

IN THE FAMILY COURT MUMBAI AT BANDRA

PETITION NO.A-2050 OF 2010

Mr. N ... Petitioner

Vs.

Mrs. N ... Respondent

CORAM : HIS HONOUR JUDGE

SHRI. S. R. KAFRE

DATED : 24th DECEMBER, 2013.

ORDER BELOW EXH.56

This is an application filed by the petitioner for taking action for perjury against respondent-wife.

2. According to the petitioner he has filed this petition for decree of divorce. The respondent had filed interim application for maintenance pendente lite on 28-4-2011 stating in para No.10 of said application, "I have no source of income and have become burden on my parents, it is embarrassing and ridiculous situation as I am being compelled to depend upon parents for my daily needs, after marriage". The respondent has also mentioned, "I do not have any other source of income."

3. According to the petitioner, the respondent used to work as a Teacher in a school prior to her marriage is admitted position. The petitioner had filed an application for review of order by producing documentary proof that the respondent is working as a school Teacher and her photograph appears in the magazine of the

school. The respondent is doing a job as a pre-primary Teacher at Thakur Public School, Kandivali (E) and having permanent job and also having bank account in Saraswat Bank, Kandivali (E) Branch, vide salary account No.4963957. The respondent had refused to produce any document in spite of the petitioner has filed on record the book published by the school, where the respondent is working as a Teacher. The respondent has filed her affidavit as per the direction of this Court, which speaks about her employment. It is admitted that she was working full-time and getting Rs.7500/- per month but in spite of calling upon her to produce her bank statement and income proof, she refrained from doing so.

4. According to the petitioner, after the witness summons and a document brought on record, it is revealed by the order of this Court dated 7-5-2013 that the respondent is a liar and she obtained the interim maintenance order by misguiding this Court by purposefully stating lie on oath and concealing the material fact by not producing documents which are in her possession and made the petitioner to suffer. Therefore, the petitioner has requested for taking legal action against the respondent under the provisions of Section 195 and Section 340 of Criminal Procedure Code.

5. After filing of this application, my learned predecessor has passed order dated 3-7-2013 of issuance of notice under Section 340 of Criminal Procedure Code. The copy of this application was given to the respondent on the same day i.e. on 3-7-2013. On 5-8-2013 the learned Advocate for the respondent had made a remark on the overleaf of the application that she will argue,

she does not want to give written reply.

6. I have heard learned Advocate Smt. Usha Tanna for the petitioner and learned Advocate Smt. Jivan Vijay for the respondent-wife. The learned Advocate for the petitioner has vehemently argued that, though the respondent has source of income, she has made false averments in her application that she did not have any source of income. She has sworn affidavit with false contents. The learned Advocate has further submitted that while deciding the review application of the husband, this Court has made observations in respect of the false averments made by the respondent and therefore, it is necessary to initiate action of perjury against the respondent-wife.

7. Smt. Jivan Vijay, learned Advocate, appearing for the respondent-wife has submitted that false accusations are made against the respondent. She has filed her documents on record and in view of modified order, the quantum of the maintenance was reduced and this Court, while deciding the review application, has imposed exemplary cost of Rs.5000/- on the respondent and therefore already action is taken against the respondent. Now, there is no need to proceed against the respondent under the provisions of Code of Criminal Procedure. The learned Advocate for the respondent has further submitted that there was no malice or intention to mislead this Court and the bonafide mistake of the respondent be excused.

8. I have given my thoughtful consideration to the submissions canvassed by the learned Advocates for both the

parties.

9. The provisions of Chapter XXVI of Code of Criminal Procedure deal with offences affecting the administration of justice. Section 195 of said Code speaks about prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. The provisions of Section 340 of the Code reads as under :

“Procedure in cases mentioned in Section 195- (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-Section (1) in respect of an offence may, in any case where that Court

has neither made a complaint under sub-Section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, "Court" has the same meaning as in Section 195."

10. In the case in hand the petitioner-husband has filed main petition for divorce under the provisions of Section 13(1)(ia) of Hindu Marriage Act. The respondent has submitted written statement at Exh.12. After the appearance of the respondent, both the parties were referred to the Marriage Counsellor for exploring the possibility of reconciliation and amicable settlement. However, no reconciliation or amicable settlement had taken place. Even after hearing of the argument of present application at Exh.56, I had referred both the parties to Judge Mediator, to work out the settlement between the parties. However, the parties could not come to terms and accordingly Judge Mediator has submitted the report.

11. The respondent had filed interim application No.162 of

2011 (Exh.13) for interim maintenance under the provisions of Section 24 of Hindu Marriage Act. Said application was contested by the petitioner. Said application was decided on 2-3-2012 by my learned predecessor and interim maintenance at the rate of Rs.20,000/- per month was granted to the respondent, from the date of said application i.e. 28-4-2011. The respondent was also given litigation cost of Rs.20,000/-.

12. On 11-5-2012 the petitioner had filed application for review and/or cancellation of maintenance order dated 2-3-2012. The said application was resisted by the respondent by filing her reply on Exh.32 and after hearing both the parties, the said application was decided on 7-5-2013. In view of that order, the quantum of maintenance granted to the respondent was reduced from Rs.20,000/- per month to Rs.13,000/- per month.

