

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.**

Criminal Revision Application No.224 Of 2002.

Gulam Nabi s/o Abbaskhan.

Age : 28 Years., Occ.: Agriculturist.

R/o.: Sarpate, Tal. Amalner, Dist. Jalgaon. :: **Applicant.**

Versus

(1) Maqsoodbee w/o Gulab Nabi.
Age : 25 Years., Occ.: Household.

(2) Sikandar s/o Gulab Nabi.
Age : 3 Years., Occ.: Nil.
Minor, U/G of his real mother,
Applicant No.1.

Both R/o.: Janjala, Tal. Sillod,
Dist. Aurangabad. :: **Non-Applicants.**

Appearance ==>

Mr. B.R. Warma, Advocate for the Applicant.

CORAM : V.M. DESHPANDE, J.

DATE : 3rd FEBRUARY, 2015.

ORAL JUDGMENT :-

Challenge in this Criminal Revision Application is the Judgment and Order dated 26th July, 2002 passed by the learned Principal Judge, Family Court, Aurangabad in Petition No.E-421/2001, by which the learned Judge of Family court partly allowed the Petition filed on behalf of Non-Applicant Nos. 1 and 2 under Section 125 of the Code of Criminal Procedure and, thereby, granted monthly maintenance allowance in their favour @ Rs.500/- and Rs.200/- respectively, from the date of petition.

[2] I have heard Mr. B.R. Warma, learned counsel for the applicant. Non-Applicant Nos.1 and 2 though served, were not represented by anybody.

[3] Mr. B.R. Warma, learned counsel strenuously urged before me that, Judgment and Order passed by the learned Judge of Family Court cannot be stand to the scrutiny of law, in as much as, the learned Judge of family court has not correctly appreciated the evidence brought on record.

[4] The applicant is the husband of Non-Applicant No.1 and father of Non-Applicant No.2. There is no dispute about the relations between the parties. Even there is no dispute about existence of marital tie between the applicant and Non-Applicant No.1.

[5] The Non-Applicants were required to file Petition No.E-421/2001 for grant of monthly maintenance allowance in the Family Court, Aurangabad. Said proceedings was compromised on 8th April, 2001 and as per the agreement, Non-Applicant No.1 went with the present applicant to resume cohabitation however, she could reside there only for two months; since that time, it was revealed to her that applicant has already married with Shakilabee. It was further stated that, therefore, she was driven out from her matrimonial house. Only contention of the learned counsel for the applicant is that, once the matter was compromised and Non-Applicant No.1 started residing with the applicant, her subsequent proceeding i.e. Petition No. E-421/2001 is barred. Such tall claim made by learned counsel for the applicant cannot be accepted at all.

[6] It reveals that right from the beginning the Non-Applicants were neglected by the present applicant and, therefore, they were required to

knock the doors of the court for getting their right of maintenance by filing Petition No.E-421/2001. Said petition was compromised and in fact, in pursuant to the compromise, Non-Applicant No.1 went with the present applicant to reside with him. However, it was noticed by her that, applicant has already married with Shakilabee and on that count, she was subjected to cruelty.

[7] A lady if chose to depart the company of her husband, if it is noticed by her that her husband has married with some other lady and is residing either in the said house or separately with another woman; no fault can be attributed against such lady, if she chose to reside separately from her husband. Further in the present case, Non-Applicant No.1 was subjected to cruelty at the hands of applicant. She was driven out by the present applicant. The impugned Judgment and Order shows that this aspect is correctly assessed by the learned court below.

[8] The applicant, who is the husband and father of Non-Applicant Nos. 1 and 2 cannot absolve his responsibility and liability to maintain them. Further on the basis of available material, the learned Judge of Family Court, Aurangabad has fixed the quantum of monthly maintenance allowance of Non Applicant Nos.1 and 2 @ Rs.500/- and Rs.200/- respectively. Said quantum is too meager and it is reached by the court below after considering the income of present applicant. Therefore, there is no reason to upset the well reasoned Judgment and Order passed by the court below. Criminal Revision Application is dismissed. Rule discharged.

(V.M. DESHPANDE, J.)