
(2016) 10 GUJ CK 0029
In the Gujarat High Court

Case No : Criminal Revision Application (For Maintenance) No. 585 of 2015

Narendrabhai Laxmandas Rijvani

APPELLANT

Vs

Tinaben @ Divyaben D/o. Chandrakant V. Longani

RESPONDENT

Date of Decision : 13-10-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2017) 169 AIC 281

Hon'ble Judges : Mr. S.G. Shah, J.

Bench : Single Bench

Advocate : Mr. Rajesh K. Kanani, Advocate, for the Applicant No. 1; Mr. K.P. Raval, A.P.P, for the Respondent No. 3; Mr. Anand B. Gogia, Advocate, for the Respondent No. 1 - 2

Final Decision : Dismissed

Judgement

Mr. S.G. Shah, J. (CAV) - The petitioner is the husband whereas respondent no.1 is his wife and respondent no. 2 is their minor daughter. Respondent no. 3 State is a formal party. Heard learned advocate Mr. Rajesh K. Kanani for the petitioners and learned advocate Mr. Anand B. Gogia for respondent no. 1 and 2 whereas learned APP Mr. K.P. Raval for respondent no. 3 State. Perused the record.

2. The petitioner herein has challenged the judgment and order dated 13th August, 2015 by the Family Court of Rajkot in Criminal Misc. Application no. 766 of 2011 whereby the Family Court has directed the present petitioner, the husband, to pay an amount of Rs. 6,500/- towards monthly maintenance of wife and Rs. 4,000/- towards monthly maintenance of minor daughter. The application was preferred by the wife and minor daughter under Section 125 of the Code of Criminal Procedure and therefore proceedings need to be completed in summary manner and as confirmed by the Hon'ble Supreme Court of India in the case of Sunita Kachwaha v. Anil Kachwaha reported in AIR (2015) SC 554, at this stage minute details of matrimonial disputes need not be considered in detail, more particularly when Trial Court has considered all rival facts and submissions in

detail while passing the impugned judgment. Therefore, what is required to be looked into in such revisional jurisdiction is only limited issue that whether there is irregularity or illegality in any manner whatsoever so as to result into injustice to the aggrieved party.

3. Therefore, if we peruse the impugned order which becomes clear that the Trial Court has awarded quite reasonable amount towards maintenance of wife and minor child since during these days considering the inflation in the market an amount of Rs. 6,500/- for human being to survive is quite nominal whereas an amount for maintenance of minor is only Rs. 4,000/- though in fact, minor may need better support for his growth and on all count. It is also undisputed fact that the word maintenance is not restricted to expenditure for meal by such deserted wife and minor child but it includes for every amenities in life which was available to the wife and minor when they are staying with the husband. Therefore, the word maintenance certainly includes the requirement of wife for everything including food and residence, transportation, medicine, education of minor, etc.

4. For arriving at such figure the Family Court has relied upon the evidence of the wife when husband has failed to disclose the income by proper and reliable evidence. It has come on record that petitioner is having a Novelty Store namely "Ganesh Novelty Store", but it is the case of the petitioner that the store is owned by his father and he is simple serving there and that his income is not more than Rs. 5,000/- per month. However, when petitioner is working with his father in a novelty store he could have certainly proved his income by documentary evidence like books of accounts or partnership deed to show that father is paying only Rs. 5,000/- to the married son having a minor child. Therefore, when petitioner has allowed the Trial Court to presume his income, which is permissible under law. The Trial Court has considered the income of the petitioner as Rs.30,000/- per month while awarding the amount of maintenance as aforesaid.

5. During the submissions of the petitioner it has been discussed that for non-payment of arrears practically petitioner has been arrested and sent to jail and therefore petitioner needs an order to release him on bail. However for either purpose i.e. either to be released on bail or for admission of such revision petition, it is disclosed by the learned advocate for the petitioner that petitioner is not able to deposit any amount towards maintenance of either of the respondent. The record also shows that pending this revision the matter was referred to mediation centre for settlement, but the matter could not be settled by mediation also.

6. Therefore, when there is no irregularity or illegality in the impugned order and when there is no reason or substance to reduce the amount of maintenance I do not see any reason to interfere with in the impugned order. Though it is subsequent development it can also not be ignored that petitioner is not ready or willing to pay any amount towards maintenance pending this revision or even for

releasing on bail.

7. For my decision I am relying upon the following decisions:

1) Kaushalya Devi and others v. Baijnath Sayal and others reported in AIR (1961) SC 790 and

2) Dhirendra Kumar Garg and others v. Smt. Sugandhi Bai Jain reported in AIR (1989) SC 147

8. In view of the above facts and circumstances there is no substance in revision petition and hence revision petition stands dismissed.