER 2024

ORDER :

1. In present revision, judgment and order dated
24.02.2023 passed by learned Family Court, Ahmednagar in Petition

No. E-20 of 2018 (Old Criminal M.A. No.815 of 2015) is taken exception to by the applicant.

2. Learned counsel for applicant pointed out that, applicant is husband, against whom respondent wife instituted proceedings under section 125 of the Code of Criminal Procedure (Cr.P.C.) claiming maintenance for herself as well as their son. That, applicant was served with the notice, however, at relevant time, applicant was required to move to Pune for earning his livelihood i.e. by doing labour work and as such he could not contest proceedings instituted by wife. Learned trial court proceeded to conduct the proceeding in absence of applicant. That, there was denial of opportunity to lead evidence and to contest wife's application. That, steps were taken to set aside the no evidence order, but learned trial court imposed cost of Rs.1,000/- for giving opportunity i.e. by order dated 08.06.2022. However, applicant could not attend court proceedings regularly and as such, his right to lead evidence forfeited by confirming the earlier order and finally matter went one way i.e. in favour of wife by order dated 24.02.2023 directing maintenance to be paid to wife and minor son. That, said proceedings are by denying fair opportunity to contest and hence instant revision, with prayers to set aside the impugned order. Learned counsel undertakes to henceforth conduct the proceedings diligently.

3. Learned counsel for respondent wife strongly opposed by pointing out that proceedings under section 125 of Cr.P.C. were instituted way back in 2015. Now, almost a decade has passed. That, there is neglect to maintain wife and son. Learned trial court has given sufficient opportunity and previous absence was also condoned and fair opportunity was given to lead evidence, however, petitioner could not avail the same. Learned counsel pointed out that, in fact, husband was not diligent. Learned trial court after giving sufficient opportunity, when the same was not availed, rightly passed impugned order and as such according to him, the same cannot be faulted at.

4. After considering the submission of both sides, it seems that, due to matrimonial discord, applicant and respondent no.1, who are husband and wife, are residing separately. Out of their wedlock, they also seem to have a child i.e. respondent no.1, who is apparently minor. Wife on account of neglect seems to have instituted proceedings seeking maintenance i.e. by invoking proceedings under section 125 of Cr.P.C. bearing Petition No. E-20 of 2018 i.e. old criminal M.A. No. 815 of 2015.

On going through the impugned judgment and order, learned trial court has observed that, there is neglect to maintain without sufficient cause and plausible reason. Moreover, he is not

making himself available to contest the proceedings or to lead evidence. It is also observed in paragraph no.9 that in spite of instituting H.M.P. proceedings for restitution of conjugal rights, present applicant did not take respondent wife back. Moreover, in spite of notice, he has remained absent through out the proceedings i.e in spite of giving ample opportunity. Consequently, it seems that learned trial court was justified in proceeding to grant maintenance.

5. Before this court it is merely submitted that, during maintenance proceedings, revisionist was required to move to Pune for earning livelihood and thereby disabled from appearing in the court and to lead evidence. Petitioner himself pointed out that, learned trial court gave an opportunity by imposing cost by order dated 08.06.2022, however, same has not been availed. There is nothing in support of what occupation he was conducting for earning his livelihood or about he is shifting to Pune for the same. Therefore, considering such state of affairs, on mere oral submissions, proceedings which are instituted years back cannot be interfered with. No case being made out to grant any relief, I proceed to pass the following order:-

ORDER

Criminal Revision Application stands dismissed.

(ABHAY S. WAGHWASE, J.)