



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

CRIMINAL REVISION APPLICATION NO.8 OF 2022

- 1) Swapnil Sarveshchandra Katiyar
Aged 34 years Occp:
Unemployed/student
R/o Ranpise Nagar, Near Bara
Jyotirling Mandir, Akola, Tq. & Distt.
Akola.

.... Applicant(s)

// VERSUS //

- 1) Sau. Vijaya @ Poonam Swapnil
Katiyar,
Aged : 31 years Occp.: Tuition Class
at Present R/o. C/o. Pradip Jamunaha,
Samta Nagar, Kailas Tekdi, Akola Tq.
& Distt. Akola.

.... Non-applicant(s)

.....
Mr. H.M. Mohta, Advocate for the applicants/s

Mr. Neeraj B. Jawade, Advocate for the non-applicant
.....

CORAM : SANDIPKUMAR C. MORE, J.

DATE OF RESERVING THE JUDGMENT : 04.12.2024

DATE OF PRONOUNCEMENT OF THE JUDGMENT : 06.12.2024

JUDGMENT :

1. The applicant-husband is challenging the judgment and order dated 01.04.2021 passed by the learned Family Court, Akola in E-Petition No.20 of 2016 filed by the present non-applicant/wife on

account of quantum. Under the impugned order, the learned Family Court has granted maintenance of Rs. 12,000/- per month from the date of the petition i.e. 10.02.2016 to be paid by the present applicant-husband to the non-applicant/wife. The cost of Rs.25,000/- towards the litigation is also awarded to the non-applicant-wife.

2. The record shows that the applicant and the non-applicant got married at Akola on 25.01.2015. However, the dispute arose between them, resulted into filing the E-Petition No.17 of 2016 before the Family Court, Akola by the non-applicant/wife under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. However, the said petition got dismissed in default.

3. The applicant is saying that the non-applicant resided with him only for few months, thereafter, she started residing with her parents and then, the non-applicant/wife filed E-Petition No.20 of 2016 under Section 125 of the Code of Criminal Procedure (CrPC), wherein, initially the interim maintenance of Rs.6,000/- was granted by the Family Court, Akola. However, finally the said

petition was disposed of by the impugned order. Hence, this revision application.

4. The learned counsel for the applicant-husband has challenged the impugned judgment, mainly on the ground that the learned Family Court, despite there being no evidence in respect of income of the applicant-husband, granted exorbitant amount of maintenance. According to him, the parties are residing separately since 2016, but that was only because the non-applicant had deserted the applicant at her own. He pointed out that though the non-applicant-wife preferred the petition for restitution of conjugal rights, but it was dismissed in default and thereafter, she filed a divorce petition. It indicates that she was not willing to cohabit with the applicant. Further, according to him, the non-applicant did not bring any reliable evidence, showing the income of the applicant, but still the learned Family Court, in absence of such proof, granted heavy maintenance. According to him, the non-applicant-wife is earning.

5. On the contrary, the applicant despite having MBBS decree of Russia cannot practice in India, unless an eligibility test is passed. He pointed out that the applicant had tried his level best to clear the said test, but cannot succeed. According to him, an Asset and Liability Statements are not considered properly by the learned Family Court and therefore, remand is necessary for fresh determination of the income of the parties, so that a reasonable order of maintenance can be passed. In alternative, he submits that the order of this Court dated 13.01.2022 for depositing Rs.6,000/- per month as interim arrangement may be confirmed finally. He also relied on the judgment of the High Court of Jharkhand at Ranchi in Criminal Revision No.512 of 2023 (Amit Kumar Kachhap Vs. Sangeeta Toppo), decided on 02.02.2024.

6. On the contrary, the learned counsel for the non-applicant-wife strongly resisted the submissions made on behalf of the applicant. He pointed out that the learned Family Court has considered the status of the applicant and his family by observing that he is from well to do family and having immovable properties.

It is also observed that nobody is dependent on the applicant and therefore, the maintenance awarded to the non-applicant-wife is properly determined. He therefore, prayed for dismissal of the present application.

7. Heard the rival submissions and also perused the documents on record along with the impugned judgment.

8. It is significant to note that the present revision application is filed by the applicant-husband with a grievance that exorbitant amount of maintenance has been awarded to the non-applicant/wife by ignoring the fact that there is no proof as regards his income. However, it can be seen that the learned Family Court has granted amount of maintenance to the tune of Rs.12,000/- per month as against the claim of the non-applicant-wife at the rate of Rs.40,000/- per month. It was contended by the non-applicant-wife that the applicant is highly qualified and having MBBS degree and thereby, earning handsomely in the form of commission to the tune of Rs.50,000/- per candidate for sending students for higher education in foreign countries. It was also

contended that he was having his own source of income and his parents are also earning separately. Though no specific income of the applicant has come on record, but the background of his family clearly indicates that they are from well to do family.

9. Further, during a course of argument, the learned counsel for the applicant argued that despite 10 to 12 attempts, the applicant-husband could not clear the test which is required for doing medical practice in India. However, on making inquiry, it was told by the applicant-husband itself that the entry fee of said test per attempt is Rs.6,500/-. Thus, it certainly gives information about the financial capability of the husband. Moreover, in the cross-examination itself the applicant-husband has given certain admissions about repayment of his education loan which he had secured for education. Moreover, he has given an evasive answer, as to how his education loan was repaid. Though he stated that his education loan was repaid by his mother, but nothing is brought on record in respect of the same. The examination-in-chief of the applicant-husband indicates that his mother is having tailoring

shop. Further, it is also mentioned in the said affidavit that he himself had purchased one Activa scooter after his marriage. This clearly speaks about his financial status.

10. It is extremely important to note that the Hon'ble Apex Court had time to time observed that even though the husband is not having any source of income, being an able-bodied person, he has liability to maintain his wife and children.

11. However, in the present case, the family background of the applicant itself suggests that he must be having reasonable income to maintain the non-applicant-wife. It is to be noted that considering today's cost of living and the manner in which the applicant is living, the amount of Rs.12,000/- per month granted as maintenance to the non-applicant-wife cannot be said to be exorbitant.

12. The learned counsel for the applicant vehemently argued that the non-applicant-wife herself deserted the applicant and she is not at all willing to cohabit with him, since, she allowed her own petition for restitution of conjugal rights to be dismissed in default

and thereafter, directly filed the divorce petition. However, in the judgment itself it is observed by the learned Family Court that it had also made attempts for reconciliation, but the applicant-husband was adamant and was saying that he would stay with wife, only if she resides with him at Delhi. Imposing such condition at the hands of the applicant-husband itself suggests that he wanted to harass his wife. Moreover, it is also settled that nobody can send a woman for cohabitation with her husband against her will.

13. In the peculiar circumstances of this case, the judgment relied upon by the learned counsel for the applicant is not applicable, since the learned Family Court had determined reasonable quantum of maintenance.

14. Considering all these aspects, the impugned judgment passed by the learned Family Court appears to be reasonable in the given circumstances, especially, considering the family background of the applicant. As such, no interference in the same is required and the present revision application stands **dismissed**.

SANDIPKUMAR C. MORE, J