



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

CRIMINAL REVISION APPLICATION NO. 159 OF 2023

Ramratan Wasudeo Sarve ..VS.. Sau. Nanda W/o Ramratan Sarve

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Parth L. Sagdeo, Advocate for applicant.

CORAM : M.W. CHANDWANI, J.
DATED : JANUARY 22, 2024

Heard learned Counsel for the applicant. None appears for the respondent though served.

2. The applicant has challenged the order dated 22.05.2023 passed by the Family Court, Bhandara in Criminal Application E-82/2021 granting maintenance of Rs.3,000/- per month to the non-applicant wife from the date of application. The main contention in the petition is that the non-applicant wife has got married to one Khojraj Thaokar and to support this contention, the applicant has examined his witness No.2 – Vijay Madhukarji Thaokar, who has not been cross examined by the non-applicant wife. According to the applicant, in spite of unchallenged version on the record, the learned Family Court did not appreciated his evidence and rejected the contention of the applicant that his wife has married to Khojraj Thaokar therefore, she is not entitled for maintenance. At the first blush, it appears that the

version of this witness that the non-applicant wife married to one Khojraj Thaokar remain unchallenged and despite of this fact, the applicant was granted maintenance by the impugned order.

3. Perusal of record shows that after examination himself, the non-applicant on 10.03.2023 filed the affidavit of examination-in-chief of his witness Nos.2 and 3, which were taken on record and the matter was adjourned for cross examination of these witnesses. It appears from the Roznama that on the next date i.e. on 27.03.2023, the witness No.3 of the non-applicant was cross examined by the applicant wife and thereafter, matter was adjourned on 01.04.2023, wherein, on that day, the learned trial Court closed the case for argument on the basis of pursis filed by the non-applicant-wife and after hearing the arguments, the impugned order came to be passed.

4. Neither the Roznama dated 27.03.2023 reveals that the witness No.2 of the non-applicant was present for cross examination nor there is order by the learned trial Court of no cross examination by the applicant wife to the witness No.2 of non-applicant. In absence on record that witness No.2 was present on 27.03.2023 for cross examination and in absence of no cross order of very same witness, it cannot be said that the non-applicant did not chose to cross-examine the witness No.2, when she cross-examined witness No.3, who was examined on the same point. Record reveals

that even Court did not notice that the witness No.2 remained to be cross-examined and case was fixed for argument. Since, this is a revision where the Court has to see correctness, legality and propriety of any finding. Thus irrespective of the fact that this present application is of applicant and non-applicant did not appear to raise grievance, I am inclined to remand the matter for giving opportunity to the non-applicant herein to cross examine of witness No.2 of the applicant herein and to decide the case afresh. Hence, the following order :

- (i) The Criminal Application is partly allowed.
- (ii) The impugned order dated 22.05.2023 passed by the learned Judge of the Family Court, Bhandara in Criminal Application E-82/2021 is hereby quash and set aside.
- (iii) The case is remanded back to learned Family Court, Bhandara.
- (iv) The learned Family Court, Bhandara shall give opportunity to the non-applicant to cross examine the witness No.2 of the applicant and decide the matter afresh.
- (v) The trial Court shall issue notice both the parties for appearance before it. The trial Court shall decide the case within two months from the date of their appearance before it.

Accordingly, the application is disposed of in the above terms.

(M.W. CHANDWANI, J.)

Kirtak