

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL REVISION APPLICATION NO. 74 of 2020

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AJITBHAI MOHANBHAI PARGHI
Versus
STATE OF GUJARAT

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Appearance:

JATIN V YADAV(8946) for the Applicant(s) No. 1
MR SURAJSIKH B MATIEDA(10499) for the Applicant(s) No. 1
MS MAITHILI MEHTA, APP (2) for the Respondent(s) No. 1
RULE SERVED BY DS(65) for the Respondent(s) No. 2

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CORAM: HONOURABLE DR. JUSTICE A. P. THAKER

Date : 03/09/2020

ORAL ORDER

1. Being aggrieved and dissatisfied with the order of maintenance dated 27.11.2019 passed by learned Judge, Family Court No.2, Ahmedabad, in Criminal Misc. Application No.218 of 2018, whereby the petitioner is ordered to pay maintenance of Rs.4,000/- per month to his wife, the petitioner has filed this revision under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973.

2. For the brevity and convenience the parties are referred to as "husband" and "wife" respectively.

3. It is contended by the husband that his wife has filed an application before the Family Court, Ahmedabad, on the ground that she was deserted by the husband and the husband has not paid any maintenance to her. It is the contention of the husband that marriage between the parties was solemnized on the false statement of the wife that she is unmarried and, according to him, while form is filled up for registration of marriage, she has shown herself as unmarried, but in reality she had married with another person earlier and she got divorce from that fellow. It is contended that this fact has been concealed by her

and, therefore, he has also filed criminal complaint against the wife for cheating and the same is pending. It is further contended by the husband that the wife is serving in a company and is getting Rs.9,000/- as income from that job and, therefore, she is not entitled to get any maintenance from him. It is also contended that he was earlier working as RTO agent and since the system of on-line is introduced, he has no such income as has been alleged by the wife. It is also contended by husband that, in chief-examination, wife has made false statement regarding dishonour of the cheque given by him, however, she has admitted in cross-examination that cheque which she received from the husband has been encashed.

3.1 It is also contended by the husband that he has also filed appropriate civil suit for declaring the marriage between the parties as null and void and that suit is still pending.

3.2 It is the contention of the husband that all these facts have not been properly appreciated by learned Family Court and the Family Court has committed serious error of facts and law in holding that the wife is entitled to get maintenance as well as regarding facts of granting maintenance of Rs.4,000/- per month. He has prayed to allow present revision application and set aside the impugned order dated 27.11.2019 passed in Criminal Misc. Application No.218 of 2018 by learned Judge, Family Court, Ahmedabad.

4. Heard learned advocate Mr.Jatin Yadav for the husband and learned APP for the respondent-State through video conferencing. Though rule is served to the wife, she has chosen not to appear.

5. Mr.Jatin Yadav, learned advocate for the husband submitted the same facts, which are narrated in revision memo and he has referred to

the impugned judgment as well as deposition of both sides and the fact regarding filing of criminal complaint of cheating against the wife and filing of suit for declaration as nullity of marriage between the parties. He has prayed to allow present revision application.

6. At the outset, it is necessary to observe that this is a revision application and the power of revisional Court is very limited. It is also settled law that if the judgment and order of the trial Court is based on proper appreciation of evidence on record, then revisional Court cannot interfere with such finding of the trial Court.

7. Considering aforesaid legal principles and the submissions made by learned advocate Mr.Yadav and on perusal of the material placed on record, which consists of copy of Criminal Misc. Application No.218 of 2018 and reply filed thereto by the husband as well as deposition and documentary evidence, it clearly appears that there are certain admitted facts, which are narrated herein below:-

- i) Marriage between the parties was solemnized on 15.10.2016.
- ii) Wife and husband lived together for some time.
- iii) Thereafter, she has shifted to her parental home and she is residing there.
- iv) Wife is working in a company and is earning salary.
- v) There is an admission on the part of the husband that he was working as RTO agent.
- vi) Husband has filed Civil Suit for declaration to the effect that marriage between the parties is void.

8. On perusal of entire material on record, it appears that the husband has heavily relied upon the statement made by the wife during her chief-examination to the effect that cheque given by the husband is

dishonoured and, during her cross-examination, she has admitted that the cheque was encashed. Thus, solely on this ground, it is argued that the wife is making false statements and she is not entitled to get any maintenance from the husband. It is well settled that entire evidence, which includes chief-examination, cross-examination and re-examination if any, is required to be appreciated. Lapses or incorrect statement or false version put forward in chief-examination is not sufficient to discard other facts narrated in the deposition of the wife. Therefore, the stand taken by the husband against such statement cannot be accepted and the argument that the wife is not entitled to receive maintenance due to this, is devoid of merits.

9. It also appears that while allowing the application for maintenance of wife, learned Family Court has appreciated entire evidence on record in proper perspective and has not committed any serious error of law and facts. It is incumbent upon the husband to lead evidence with regard to his income. In the present case, wife has fairly admitted that she is working in a private company and is getting Rs.5,000/- per month. As against this, husband has merely stated that he was working as RTO agent and now due to coming into operation of on-line system, he is not getting that much income as has been alleged by the wife. At the same time, the husband has not led any evidence regarding his actual income. Under the circumstances, observations of learned Family Court regarding income of the husband is just and proper. Not only that till the time the suit filed by the husband is decided by the learned Family Court, it is the liability of the husband to pay maintenance to his wife.

10. In view of above, when the Family Court has properly appreciated the evidence on record, there is no scope for interference in the finding of the Family Court. Therefore, present revision application is devoid of

merits and the same is hereby dismissed. Rule is discharged. No order as to costs.

RS MALEK/ RAVI P. PATEL

(A. P. THAKER, J)

