
(2014) 02 GUJ CK 0055
In the Gujarat High Court

Case No : Criminal Revision Application (For Maintenance) No. 746 of 2013

Pareshbhai Devsibhai Tilva

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Citation : (2014) 02 GUJ CK 0055

Hon'ble Judges : S.H. Vora, J

Bench : Single Bench

Advocate : Y.A. Ratanpara, Advocate for the Applicant No. 1, Advocate for the Appellant; Y.V. Vaghela, Advocate for the Respondent No. 2 and Ms. Jirga Jhaveri, APP for the Respondent No. 1, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

S.H. Vora, J.

Rule. Learned APP Ms. Jhaveri waives service of notice of rule for the respondent State.

1. Challenge in this Criminal Revision Application is the impugned judgment and order dated 29.1.2013 passed by the learned Principal Judge, Family Court, Junagadh in Criminal Misc. Application No. 618 of 2011, whereby the learned Family Judge has awarded amount of maintenance of Rs. 4000/- per month to the respondent wife.

2. On perusal of the impugned order, it transpires that the learned Principal Judge, Family Court, Junagadh awarded amount of Rs. 4000/- per month towards monthly maintenance to the respondent No. 2--wife without recording any finding as to monthly income of the petitioner husband. Under the circumstances, reliance placed by the learned Judge, Family Court, Junagadh upon principle laid down in case of Sucheta Zutshi Nee Pandita Vs. Pankaj Pandita, is misplaced and it cannot have been applied in absence of any specific evidence as to monthly income of the petitioner being assessed by the trial Court

in light of evidence adduced by the parties.

3. Under the circumstances, it would be appropriate to call upon the parties to prove petitioner's monthly income by producing relevant evidence. So, it would be appropriate to modify the impugned order by remanding the matter to the learned Principal Judge, Family Court, Junagadh for reconsideration only on the issue of deciding the monthly income of the husband and thereafter, the learned Principal Judge, Family Court, Junagadh may assess the amount of maintenance to be awarded to the wife. Needless to say that there are several means for both the parties to prove petitioner's income and therefore, the matter is remanded to the learned Judge, Family Court, Junagadh for deciding only issue of monthly income of the husband so as to correctly and legally arrive at specific amount to be paid to the respondent No. 2 wife afresh and the learned Principal Judge, Family Court, Junagadh shall decide the same in accordance with law uninfluenced by the observations made in the impugned order.

4. Pending hearing of the maintenance application afresh, the impugned order is hereby modified to the extent that the petitioner husband shall pay Rs. 3000/- to the respondent No. 2 wife by way of monthly maintenance and the same shall be treated as interim maintenance till fresh decision in this matter is taken, as aforesaid. It is clarified that any amount of maintenance paid till today and further that will be paid to the respondent No. 2 till final decision on the issue in question shall be adjusted/accounted. It is also clarified that if any amount is paid by the petitioner husband, during the pendency of the maintenance petition u/s 125 of the Code and pending hearing of the present application, the respondent No. 2 - wife will be at liberty to withdraw such amount by Account Payee Cheque on proper verification.

5. In the result, the present petition is hereby partly allowed and the impugned order is modified in the above term. The learned Principal Judge, Family Court, Junagadh is directed to allow both the parties to lead evidence to prove the income of the petitioner and then decide the final maintenance amount in accordance with such income that may be proved by the party concerned as per the evidence that may be led by the parties. Rule is made absolute to the aforesaid extent.