



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

CRIMINAL REVISION APPLICATION NO. 23 OF 2024

Vijay Babanrao Rakhe
Age 44 Years, Occu : Private, R/o Purpidit
Colony, Qtr. No.773, Sant Gomaji Ward,
Hinganghat, Tahsil Hinganghat, District
Wardha.

... APPLICANT

VERSUS

Sau. Mamta Vijay Rakhe
Age 37 Years, Occu : Housewife, Resident at
- C/o Suraj Arunrao Pal, Plot No. 177,
Radhakrushna Nagar, Wathoda, Nagpur.

... NON-APPLICANT

Ms. Shubhada K. Phaltankar, Advocate (Appointed) for Applicant.
Mr. M. B. Turankar, Advocate for Non-applicant.

CORAM : SANDIPKUMAR C. MORE, J.
JUDGMENT RESERVED ON : DECEMBER 02, 2024.
JUDGMENT PRONOUNCED ON: DECEMBER 03, 2024.

JUDGMENT

. Heard finally with consent of learned Counsel appearing on
behalf of the rival parties at admission stage.

2. The Applicant/husband has taken an exception to the Judgment
and order dated 22/8/2023 passed by the learned Principal Judge, Family

Court, Nagpur (*for short, 'the learned Family Court'*) in Petition No. E-387/2017, whereby certain maintenance amount, as mentioned in the order, is granted to the Non-applicant/wife as well as her son. The learned Family Court has granted maintenance at the rate of Rs.2000/- per month each to the Non-applicant and her son from 29/8/2017 till 22/8/2023 and thereafter at the rate of Rs.3000/- per month each along with Rs.5000/- as cost of litigation.

3. The learned Counsel for Applicant strongly submitted the impugned Judgment and order has been challenged by the Applicant/husband mainly on three grounds, *viz* – firstly, son of the Applicant is not made party, and despite this, the learned Family Court granted him maintenance; secondly, there was a decree against the Non-applicant/wife directing her to cohabit with the Applicant, but she did not follow the same; and thirdly, the Applicant/husband is ready to cohabit with the Non-applicant/wife.

4. On the contrary, learned Counsel for the Respondent/wife strongly opposes the submissions made on behalf of the Applicant/husband and supported the impugned Judgment and order.

5. Admittedly, the Applicant and Non-applicant/wife had tried to settle the dispute and the Non-applicant/wife also resided with the Applicant,

even after dispute. Further, it is not disputed that a decree of restitution of conjugal right is also passed by the learned Family Court in favour of the Applicant/husband, but it appears that even after the parties started residing together, there was certain harassment of the Non-applicant at the hands of Applicant, and therefore, she again started residing separately.

6. The learned Counsel for Applicant/husband tried to argue that son of the rival parties was not made party and still the learned Family Court granted him certain maintenance. However, such submission cannot be accepted, since it is not disputed that the Non-applicant/wife had given birth to son out of this wedlock. Thus, there is prime responsibility of the Applicant/husband for maintaining his own son.

7. So far as passing decree of restitution of conjugal right in favour of the Applicant is concerned, it is settled principle that nobody can compel a woman to cohabit with her husband against her will. As such, passing of decree for restitution of conjugal right against the present Non-applicant/wife is hardly a point for refusing her maintenance.

8. It is extremely important to note that in the impugned Judgment itself the learned Family Court has considered vital admissions given by the present Applicant/husband. It can be seen from those admissions that the

brother of Applicant also works and his father is getting pension, that means, there is no force in the submission of the learned Counsel for Applicant that father is financially dependent on the Applicant. Further, the Applicant/husband has clearly admitted in his cross-examination before the learned Family Court that only his wife and child were dependent upon him. Thus, in the light of these admissions it can easily be inferred that nobody, except the Non-applicant and her son, are dependent on the Applicant.

9. Further, the learned Counsel has also challenged the impugned Judgment on the ground that the Non-applicant is only getting Rs.9000/- per month as a salary, however, the Applicant did not produce any document to that effect before the learned Family Court. Though the Non-applicant/wife had claimed that the Applicant gets salary of Rs.30,000/- per month and also getting rent of Rs.20,000/- per month from ancestral property, but the learned Family Court has considered reasonable monthly income of the Applicant to the tune of Rs.12,000/- per month. Thus, considering such income, it appears that the Family Court has passed reasonable order of maintenance. The learned Family Court has considered every aspect of the dispute between the parties and the evidence led by them in proper perspective. Thus, the impugned Judgment and order needs no interference, and accordingly, the present Revision Application stands dismissed.

10. Ms. Shubhada K. Phaltankar, the learned Advocate appointed by the High Court Legal Services Sub Committee, Nagpur has appeared on behalf of the Applicant/husband. Her professional fees be quantified and paid as per the Rules.

(SANDIPKUMAR C. MORE, J.)

vijaya