

HIGH COURT OF GUJARAT**Bench: Honourable Mr. Justice J. C. Doshi****Date of Decision: 15th February 2024**

R/CRIMINAL REVISION APPLICATION NO. 234 of 2012

KHOKHAR BHIKHABHAI S/O JINABHAI CHAKUBHAI ...PETITIONER**VERSUS****KHOKHAR SANGEETABEN BHIKHABHAI & 3 other(s)
...RESPONDENT(S)****Legislation:**

Hindu Adoption and Maintenance Act, 1956, Section 20(3)

Subject: The petition seeks to quash the Family Court's order, which granted maintenance to the respondent No.3, the petitioner's stepdaughter, from her mother's previous marriage.**Headnotes:**

Marriage and Maintenance Claim – Petitioner denies marriage with respondent No.1 and contests maintenance claim for respondent No.3, a child from respondent No.1's previous marriage – Marriage registration confirmed, petitioner assumed responsibility for respondent No.3's maintenance in a compromise deed. [Para 2, 8]

Financial Condition of Parties – Petitioner claims financial incapacity due to previous wife's cancer treatment expenses and current unemployment – Respondent No.1's employment status unclear, but deemed capable of self-support. [Para 5, 8]

Legal Basis for Maintenance – Family Court's grant of maintenance for respondent No.3 upheld – Daughter's entitlement to maintenance from father until marriage, as per Section 20(3) of the Hindu Adoption and Maintenance Act, 1956 and Supreme Court precedent in Jagdish Jagtavat v. Manjulata and others (2002) 5 SCC 422. [Paras 8-10]

Decision – High Court dismisses the petition, upholds the Family Court's order granting maintenance of Rs.1500 per month to respondent No.3 from 28.8.2008 till realization – Respondent No.1 not entitled to maintenance. [Para 11]

Referred Cases:

- Jagdish Jagtavat v. Manjulata and others (2002) 5 SCC 422

Representing Advocates:

Mr. Vasant Shah for the petitioner

Ms. Bhavika H. Kotecha for respondent Nos. 1, 2, 3

Mr. H.K. Patel, Addl. Public Prosecutor for respondent No. 4

ORAL JUDGMENT

1. By way of this petition, the petitioner prays to quash and set aside order dated 16.3.2012 passed by the Family Court, Ahmedabad in Criminal Misc. Application No.2094 of 2008 granting maintenance of Rs.1500/- per month to the respondent No.3 from 28.8.2008 till realization.

2. The facts of the case are that the petitioner married to respondent No.1 by so called registered deed on 3.12.2007 and thereafter, they started living together. This is the second marriage of both the parties and respondent Nos.2 and 3 are the son and daughter of the respondent No.1 from her previous marriage. But two months after marriage, both the petitioner and respondent No.1 got separated and thereafter, the respondent No.1 filed aforesaid Criminal Misc. Application for maintenance.

3. Upon filing of aforesaid Criminal Misc. Application, a show cause notice has been issued to the petitioner and the petitioner appeared through advocate and filed reply at Exh.7 and contested the application, whereby he denied marriage with the respondent No.1 herein and also denied relationship with respondent No.1 as husband and wife.

4. The learned Family Court, Ahmedabad by impugned judgment and order, has been pleased to partly allowed the application and granted maintenance of Rs.1500/- per month to the respondent No.3 from 28.8.2008 till realization. Hence, present petition.

5. Learned advocate for the petitioner would submit that the learned trial Court has not considered the reply of the petitioner at Exh.7. He would further submit that the petitioner has spent huge amount for treatment for his earlier wife, who was suffering from cancer and at present, he is without any job and has no source of income. He would further submit that the petitioner has filed his examination-in-chief on oath, which is not challenged by the otherside and

therefore, as per the Evidence Act, his evidence remained unchallenged and should be considered fully. He would further submit that the respondent No.1 has failed to prove that she is legally wedded wife of the petitioner. Upon such submission, learned advocate for the petitioner submits to allow this petition.

6. Learned advocate for the respondent Nos.1 to 3 and learned Additional Public Prosecutor appearing on behalf of the respondent-State have opposed this petition and pray this Court to pass necessary order.

7. Heard the learned Advocates for the respective parties and perused the papers.

8. Having heard the learned advocate for the parties, at the outset, it is undisputed fact that the petitioner and the respondent No.1 are legally married husband and wife as per the marriage registration annexed at Exh.5/2. During the cross-examination of the respondent No.1, she has stated that she has left the job. However, there is no evidence on record to show that the respondent No.1 has also left the job. Thus, the learned trial Court has rightly come to the conclusion that the respondent No.1 is a earning lady and is capable of earning her livelihood and therefore, not entitled for maintenance from the petitioner. So far as maintenance of respondent No.3 is concerned, as per compromise deed at Exh.5/3, the petitioner has taken the responsibility to maintain respondent No.3, which fact is not specifically denied by the petitioner in his affidavit on oath or statement. At the time of marriage i.e. 7.12.2007, the respondent No.3 was aged 13 years and at the time of passing the impugned order, the respondent No.3 is aged 18 years.

9. At this juncture, it is worth mention judgment of the Hon'ble Apex Court in case of Jagdish Jagtawat Vs.Manjulata and others reported in (2002) 5 SCC 422, wherein the Hon'ble Apex Court has held that in case if the daughter is major and unmarried, she is entitled to be maintained by her father. Even as per section 20(3) of the Hindu Adoption and Maintenance Act, 1956, the daughter is entitled for maintenance till she marries.

10. Thus, considering the para 13 of the impugned order, there is no error much less patent error committed by the learned trial Court in passing the order granting maintenance of Rs.1500/per month to the respondent No.3 from 28.8.2008 till realization.

11. Under circumstances, present petition fails and stands dismissed.
Rule discharged.

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