

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL REVISION APPLICATION (FOR MAINTENANCE) NO. 326 of
2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE S.G.SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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SARFARAZ ISHWARSINHJI RANA....Applicant(s)

Versus

STATE OF GUJARAT & 3....Respondent(s)

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Appearance:

MR PUSHPADATTA VYAS, ADVOCATE for the Applicant(s) No. 1

DS AFF.NOT FILED (N) for the Respondent(s) No. 3 - 4

MR MRUGEN K PUROHIT, ADVOCATE for the Respondent(s) No. 2

MS JIRGA JHAVERI, ADDL. PUBLIC PROSECUTOR for the Respondent(s)
No. 1

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CORAM: HONOURABLE MR.JUSTICE S.G.SHAH

Date : 30/01/2015

CAV JUDGMENT

1. Applicant is husband and respondent in the impugned order, whereas respondent No.2 is wife and respondent Nos. 3 and 4 are their minor children and applicants in the impugned order dated 31.03.2013 by the Family Court, Anand in Criminal Misc. Application No. 379 of 2013 whereby applicant is directed to pay Rs.5000/- for wife and Rs.3000/- for each minor children i.e. in all Rs.11,000/- towards their maintenance from the date of original application dated 13.02.2012 being old Criminal Misc. Application No. 39 of 2012.

2. The grievance of the applicant is mainly on the quantum of maintenance contending that trial Court has committed an error in presuming his income as Rs.25,000/- to 30,000/- per month without any such evidence on record and, that, though he has paid certain amount to his wife and children towards their maintenance, the trial Court has failed to appreciate such evidence and to consider reduction in maintenance pursuant to such voluntary payment. It is further submitted that trial Court has not considered the fact that he is not having any other property and earning capacity and that he is doing small business of re-selling vehicles in the firm of his maternal uncle in partnership of three persons and, therefore, he is getting only 1/3rd amount after deducting expenditure.

3. However, if we peruse the record and certified copy of deposition of applicant – husband herein, before the trial Court, it becomes clear that though applicant – husband has pleaded that he is not earning Rs.25,000/- to 30,000/- even in this revision

application he has never bothered to disclose his earning in proper perspective i.e. at least in minimum words. Nothing is disclosed either in the reply or in his deposition in form of affidavit before the trial Court when it is stated by him that he is doing business of resale of vehicles with his maternal uncle and getting only 1/3rd shares since there are three partners. However, he has no option but to admit that they have some agricultural land though it is stated that it has not been cultivated by him.

3.1 To show the payment to the wife, applicant – husband has produced photocopy of counter-slip of pay-in of the bank. However, there is no clarity in the evidence or in the impugned judgment about the genuineness and reasons for such payment, if at all it is paid in favour of the wife.

3.2 On perusal of available record, it becomes clear that there is no substance in the revision application, in as much as, applicant herein i.e. husband has never bothered to prove requisite information before the trial Court, so as to award appropriate amount of maintenance to the deserted wife and children. If we peruse the copy of deposition of the present applicant, on the contrary it becomes clear that applicant – husband has never bothered to keep his wife and children and so far as quantum is concerned though he has stated that he is doing the business of re-selling of vehicles in the name of New Lucky Auto Consultant, he has not disclosed that what he is getting from such business. Therefore there is no illegality or irregularity in the impugned judgment in presuming the income of a person as Rs.25,000/- to 30,000/- considering his properties and earning activities. It is clear and obvious that applicant – husband has tried to take chance both before this Court as well as before the trial Court by giving

minimum information to see that there would be minimum amount of maintenance. Though he has stated that he is not earning Rs.25,000/- to 30,000/- from agriculture and resealing of vehicles; when he is not disclosing his income he has audacity to say that his wife is earning Rs.15,000/- by teaching, knitting, running beauty parlour, serving in tuition class and serving in cloth store and, therefore, her income is more than his income and, therefore, she is not entitled to get any maintenance. It is unfortunate that husband is claiming that wife is doing five activities for her maintenance and earning Rs.15,000/- but I am unable to maintain my minor children because I am not earning and I have responsibility of my parents.

3.3 However, there is no evidence before the trial Court either to presume against wife or to prove specific income of the wife but when there is an evidence before the trial Court regarding activity of the husband, trial Court has rightly presumed the income of the husband and awarded monthly maintenance as per impugned order and, therefore, there is no substance in the revision application, since there is neither irregularity nor illegality in the impugned order which is based upon evidence before the trial Court.

3.4 However, considering the rival submissions, it is required to be observed that if at all applicant has paid certain amount towards maintenance, proof of which is produced on record of this revision application, then he would certainly be entitled to get set off of that amount before executing the order.

3.5 Therefore, applicant is entitled to get set off of the amount which is already paid by him during the pendency of application for maintenance before trial Court. Therefore, while executing the

impugned order the executing Court shall give benefit of such payment by giving set off. For the purpose applicant has to prove the details of such payment with actual figures, so as to enable the trial Court in passing appropriate order.

3.6 Since applicant has also produced one affidavit of his maternal uncle before this Court, when such witness is not examined before the Family Court, such affidavit cannot be taken into consideration at this stage. However, if at all applicant is entitled to get the impugned order modified under Section 127 of the Code of Criminal Procedure then he may prefer such an application disclosing all relevant information with reasons and why it could not be produced and disclosed before impugned order. As and when and if such application under Section 127 of the Code of Criminal Procedure is filed, the only benefit that may be extended to the present applicant is to the effect that in event of such application under Section 127 the trial Court shall decide such application without being influenced by filing of present revision and its dismissal by this order, however, in accordance with law applicable to such proceedings.

4. Learned advocate for the respondent – wife is relying upon following decisions:

- (1)**Vanitaben Naranbhai vs. N. R. Makwana reported in 1991 (1) GLH 227**, wherein criteria for fixing the maintenance is considered in detail and the term “sufficient means” has been explained.
- (2)**Shabana Bano vs. Imran Khan reported in 2010 (1) GLH 416** to ascertain the rights of muslim woman to get maintenance.

- (3) **Seenora Benzamin Chokar vs. Benzamin Manase Cholkar reported in 2014 (1) GCD 163**, wherein provisions of Section 114 of the Evidence Act with reference to such proceedings has been dealt with for consideration of presumption regarding income.
- (4) **Rajendrabhai Arvindbhai Ghadiya vs. Niranjanaben W/o. Rajendrabhai Ghadiya reported in 2014 (1) GCD 133.**

5. Applicant is also relying upon the decision in case of **Chanchalben Purusottambhai Patel vs. Madhukantbhai Purusottam Patel reported in 1995 (2) GLR 1917**, which deals with quantum of maintenance in such cases.

6. Since I am dismissing the revision application both on factual aspect as well as on such legal issues, it would not be necessary to burden this judgment by reproducing more details from such cited cases.

7. In view of above facts and circumstances, present revision application stands dismissed. However with observations as above regarding directions to the executing Court to extend the benefit of set off of the amount which is paid by the husband to the wife if there is proper proof of such payment and application under Section 127 of the Code of Criminal Procedure, if filed, is to be decided without being influenced by this order and preferably within 6 months from the date of filing. Rule is discharged.

(S.G.SHAH, J.)

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