



Judgment

426 revn298.22

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL REVISION APPLICATION NO.298 OF 2022

Kamlesh s/o Hiralal Khandekar,
aged about 40 years, occupation: private
service, r/o Roopam Society, plot
No.62, near Shri Sai Parnath
School, Nara Road, Jaripatka,
Nagpur. **Applicant.**

:: V E R S U S ::

Kajal w/o Kamlesh Khandekar, (Nee
Kajal d/o Chintaman Borkar) aged
about 30 years, occupation: private service,
r/o c/o Chintaman Borkar Ishapur
(Budurk Khurd) tahsil
Katol, district Nagpur. **Non-applicant.**

**Shri S.Karmarkar, Counsel for the Applicant.
None for the Non-applicant.**

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 26/06/2025
PRONOUNCED ON : 08/07/2025

JUDGMENT

1. Heard learned counsel Shri S.Karmarkar for the
applicant. None appeared for the non-applicant. **Rule.** Heard
finally.

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2. The revision application is filed by the applicant challenging judgment and order dated 4.11.2022 passed by learned Additional Sessions Judge-13, Nagpur in Criminal Appeal No.145/2019 confirming judgment and order dated 26.4.2019 passed by learned JMFC, Katol in Misc.Criminal Application No.46/2017 granting maintenance to the non-applicant at the rate of Rs.5000/- per month towards maintenance and Rs.2000/- towards house rent and also to pay compensation Rs.50,000/-.

3. Brief facts necessary for disposal of the revision are as under:

On 6.11.2016, marriage of the applicant with the non-applicant was performed at Katol, district Nagpur. After the marriage, the non-applicant resumed cohabitation at the house of the applicant. The applicant along with the non-applicant went at parental house of the non-applicant to perform some customs and from villagers he came to know

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that she was having affair with a person and fraud is committed with him. On returning back to Nagpur, the applicant enquired with the non-applicant and she disclosed that she was having love affair with one muslim boy and, therefore, the applicant called her parents and disclosed the entire incident to them. Thereafter, the non-applicant did not co-habit with the applicant. It is alleged that the non-applicant and her parents concealed facts and by playing fraud performed the marriage with him. Since 17.12.2016, the applicant and the non-applicant are residing separately. The non-applicant filed a complaint with Women Cell with false allegations against the applicant. The applicant issued notice on 17.12.2016 which was received by her and, thereafter, an application under Section 12 of the Hindu Marriage Act was filed by him for declaring the marriage *null and void*. The non-applicant also filed a criminal application for grant of maintenance. It is contention of the applicant that a petition

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filed by the applicant bearing Petition No.A-292/2017 came to be allowed and their marriage was declared *null and void*.

4. The non-applicant preferred an application bearing Misc.Criminal Application No.46/2017 for grant of maintenance under provisions of The Protection of Women from Domestic Violence Act, 2005. Though the non-applicant was served in Petition No.A-292/2017, she did not file her written statement. However, learned Judge of the Family Court referred the matter for mediation. During the mediation proceeding, the non-applicant agreed to accept amount of Rs.1,40,000/- as full and final settlement and the applicant paid amount Rs.20,000/- and, thereafter, the non-applicant did not turn up and not adduce evidence. Learned Judge of the Family Court allowed the application of the applicant and declared the marriage *null and void* and directed the non-applicant to return amount of Rs.20,000/-. Learned JMFC, before whom the application was filed for grant of

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maintenance, allowed the said application without considering the fact that the marriage between the applicant and the non-applicant is already declared *null and void* and granted maintenance as the aforesaid.

5. Being aggrieved with the same, the applicant preferred an appeal bearing Criminal Appeal No.145/2019. Learned Additional Sessions Judge has not considered this aspect and dismissed the appeal. Hence, this revision.

6. Learned counsel for the applicant submitted that as the marriage between the applicant and the non-applicant is already declared *null and void*, the non-applicant is not entitled for any maintenance. Learned JMFC as well as Additional Sessions Judge had not considered the same and granted the maintenance to the non-applicant which is erroneous and against provisions of law and, therefore, liable to be quashed and set aside.

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1. In support of his contentions, he placed reliance on the decision of the Hon'ble Apex Court in the case of **Deoki Panjhiyara vs. Shashi Bhushan Narayan Azad, reported in (2013)2 SCC 137.**

2. The issue raised in the revision is that in view of the judgment and order of learned Judge of the Family Court, as the marriage is declared *null and void*, the non-applicant is not entitled for grant of maintenance or any compensation. The decree of nullity is passed by the competent court and, therefore, the order granting maintenance is erroneous and illegal and liable to be set aside.

