



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

CRIMINAL REVISION APPLICATION NO. 10 OF 2024

Rajesh Kashinath Kamble

Vs.

Nalini w/o Rajesh Kamble (Nalini d/o Nanarao Wankhade) and another

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

Court's or Judge's orders

Mr. M. V. Rai, Counsel for the applicant.

Ms. P. M. Mane, Counsel h/f Mr. S. D. Chande, Counsel for the non-
applicant Nos.1 and 2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 06/01/2025

1. By preferring this revision, the applicant has challenged the order passed by the Family Court, No.3, Nagpur by which the petition of the non-applicants is partly allowed and it was directed that the applicant shall pay monthly maintenance of Rs.5,000/- per month each to the non-applicant No.1 and the non-applicant No.2 from the date of petition i.e. 24.06.2013. The amount whatever paid by the applicant during pendency as per the order dated 07.03.2014 of this Court and order of the Family Court and the order of this Court, same shall be adjusted while calculating the arrears of maintenance and also directed to pay the costs of Rs.5,000/-.

2. Heard learned Counsel for the applicant who submitted that the marriage between the

applicant and the non-applicant No.1 is not disputed. It is also not disputed that she had filed an application under Section 125 of the Code of Criminal Procedure (for short 'Cr.P.C.') for grant of maintenance bearing Petition No.E-309/2013 on 24.06.2013. On an allegation that the applicant was addicted to the bad vices like consumption of the liquor and was suspecting her character and caused cruelty to her. The Family Court has awarded the maintenance which was challenged before this Court and as per the order of this Court again the petition was remanded back. After remanding back the petition, again the non-applicants filed an application for grant of adjournment and which was rejected, the petition was dismissed. After three years, the petition was again restored and no opportunity was granted to the present applicant to cross-examine the witness and hurriedly the judgment was passed. He submitted that there are serious allegations against the present non-applicant No.1 that she was living in illicit relationship and also given birth to a child. The birth certificate which is material evidence requires to be adduced and therefore, opportunity is to be granted to the present applicant to cross-examine the witness. He submitted that in view of that the matter be remanded back to the Family Court and the present applicant will cooperate with the Family Court to dispose of the petition as early as possible.

3. Learned Counsel for the non-applicants strongly opposed the said petition on the ground that the applicant has not paid the arrears of the amount. The Family Court has rightly considered the evidence and granted the maintenance which is a very meager amount. Thus, the petition is devoid of merits and liable to be dismissed. She also prayed that the applicant be directed to pay the maintenance amount which is due from him.

4. After hearing the learned Counsel for the applicant and the learned Counsel for the non-applicants and perused the impugned judgment as well as the Roznama. From the impugned judgment, it reveals that the marriage between the parties was solemnized on 21.06.1994, is not disputed. It is also not disputed that there was a discord between them and therefore, she filed an application under Section 125 of Cr.P.C. for grant of maintenance on an allegation that the present applicant is a habitual drinker and under the influence of liquor, he used to ill-treat. As the present applicant failed to file the written statement in that application, the matter was decided without written statement. The said order was challenged before this Court, in Criminal Revision Application No.179/2014 wherein this Court has set aside the order of the Family Court and directed to give an opportunity to the present applicant and to decide the matter. Thereafter, the present applicant has filed his reply

before the Family Court and denied the allegations of cruelty. During the pendency of the said petition, as the present non-applicants failed to adduce the evidence and filed an application for adjournment on 05.02.2019 the same was rejected and the petition was dismissed for want of evidence. On 17.09.2022 she filed a petition for restoration of the same and accordingly, the same was restored. On 11.10.2022 both parties were absent. Notice was issued to the present applicant on 21.10.2022 and thereafter, on various occasions the absence of both the parties was recorded. On 25.01.2023 no cross-order was passed below Exh.14. As the present applicant failed to appear, the matter was decided without the cross-examination of the non-applicants.

5. The learned Counsel has invited my attention towards the one birth certificate which shows that one Nalini Tirki has given birth to a child on 19.06.2001. The name of the father is mentioned as George Tirki. Learned Counsel for the applicant submitted that there is a specific defence of the present applicant that the present non-applicant No.1 was living adulterous life and was residing at the house of said Tirki and an opportunity is to be granted to him to adduce the evidence. There is no dispute as to the fact that after restoration, notice was issued to the present applicant, but the Roznama nowhere reveals that whether the notice was served upon the present applicant or not. On various

occasions, the absence of both the parties appear to be recorded. Considering the nature of the defence of the present applicant, one opportunity is required to be granted to the present applicant. At the same time, applicant has to deposit 50% of the amount of the arrears under protest before the trial Court. The non-applicants shall be permitted to withdraw the said amount subject to the final disposal of the petition before the Family Court. In view of that, I proceed to pass following order:

ORDER

- (i) Criminal Revision Application is allowed.
- (ii) Petition No.E-309/2013 is remanded back to the Family Court, No.3, Nagpur.
- (iii) Family Court No.3, Nagpur shall give an opportunity to the present applicant to cross-examine the non-applicant and her witnesses and to adduce his evidence in support of his contention.
- (iv) The Family Court No.3, Nagpur shall further permit both the sides to adduce any additional evidence if they want to adduce.
- (v) Both parties shall cooperate with the Family Court to dispose of the matter at the earliest.
- (vi) The 50% of the amount of the arrears shall be deposited by the present applicant before the Family Court No.3, Nagpur under protest and the non-applicants will be at liberty

to withdraw the said amount subject to the final outcome of the petition.

(vii) The parties to appear before the Family Court No.3, Nagpur on 13.01.2025.

The revision application is disposed of.

(URMILA JOSHI-PHALKE, J.)