13. In the original interim maintenance application at Exh.13 in para No.10 the respondent has stated that she has no source of income and has become burden on her parents, it is embarrassing and ridiculous situation as she being compelled to depend upon parents for her daily needs, after marriage. Further, in para No.13 of said application the respondent has stated that she is a simple graduate and cannot earn her livelihood and it is the duty of the petitioner to provide for the same. While replying these averments, the petitioner had stated in para No.8 of his reply at Exh.17 that the respondent is well educated and accomplish and qualified graduate with expertise in teaching institution and was employed in Nursery Institution and thus the respondent was capable of maintaining

herself and what was stated by her is not true.

14. Now, it is necessary to see what observations are made by my learned predecessor while deciding the review application at Exh.30, in respect of the income of the respondent-wife. The observations made in para No.10 of said order runs as under :

“While disposing interim maintenance application, this Court in para No.4 has observed that there is no record before Court to believe that respondent-wife is an earning member. This observation was based upon statement of respondent and also from the circumstance that there was no record before Court to prove the earning of the respondent. The documents which are referred herein in this order clearly reveal that on the date of passing of the order and on the date of moving an application for interim maintenance, respondent was an earning member, so respondent has misguided this Court to believe that she do not have any income. She has suppressed vital information from the Court that she is earning about Rs.6804/- by being working as a Pre-primary Teacher in a school”.

15. It is settled position of law that while determining quantum of maintenance the regard shall be had to the status and position of the parties, income of both the parties, reasonable wants of the claimant and number of persons dependent upon the payer. The provisions of maintenance are benevolent provisions. These provisions are made to prevent vagrancy of destitute wife and the minor children. The person who is liable to maintain his dependents, has to provide maintenance to his dependents, so that they can keep their soul and body together and they should not face any problem in their day-to-day life. The needy persons are entitled to get the basic

requirements like food, shelter and clothes from the person who is liable to maintain them as per the provisions of law.

16. It is settled principle of law that he who seeks equity, must do equity. The fraud and justice cannot dwell together. The justice seeker must step in the Court with clean hands. The dishonest person cannot be entertained by the Court of law. In matrimonial matters persons come with their family problems before the Court and Court makes every possible attempt to find out solution of their problems. In such circumstances, it is the first and foremost responsibility of the party to tell the truth to the Court, so that Court can go to the root of the matter to solve the real dispute. There should not be game of hide and seek when justice is sought from the Court of law. All the Dharmashastras teach us "सत्यं वदं" "Tell the truth". Foundation of every case must be on true and honest disclosure of facts. No place can be given to lies or falsehood during the course of administration of justice. The person who comes to the Court i.e. house of justice, to seek justice, has to show his bonafides and honesty by making true disclosure of the facts within his knowledge.

17. Here it has been established that the respondent-wife has suppressed vital information from the Court that she is earning about Rs.6804/- by being working as a Pre-primary Teacher in a school. It was the prime duty of the respondent-wife to come in the Court with clean hands by stating that she is earning Rs.6804/- per month. If she wants to claim maintenance from the petitioner, she has to make out a case that it is not possible for her to lead life with

dignity and respect in that amount and the income of the petitioner is at higher side. She has to show the disparity between her income and income of the respondent and by making such type of true disclosure of the facts, she should have claimed maintenance amount from the petitioner. But this has not been happened in this case. The respondent-wife has made false averments in her interim maintenance application by stating that she has no source of income and she is burden upon her parents. She has not taken pain to disclose her income, though it may be meager. On the contrary, she has made false statements on oath.

18. While submitting the application for interim maintenance, the respondent-wife has taken oath and she has sworn affidavit on the application itself. This goes to show that she has made false averments knowingly in a Court proceeding. In such circumstances, prima facie, the offences punishable under Section 177, 181, 182 and 191, read with Section 193 of Indian penal Code are attracted. Because of the false statements made by the respondent in her application for interim maintenance, this Court is misled and misguided and therefore, the petitioner has suffered and he was directed to pay maintenance at the rate of Rs.20,000/- per month.

19. The petitioner was required to file application for review of said order and accepting his contention, the quantum of maintenance was reduced from Rs.20,000/- per month to Rs.13,000/- per month. While deciding the said application, my learned predecessor has imposed exemplary cost of Rs.5000/- on the respondent for making false statements. But it does not mean

that the respondent is absolved from the criminal liability. Therefore, it is necessary to take action against the respondent as per the provisions of Section 195 and 340 of Criminal Procedure Code. The Deputy Registrar of this Court has to file complaint against the respondent in competent Court for the offences discussed above.

20. In view of my foregoing discussion, I come to the conclusion that, the application at Exh.56 deserves to be allowed. In the result, I proceed to pass the following order.

ORDER

1. The application at Exh.56 is allowed.
2. The Deputy Registrar of Family Court, Bandra, Mumbai, is directed to file complaint against the respondent-wife in competent Court, for the offences punishable under Section 177, 181, 182 and 191, read with Section 193 of Indian penal Code.
3. The Deputy Registrar is authorized to take true copies of entire proceedings to file along with the complaint in the competent Court.
4. Inform this order to Deputy Registrar, Family Court, Bandra, Mumbai.

Sd/-24-12-2013
(Subhash R. Kafre)
Judge,

Date : 24th December, 2013

Family Court No.3, Mumbai.