3. On hearing learned counsel for the applicant, performance of the marriage between the applicant and the non-applicant is not disputed. The said marriage was performed on 6.11.2016. As per the evidence of the applicant, he got knowledge about affair of the non-applicant and he enquired with her and on 17.12.2016 she disclosed about her

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affair and, thereafter, he approached the Family Court for declaring his marriage as *null and void*. The notice of the said petition was duly served on the non-applicant, but she chose not to appear and contest the said petition. The applicant has examined himself before the Family Court. As the evidence of the applicant remained unchallenged, the decree of declaration that the marriage performed between the applicant and the non-applicant is *null and void*.

4. It is also not disputed that the non-applicant also filed an application before JMFC at Katol seeking various reliefs under Sections 12, 18, 19, 19C, 20, 22, and 23 of The Protection of Women from Domestic Violence Act wherein she has alleged that after the marriage, she was ill-treated by the applicant and he was not allowing her to call her parents for any function. She was insulted and humiliated and also abused and, therefore, she was constrained to leave matrimonial house and started residing at her parental house. As the

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applicant has not made any provision for her maintenance, she claimed maintenance from the applicant. As per contention, the applicant is earning for his livelihood and getting handsome income and, therefore, he is able to pay separate maintenance. On appreciating the evidence, Rs.5000/- per month towards maintenance and Rs.2000/- towards house rent and Rs.50,000/- towards compensation were granted to the non-applicant.

5. The applicant challenged the said order only on the ground that the competent court i.e. Judge of the Family Court declared the marriage of the applicant and the non-applicant *null and void* and, therefore, the non-applicant is not entitled for any maintenance.

6. Perusal of the evidence on record reveals that the application before the Family Court was decided without any evidence of the non-applicant. It is decided *ex parte* as the non-applicant has not contested the said application. Only on

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the basis of the evidence of the applicant, the marriage was declared *null and void*. The allegation levelled against the non-applicant for declaring the marriage *null and void* is that she was having affair with one boy prior to her marriage with the applicant. As far as this allegation is concerned, the applicant deposed before the Family Court on the basis of the information received by him. He testified that he came to know from villagers residing in the village where her parents are residing and, thereafter, the non-applicant has also disclosed to him. Admittedly, the evidence of the applicant remained unchallenged.

7. It is pertinent to note that in *ex parte* proceeding, on the basis of the sole evidence of the applicant, the marriage was declared *null and void*. The applicant has not adduced any evidence though he has levelled severe allegation against the non-applicant.

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When a husband levels serious allegations of such a nature, onus on the husband is very heavy.

In *ex parte* proceeding, the plaintiff retains the burden of proof to substantiate their claims, even in the absence of the defendant.

8. It is well settled that for sustaining *ex parte* decree, it is incumbent upon successful party to show presence of adequate evidence to sustain findings. Merely because one of parties is absent would not *ipso facto* leads to conclusion that the evidence adduced by successful party supports his/her case.

9. It is equally well settled that mere fact that applicant/plaintiff/petitioner has chosen to adduce some evidence cannot be itself entitled him to an *ex parte* decree. Even, the decree has to be passed only on the basis of reliable evidence. It is duty caste on the court to ensure that in *ex parte* cases decree is based on cogent and reliable evidence.

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10. In the present case, besides the evidence of the applicant, no other evidence is adduced by the applicant to substantiate allegations that the non-applicant was having affair prior to her marriage. Admittedly, no direct evidence would be available. When the applicant came with a case that he came to know from villagers about the said fact, not a single villager is examined by the applicant. The evidence of the applicant is also vague in nature. No specific instances are narrated by him to substantiate the allegation of the affair.

11. Learned JMFC at Katol considered that the non-applicant is residing along with her parents owing to intolerable ill-treatment and version of the non-applicant has not been impeached during the cross examination. He was serving with a company and drawing handsome salary. He was also earning some amount from residential premises given on rent. The non-applicant has not denied that he is serving in the company and by considering the income of the applicant,

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the order of maintenance was passed in favour of the applicant. When the said order was challenged before learned Additional Sessions Judge, said learned Judge has also not taken into consideration the definition of The Protection of Women from Domestic Violence Act. Admittedly, the decree passed in Petition No.A-292/2017 is not challenged by the non-applicant. The cross examination of the non-applicant was taken and she denied all suggestions. Though the applicant has taken a plea that the non-applicant was having illicit relations with a person, but he has not examined any witness in support of his contentions and only relied upon his own evidence which is not substantiated by the independent witness. Thus, except the allegation that the non-applicant is not possessing good character, no other evidence is brought on record. In this view of the matter, learned Additional Sessions Judge has maintained the order granting maintenance by considering the income of the applicant.

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12. Perusal of the entire evidence and considering the fact that the non-applicant who is wife has no source of income to lead her life, learned Judge of the Family Court granted maintenance @ Rs.5000/- per month towards maintenance and Rs.2000/- towards house rent and Rs.50,000/- towards compensation. I do not find any illegality in the order passed by both learned Judges below. Thus, the revision being devoid of merits is liable to be dismissed and the same is **dismissed**.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!